1 Introduction: international relations theory and the common good

The protection of foreign populations by collectivities of states is both an anomaly and an enduring practice in international relations.[1] It is an anomaly because in a system of sovereign states, each state is not only the final judge of its own interests, it is also required to provide the means to attain them.[2] Most political leaders recognize that their primary responsibility is toward their own citizens, and they tend to pursue this with extreme prejudice. Protecting groups and individuals within other states traps foreign policy officials into diverting resources from their own security needs without providing a significant domestic political benefit. Thus, the welfare of foreign populations falls well outside traditional definitions of state interest. Moreover, the institution of sovereignty is supposed to limit the jurisdiction of international organizations to regulating the relations *between* states, not *within* them. This has long been maintained through norms of coexistence, diplomatic practice, and international law, all of which are largely designed to shield states from interference in their internal affairs by outside powers.[3]

Yet international protection is also an enduring practice in diplomatic history. Since the evolution of the nation-state system in the sixteenth and seventeenth centuries, collectivities of states have alternately sought to protect religious minorities, dynastic families, national minorities,

[1] By foreign, I am simply referring to individuals and groups who are not citizens, subjects, or rulers of the states offering the guarantees.
[2] See Robert Art and Robert Jervis, "The Meaning of Anarchy," in Robert Art and Robert Jervis, eds., *International Politics: Anarchy, Force, Political Economy and Decisionmaking*, 2nd edition (Boston: Little, Brown and Company, 1985), p. 3.
[3] See, for example, Gerhard von Glahn, *Law Among Nations: An Introduction to Public International Law* (Boston: Allyn and Bacon, 1996), p. 133 and Article 3/7 of the UN Charter.

ethnic communities, individual citizens, and refugees. This practice has not been random. Rather, during particular eras certain classes of people have been specifically singled out for protection while others have been consciously ignored. In fact, international commitments to protect groups or individuals within states have been an important component of every major diplomatic settlement since the Peace of Westphalia in 1648. While the institutional mechanisms for implementing these guarantees have varied in both strength and depth, in each case the participating states considered the commitments to be general obligations.

The open-ended nature of these protections suggests a level of commitment that usually is only found in military alliances. Historically the commitments made to target populations have tended to assume the form of general guarantees applied to entire classes of people. While targets have sometimes been selective and enforcement inconsistent, states have established elaborate protection mechanisms through international institutions such as the Holy Alliance, the League of Nations, the Council of Europe, the Organization for Security and Cooperation in Europe, and the United Nations. In each case, they committed themselves to protecting defined classes of people within countries far from their borders.

At the same time, there is no easily apparent conceptual thread that connects the choice of target populations; sometimes the protected group is a ruling class while at others it is a political community. For example, the protection of religious minorities was singled out in the multilateral treaties of Osnabrück and Munster (1648), that ended the Thirty Years War. Catholic and Protestant minorities were guaranteed the right to privately practice their religion without interference from the king, and public discrimination based on religion was prohibited within all realms.[4] No other domestic group was afforded such protection. Following the end of the Napoleonic Wars in 1815, the Holy Alliance extended guarantees toward all recognized European dynastic families but not to the religious minorities within their realms.[5] The existence of national minorities was barely even acknowledged.

The protected group changed again after World War I, when the League of Nations assumed the responsibility for enforcing a wide range of treaties which extended recognition and protection to *national*

[4] For specific provisions see Clive Parry, ed., "Treaty of Osnabrück," in *The Consolidated Treaty Series, vol. 1, 1648–1649* (Dobbs Ferry, NY: Oceana, 1969), Article V, sections 11–44.
[5] See Harold Temperley, *The Foreign Policy of Canning, 1822–1827: England, the Neo-Holy Alliance and the New World* (London: G. Bell and Sons, 1925).

