Introduction

On November 8, 2013, an experienced advocate for economic and social rights sits down with me in Palais Wilson, the home of the Office of the High Commissioner for Human Rights (OHCHR) and meeting venue for the human rights treaty bodies. We chose the empty childcare room over the crowded cafeteria. I asked her for this interview to learn more about how the work of one such treaty body, the Committee on Economic, Social and Cultural Rights (CESCR), facilitates the work of non-governmental organizations (NGOs) at the domestic level. Why do human rights organizations like hers prepare parallel reports and statements on states, often requiring resource-intensive collaboration with other actors, or travel to Geneva without being allowed to speak during the constructive dialogue between treaty body and state delegation? Even the intergovernmental Human Rights Council (HRC) grants its observers more visible participation opportunities in their procedures.

She explains her organization’s advocacy as a result of many NGOs’ conviction that treaty bodies provide a meaningful channel through which “to influence lawmaker,”¹ which materializes particularly, she says, in their work to draft and adopt General Comments (GCs).² To explicate further, she cites an earlier-morning dialogue between a treaty body member and a government official, in which strong disagreement ensued regarding this particular state party’s obligations under Article 7 of the International

¹ Interview with an NGO Officer.
² I use the term general comments to refer to the interpretations of the human rights treaty bodies. Two treaties, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), use the term general recommendations. When not pointing to specific General Comments or General Recommendations, this book subsumes the two treaties’ general recommendations within the term general comments.
Covenant on Economic, Social and Cultural Rights (ICESCR) in the aftermath of the 2007–2008 global financial and economic crisis. Pressed on the austerity measures the government imposed as a response, which clawed back domestic advances in the protection of just and favorable conditions of work and “raised important concerns regarding the principles of non-retrogression, progressive realization, non-discrimination and minimum core obligations” (OHCHR 2012: 8), the official defended them as a move of necessity to restore economic stability.

Notably in their pushback, this government was no rogue dissenter but rather one of many state parties arguing, whether directly or by inference, that they hold latitude to decide on exceptions from human rights obligations in the event of such crises. Probing the governments’ lines of argument, I ask my interview partner if states shouldn’t here know better on the subject of their obligations, given that CESCR concluding observations and International Labor Organization (ILO) conventions provide additional clarification on this exact topic. The advocate for economic and social rights looks at me, shakes her head, and expresses sympathy for the government’s position. In her view, the obligations as set out in the Covenant itself and, particularly, Article 7 are vague and thus in need of more direct and comprehensive clarification than that provided by concluding observations and ILO conventions. That kind of clarification, she says – *authoritative* clarification – comes by way of general comments.

She follows this vignette by recounting a general comment drafting process she initiated with a treaty body member – a longtime NGO colleague of hers – years earlier, in which she facilitated consultation with civil society and trade unions on state obligations under Article 7. With reference to the only recently adopted Optional Protocol allowing for individual complaints, she described her role and that of the other involved actors, all of whom had a professional interest in the justiciability of the ICESCR, as part of a global strategy of strengthening economic, social, and cultural rights. In 2016, three years after our interview, the Committee on Economic Social and Cultural Rights adopted General Comment No. 23 on the right to just and favorable conditions of work as set out in Article 7. It laid out states’ obligations in times of

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3 The financial crisis posed serious threats to the progress made in the development of ESC rights (Nolan 2014; Ratjen and Satija 2014). For the context of the debate in the UN, see OHCHR 2012.

economic, fiscal, and political crises and austerity measures and also included new categories of work and workers that evolved since the Covenant’s drafting.

This episode from my first research stay at the UN in Geneva exemplifies the very direct access that human rights professionals like her have to the UN treaty bodies. As representatives of specific human rights organizations, they come to the premises of Palais Wilson to make proposals for agendas, share information on treaty implementation at site events, present parallel reports to support the monitoring of state reports, and make written and oral statements on the treaty bodies’ days of general discussion. While their interest to “influence lawmaking” in the treaty bodies is not surprising, the seemingly very direct and natural opportunities granted to do so are. I had never put much thought into the processes that lead to the adoption of a general comment; like many other human rights scholars, I looked at them only as one of the instruments available to fulfill the expert committee’s mandate as monitoring bodies. Closer examination, however, appeared to paint the picture of an instrument whose impacts were much more productive than prescriptive – indeed this NGO professional was but one among many individuals who came to the treaty bodies’ sessions to above all influence not monitoring but lawmaking.

This lawmaking became the core focus of an empirical inquiry into the treaty bodies’ work to produce general comments, whose findings are what this book bears. This inquiry was guided less by legal questions than by an interest to determine how exactly general comments, which lack formal status in international human rights law and require no formal consent by states, are elaborated and adopted - and more particularly, how this happens within a treaty body system presently mired in stakeholder contestation, a decade-long reform process, and resource burdens. Because what surprised me most about this emphatic notion of the general comments’ seeming efficacy to influence law was that they were managing to do so, with such stresses notwithstanding.