(defined as ethnic) minorities.[6] Religious minorities were considered only in so far as their religion formed the basis of a national identity. A generation later, the Council of Europe ignored national minorities in favor of individual citizens as a target class, through the adoption of several broad-based and legally binding human rights conventions and protocols.[7] The signatories agreed not only to establish basic standards, but also to create binding adjudication for enforcement. More recently, with the political and diplomatic integration of Eastern and Western European states the aftermath of the Cold War, the Organization for Security and Cooperation in Europe committed itself to protect the identity and corporate integrity of ethnic communities.[8]

The recurrence of these practices over time suggests that they constitute a definable form of institutional cooperation, which I call International Protection Regimes (IPRs). IPRs are multilateral institutions designed to protect clearly defined classes of people within sovereign states.[9] They are initiated by either international organizations or coalitions of states, whose members make general commitments to defend the target population against violations either by their governments or other segments of their societies.

Any explanation for this phenomenon must confront not only the apparent contradiction between theory and practice, as suggested in the opening paragraphs, but also the concurrent duality of a recurring pattern (international protection) and a secular change (the identity of the protected group). This book does so by examining why collectivities of states make general commitments to protect foreign populations and how they decide which groups to protect. It offers an explanation for this practice by advancing a theory of cooperation that is based on a shared normative and political vision of international order. Its fundamental starting point is not the maximization of individual utility by autonomous actors in a competitive system, although this certainly

[6] See Inis Claude, *National Minorities: An International Problem* (New York: Greenwood Press, 1955), pp. 17–20.

[7] See the Council of Europe, "European Convention on Human Rights and Fundamental Freedoms," Rome, November 4, 1950 and its five protocols: Paris, March 20, 1952; Strasbourg, May 6, 1963 (2 separate protocols); Strasbourg, September 16, 1963; and Strasbourg, January 20, 1966.

[8] See, for example, Conference on Security and Cooperation in Europe, *The Challenges of Change: Helsinki Summit Declaration*, Helsinki, 10 July, 1992, Section II.

[9] An institution is multilateral when it is based on generalized principles of conduct that apply without regard to the particularistic interests of the parties or the strategic exigencies that may exist in a particular occurrence. John Ruggie, "Multilateralism: The Anatomy of an Institution," *International Organization*, vol. 46, no. 2 (1992), p. 571.

explains many forms of statecraft. Rather, the problematique is how a self-selected group of political actors in an international society attempt to maintain a cohesive political order by resolving its internal tensions and adapting to a changing environment. Such an order helps these actors to promote their preferred political values over competing ones and freezes the existing distribution of resources and authority within the region or system.

I begin with the premise that political leaders not only come to the international stage with preferences for particular outcomes, they also bring with them a vision of politics that reflects various forms of knowledge, beliefs, and values about the nature of security, justice, and order. These attributes help to structure their choices and determine what kinds of relationships they wish to create and maintain. From this perspective international politics is as much about defining the structures and rules of interaction as it is about achieving specific material benefits or gaining strategic advantage.

I argue that international protection regimes are part of a class of institutions that are designed to promote the "common good" for a collectivity of states.[10] Unlike functional institutions that seek to provide consumable benefits to their participants, "institutions for the common good" are concerned with the preservation and general welfare of the international order itself. Their development requires a consensus among a group of core states around a basic set of political and normative principles. Since these types of institutions do not allocate resources among individual members, concerns with relative gains are muted; this allows states to make general commitments that apply in unforeseen circumstances. Thus, while these institutions may not provide direct benefits to participating states, they help to advance the broader goals of an international order by helping to maintain a preferred social or political framework through which states can cooperate and compete on the international stage.

Explaining international protection regimes

Traditionally, scholars have explained patterns of institutional cooperation by state interest, necessity, mutual advantage, and domestic

[10] Institutions are relatively stable collections of practices and rules that define appropriate behavior for specific groups of actors in specific situations. James G. March and Johan P. Olsen, "The Institutional Dynamics of Political Orders," *International Organization*, vol. 52, no. 4 (Autumn 1998), p. 948.

politics. That is, institutions have been presented as arenas for advancing parochial strategic or economic interests,[11] as mechanisms for achieving reciprocal gains,[12] and as transmission belts for projecting domestic politics onto the international field.[13] Each of these approaches is "individualist" in the sense that they attempt to explain cooperation by appealing to characteristics of individual actors (such as their internal preferences or capabilities) within their strategic environments.[14]

Typically, individualist-based theories conceptualize institutions as mechanisms for achieving the optimum allocative efficiency of their participants. While there is some debate over the role of power and coercion in creating them, regimes are considered to be the outcome of bargaining among utility-maximizers. Whether the regimes are imposed by hegemonic powers or negotiated by a group of like-minded states, they represent an attempt to reach interdependent decisions by reconciling diverging and converging interests. From this perspective, the "logic of expected consequences" drives state behavior.[15] Such logic is derived from a rational calculation of costs and benefits. While these benefits may sometimes be long term rather than immediate, political actors clearly expect some type of direct payoff.

Consequently, while this literature is highly varied and covers a wide range of cooperative and collaborative practices, its explanatory power is limited to situations in which political actors seek to achieve direct material benefits that cannot be obtained through unilateral action. Yet, the theoretical and empirical puzzles discussed in the introduction arise precisely because the benefits from making broad commitments to foreign populations in unforeseeable circumstances are not directly consumable by the participating states. Consequently, international protection regimes do not fit individualist models of institutions for several reasons.

[11] John Mearsheimer, "The False Promise of International Institutions," in Michael Brown *et al.*, eds., *Theories of War and Peace* (Cambridge, MA: The MIT Press, 1998), p. 339.
[12] Robert Keohane, "A Functional Theory of Regimes," in Stephen Krasner, ed., *International Regimes* (Ithaca: Cornell University Press, 1982).
[13] Andrew Moravcsik, "Explaining International Human Rights Regimes: Liberal Theory and Western Europe," *European Journal of International Relations*, vol. 1 (1993).
[14] I borrow the term "individualist" from James Caporaso in "International Relations Theory and Multilateralism: The Search for Foundations," *International Organization*, vol. 46, no. 3 (Summer 1992).
[15] James G. March and Johan P. Olsen, "The Institutional Dynamics of International Political Orders," in Peter Katzenstein *et al.*, eds., *Exploration and Contestation in the Study of World Politics* (Cambridge, MA: The MIT Press, 2000), pp. 309–11.

First, IPRs are not designed to provide a public good, such as open trade routes or reduced hydrocarbon emissions. Nor are they specifically created to solve collaboration problems such as achieving arms control or providing stable currency convertibility.[16] They do not resolve dilemmas of common aversion or common interest.[17] Unlike collective security systems, protection regimes do not affect utility calculations by linking state security with general commitments to protect territorial integrity and promote nonaggression. And, unlike other types of security regimes, they do not attempt to increase each state's relative safety through mutual restraint and adjustment of military policy. Finally, they differ from other forms of collective intervention in that they are not targeted at particular states, but rather at general classes of states, and, more specifically, at general classes of people within these states.

International protection regimes are particularly challenging for neorealist theories of international relations. In a realist world, states are predisposed toward self-help and parochialism and resist becoming entangled in any commitments or institutions that significantly restrict their freedom of action. Great powers therefore hesitate to get involved in potentially violent situations where their vital interests are not threatened, particularly if this means expending their own political and material resources.[18] Participating in multilateral efforts to guarantee the security of foreign populations both constrains a state's ability to act unilaterally while also tying it to open-ended commitments that could apply in circumstances that may not support its strategic objectives in the future.[19] As a result, a realist foreign policy eschews unnecessary foreign entanglements and avoids taking risks that do not further the welfare of either the state or its citizens.[20]

[16] Collaboration problems arise when the pursuit of one's preferred strategy results in suboptimal outcome for all sides. Institutions can help resolve this dilemma by facilitating mutual policy adjustment, extending the shadow of the future and sanctioning defectors. See, for example, Lisa Martin, "The Rational State Choice of Multilateralism," in John G. Ruggie, ed., *Multilateralism Matters: The Theory and Practice of an Institutional Form* (New York: Columbia University Press, 1993), pp. 95–100.

[17] See Arthur Stein, "Coordination and Collaboration: Regimes in an Anarchic World," *International Organization*, vol. 36, no. 2 (Spring 1982).

[18] Mearsheimer, "The False Promise of International Institutions," pp. 356 and 357.

[19] This problem in part underlies the realist opposition to collective security regimes. See, for example, Richard K. Betts, "Systems of Peace or Causes of War?," *International Security*, vol. 17 (1992).