So how do the treaty bodies, against this pessimistic backdrop and a lack of formalized procedure, draft and adopt their interpretations – and how does this answer bear on our understandings of international organizations, transnational actors, and international law? Derived from the research of this aforementioned inquiry, which dives beneath the surface of formal access

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5 Lawmaking is quoted here from the interview in the opening vignette. This book discusses and analyzes several examples of general comments that influenced the development of international human rights law, and as such, I use the term lawmaking to specify an activity that produces outputs that can be argued for as (soft) law (Lagoutte, Gammeltoft-Hansen, and Cerone 2016).
rules, procedures, and actors of the UN treaty body system, this book’s answer is that they do so through their members’ close collaboration with non-state actors in an informal, short-lived process of liaising I conceive as a Transnational Lawmaking Coalition (TLC) for human rights. Through the instrument of treaty interpretations, these coalitions press for clarification of state obligations in response to global challenges, crises, and/or state inaction, and consequently contribute to the development of international human rights law. Specifically comprising at least one UN treaty body member alongside human rights professionals, these coalitions maneuver outside the above stresses, or rather fill in the space they leave behind, as an actor strategically using treaty interpretations to account for better protection of human rights.

1.1 INTERPRETING HUMAN RIGHTS: THE POWER AND PRACTICE OF TREATY BODIES

This book’s focus on who makes human rights needs certain clarification regarding its embeddedness in broader debates about the history, origins, and nature of human rights. My account on human rights in international law and politics does not deny that the institutionalization, including the “legalization” of human rights in global governance, has not always been driven by actors with the best interests for all in mind. Some actors might have been more purposeful, and other actors well-meaning but damage-doing in their endeavor to respect, protect, and fulfill human rights for all. Some governments, and increasingly so it seems, have either lost or never had a genuine interest in protecting human rights. In this regard, I agree with scholars who have repeatedly highlighted the hostage-taking of human rights by states, international institutions, and non-state actors (Hopgood 2013; Moyn 2018; Mutua 2007). Yet, not complying with or violating human rights is often justified with the weaknesses of human rights law, and only to a lesser extent

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6 For legalization, see the IO special issue 2000 (Abbott et al. 2000 or Abbott and Snidal 2012), and also: Aalberts and Gammeltoft-Hansen 2018; Finnemore and Toope 2001. For human rights in other institutions than the UN Geneva bodies, see for example Walling 2015, 2020; Zvobgo and Graham 2020.

7 In this book, human rights are understood as law when they are codified in one of the core treaties or their optional protocols. As such, I draw a distinction between human rights as law and as norms (Finnemore and Sikkink 1998; Jurkovich 2020b). Arguments about the meaning and application of laws in-use (Wiener 2009) are thus in-built features of human rights law, providing for the possibility of norm change (Sandholtz 2007). In my view, treaty interpretations of human rights law can serve two functions here: for one, they can further clarify what is needed for this translation of law into practice by highlighting state obligations. For another,
with a general rejection of the value(s) inherent in human rights (Winston 2018). Any scenario of a “twilight of human rights law” (Posner 2014) requires the acknowledgment that the treaties themselves are likely the product of actors who entered their negotiations with different interests. But my approach to the weaknesses of the UN human rights treaty system is not in adding yet another critique of human rights – others have already done so at great length and support for their arguments occurs every day in the news – but in taking an actor-centric perspective and turning to an in-depth analysis of who makes human rights law.

Human rights law, and the UN human rights treaties specifically, are far from perfect. Not only those treaties adopted tell us a story about the political forces behind them, but even more telling are those which both remain subject to endless negotiations and open-ended working groups and where support for nonbinding regulations prevails, for example, in business and human rights. My interest in treaty interpretations is grounded, for one, in the (allegedly) less politicized nature of their making, as expert committees decide on their scope and not governments. For another, and this is where this book departs from pessimistic outsets on the state of international human rights, treaty interpretations provide the opportunity to clarify obligations in light of political, economic, and social challenges. In that sense, they can be a tool to make rights right – and account for previous shortcomings in human rights law.

This perspective on general comments unsurprisingly does not come from one of formal international lawmaking, but is informed by decades of scholarship on advocacy for human rights. Numerous scholars have already shown how, and under what conditions, human rights matter for people around the globe. Struggles in their name repeatedly tell the story that human rights are, and have always been, contested and that those who claim to speak for them do they can make human rights law, by incorporating norms which have not yet been codified into the treaty. Hence, the focus of this study is the process until norms become validated as law, but that does not mean that human rights are then ready for implementation in all places or immediately achieve acceptable levels of compliance (Chayes and Chayes 1993).