[20] See, for example, Michael Mandelbaum, "Foreign Policy as Social Work," *Foreign Affairs* (January/February 1996), pp. 16–32.

From a realist perspective, protecting foreign populations should also have significant relative gains implications that preclude state involvement.[21] To the extent that protection systems strengthen some political actors at the expense of others, this could undermine the government of a potential ally just as it could fortify that of a potential adversary. Without knowing in advance which powers might benefit from a particular protection system, participating states cannot calculate how the regime will ultimately affect the distribution of political influence and strategic advantage in a given region. Indeed, according to realist logic, states should be more likely to try to enhance their own strategic position by exploiting conflicts between domestic actors than attempting to settle them on the basis of an abstract principle.

According to realist approaches, institutions are forums for acting out power relationships and implementing hegemonic preferences.[22] Therefore, in order to account for IPRs, realist theories would have to establish a clear positive relationship between a hegemonic interest in protecting specific populations and the creation of multilateral regimes that do so. Yet the most we can derive from these theories themselves are *ad hoc* explanations that are based on the particularities of each case. Stephen Krasner argues, for example, that intervention to alter the relations between rulers and subjects has been motivated by a variety of factors, all related to the interests of the intervener.[23] Quite simply, protected groups are objects for the pursuit of powerful states' strategic, economic or ideological interests.

From this perspective, a state or group of states may support a foreign population in order to weaken a target government or disrupt a potential alliance with an adversary. In these types of cases, however, theories based on state power and interest can account only for a particular action, not for a *general* guarantee, particularly one of a multilateral nature. Nor can they account for the recurrence of IPRs over time under very different strategic and geopolitical circumstances.

[21] On the relative gains problem in international relations, see Joseph Grieco, "Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism," *International Organization*, vol. 42 (1988) and Kenneth Waltz, *Theory of International Politics* (New York: Random House, 1979).

[22] Mearsheimer, "The False Promise of International Institutions," p. 339.

[23] Stephen Krasner, "Sovereignty and Intervention," in Gene M. Lyons and Michael Mastanduno, eds., *Beyond Westphalia? State Sovereignty and International Intervention* (Baltimore: The Johns Hopkins University Press, 1995). For an application of this argument to human and minority rights protection see Stephen Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 1999), chs. 3 and 4.

Neoliberal theories of institutions can more easily accommodate the idea of a multilateral protection regime. Although the study of regimes has tended to focus primarily on economic and social issues, neoliberal theories do not preclude the possibility of establishing multilateral security institutions.[24] Regime theories show how a convergence of self-interest among states can facilitate cooperation in defined issue areas when independent action would result in pareto-inferior outcomes.[25] They argue that the nature and scope of institutional cooperation reflects the strategic incentives and constraints posed by different types of cooperation problems. In doing so, they try to specify the conditions that can lead to the creation of cooperative institutions by showing how regimes can help states to overcome collective action problems, make commitments more credible and reduce uncertainty and mistrust. In short, neoliberals conceive of institutions as solutions to dilemmas of strategic interaction.[26]

By showing how certain types of institutions can overcome relative gains concerns and fears of cheating, institutionalists address some of the neorealist barriers to establishing a multilateral protection regime. While conceding that few states wish to cede their right to self-help, institutionalists nevertheless argue that in an interdependent world, states will accept limits on their operational sovereignty out of necessity when doing so will increase their effectiveness and provide material benefits.[27] Thus, unlike neorealist theories, liberal institutionalist approaches can account for the bargaining processes that could lead to the creation of a protection regime. So long as the participating states find mutual benefit in protecting the populations of other nations, there are few inherent barriers to creating the regime (though there may well be many practical problems).

Like neorealists, however, institutionalists can not account for the motivation to establish one. In a neoliberal world, states participate in

[24] For a dissenting view of this statement see Robert Jervis, "Security Regimes," in Stephen Krasner, ed., *International Regimes* (Ithaca: Cornell University Press, 1983). For a supportive study see Harold Müller, "The Internationalization of Principles, Norms, and Rules by Governments: The Case of Security Regimes," in, Volker Rittberger, ed., *Regime Theory and International Relations* (New York: Oxford University Press, 1993).

[25] See for example Robert Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984).

[26] Robert Keohane, "Multilateralism: An Agenda for Research," *International Journal*, vol. 45 (August 1990).

[27] Robert Keohane, "Sovereignty, Interdependence, and International Institutions," in Linda B. Miller and Michael Joseph Smith, eds., *Ideas and Ideals: Essays on Politics in Honor of Stanley Hoffman* (Boulder: Westview Press, 1993), p. 91.

regimes only to achieve *national* objectives in an environment of perceived international interdependence.[28] Governments join the GATT, for example, because they realize that they must trade in order to prosper and their ability to export their own goods depends upon reciprocal reductions in trade barriers. For this reason, institutional theories are primarily concerned with how the benefits of cooperation are distributed and the degree to which all members are in practice made better off by the presence of institutions.[29]

Unlike GATT, however, most of the benefits from a multilateral protection system are not enjoyed directly by the participating states or their domestic constituents, but by the collectivity of states as a whole, and more specifically, by the protected population. It is not clear from neoliberal theory why states should be concerned with the welfare of foreign populations. The institutionalist emphasis on expected utility and reciprocal benefit eliminate the need to consider questions of obligation or justice. This makes it difficult to apply neoliberal theories to explain any common interest that cannot be reduced to the sum of individual interests.

In neoliberal models, norms serve as external constraints and regulatory mechanisms rather than as expressions of preferred values. States follow the rules and procedures of the regime because of the functional benefits they provide. Institutions, however, not only produce benefits to participants; they also reproduce and occasionally alter the structures that define a given system. Returning to the previous example, the GATT has not only been a mechanism for opening markets to participating states, it has also been a major force in promoting and expanding the Western liberal economic order. The idea of a trade regime designed to reduce barriers would be unthinkable without some prior commitment toward a liberal world economy. Therefore, while neoliberal theories can explain a wide range of functional regimes, they cannot explain the development of institutions that emerge primarily to pursue broader social goals.

Liberal theories also approach institutions as mechanisms for realizing national preferences, however their starting point is not state interest but rather that of individuals and groups *within* states. Domestic politics

[28] John Donnelly, "International Human Rights: A Regime Analysis," *International Organization*, vol. 40, no. 3 (1984).
[29] Lisa Martin, "An Institutionalist View: International Institutions and State Strategies," in T.V. Paul and John Hall, eds., *International Order and the Future of World Politics* (Cambridge: Cambridge University Press, 1999), p. 93.

is the first cut for explaining state behavior and systemic constraints are less important than internal ones. In the liberal paradigm, the fundamental actors are the autonomous, rational individuals and groups who engage in transactions on the basis of self-interest and risk-averse preferences.[30] Governments represent a subset of their societies whose dominant interests generate and constrain the underlying preferences and identities of states in the international system. The development of international organizations and institutions can therefore best be explained through the sequential analysis of national preference formation and strategic interaction among sovereign states.[31]

From a liberal perspective, then, an international protection regime would represent a convergence of interests among government officials from various countries acting on behalf of the dominant domestic groups within their respective societies. They would emerge through a series of "two-level games" whereby state officials attempt to reconcile the interests of their societies with those of others. Human rights regimes, for example, arise when domestic social movements and interest groups pressure their political leaders to make human rights a priority in the pursuit of foreign policy. Thus, international human rights institutions would emerge among states that already practice human rights domestically themselves.

The advantage of a liberal approach is that it does not place any inherent limits on the kinds of policies that states may choose to pursue. State interest reflects domestic politics rather than some external constraint imposed by the structure of the international system. Therefore, unlike realism, for example, states are not automatically constrained by balance of power considerations nor do international institutions have to necessarily serve some type of state interest. In fact, states could go so far as to cede much of their sovereignty in economic matters if it serves the interests of their domestic constituencies.[32] This creates more space from which one can try to explain international protection regimes.

[30] Andrew Moravcsik, "Taking Preferences Seriously: A Liberal Theory of International Politics," *International Organization*, vol. 51 (1997).
[31] See Andrew Moravcsik, "Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach," *Journal of Common Market Studies*, vol. 31, no. 4 (December 1993), p. 481.
[32] See, for example, Andrew Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Ithaca: Cornell University Press, 1998).