8 General comments carry “significant legal and political weight” (Winkler 2012: 41). While their legal value remains disputed and their impacts vary, these interpretations are “one of the potentially most significant and influential tools available (…) to deepen the understanding and strengthen the influence of international human rights norms” (Alston 2001: 763). Or, to put it differently: the “fact that general comments do not have a formal, binding, legal status does not mean that they lack legal significance” (Oette 2018: 9).

9 For an excellent overview on that matter in international law scholarship, see Bröllmann and Radi 2016.

10 Given the immensity of this literature, I include only a selection of scholarship here: Comstock 2021; Gremer and Simmons 2015, 2020; Hillebrecht 2014; Krommendijk 2015;
not always give rise to collective benefits. Their politicization is of key concern for multilateralism and the lives of billions of individuals around the globe. For these individuals, the codification of norms presents a basis on which to articulate demands for justice. International human rights law can matter, yet under the right social and legal conditions. One central condition is that obligations are clear and unambiguous, so that states know what to do for their implementation, human rights advocates at the local level know what to demand, and individuals whose rights were violated have a basis for claiming them and keep leeway for local norm translation to a minimum (e.g. Zimmermann 2017). Human rights, however, count as especially vague, indeterminate, and ambiguous norms in international law. This makes them vulnerable to political, economic, and social challenges, like the financial and economic crisis in the introductory example and explains why they need interpretation through the treaty bodies in the form of general comments.

Unlike courts or intergovernmental institutions, the treaty bodies have largely remained at the sidelines of scholarly attention to the development of human rights. This dismissal has shifted in recent years,11 with the publishing of research that has demarcated the substantial, tangible ways in which treaty body decisions impact domestic politics and law – that is, how their functions, in practice, go beyond a mere monitoring of the treaties’ obligations. Their work has always included a multistakeholder perspective, conceptualizing any success of the treaty bodies as one that goes beyond a dual state-committee relation (De Búrca 2017). While states have established the expert committees as monitoring bodies, general comments have “traditionally been the point at which states articulate opposition to treaty bodies as they often view the practice as going beyond the treaty into the realm of developing new law” (McCall-Smith 2016: 32).

In this book, general comments are to a lesser extent understood as an instrument addressing implementation problems in human rights law than as one reflecting changed normative orientations which have not (yet) been addressed by formal international law. As such, the book follows socio-legal scholarship which assumes that this is succeeded by change in behavior of a wider range of actors to which the law applies (Halliday and Shaffer 2015: 8–11). Helfer, for example, showed how ICESCR’s General Comment No. 14 on the right to health became a key document in shaping a right to access to medicine


11 For an overview of scholarship on the treaty bodies, see Bayefsky 2001; Keane and Waughray 2017; Keller and Ulfstein 2012; McCall-Smith 2016.
against intellectual property laws (Helfer 2015). The treaty bodies are thus approached as actors who can shape the development of international law intentionally through treaty interpretations.\footnote{Similarly, see Diane Desierto, on ICESCR and trade law, who highlighted that “many of the Committee’s General Comments anticipated later treaty developments in labor rights protections, education, and access to health care, gaining resonance in international practice much later than when the General Comments were first issued” (Desierto 2017).}

The matter of human rights interpretation is “both complex and, to a certain extent, obscure” (Fitzmaurice 2013: 739). TLCs can shed light on this matter by taking an actor-centered approach to the practice of human rights treaty interpretation. The drafting process for interpretations is not further specified in the treaties but left to the discretion of the respective treaty body.\footnote{See Appendix B for an overview of rules of procedures across treaty bodies, for example, Art. 39 (2) ICCPR; Art. 10 (1) CERD; Art. 19 (1) CEDAW; see for example “Rules of Procedure of the Human Rights Committee,” January 9, 2019, CCPR/C/5/Rev.11 (Rules of Procedure), which, inter alia, leaves open the criteria according to which the topics for general comments are selected and which sources will be consulted in the drafting process.} This lack of unambiguous secondary rules\footnote{Within norms research, these rules about norm making have been identified as metagovernance norms (Pantzerhelm, Holzscheiter, and Bahr 2019) or organizing principles (Wiener 2008, 2018).} gives the treaty bodies as collective actors leeway for internal debate about appropriate practices of rule-making (Raymond 2019). In this respect, these bodies differ significantly from international courts, whose decisions strictly contour the detailed procedure of adoption treaties typically define, which only allows for the consideration of certain forms of evidence and substantive law. Treaty bodies, in contrast, have the procedural room to decide themselves which sources of information they consult – and can do so without diluting their interpretations’ legal weight; their pronouncements are often cited in the same breath as decisions of international courts and tribunals, considered “key catalysts” of legal developments.\footnote{The term was used by CEDAW in General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, July 14, 2017. See also Report of the International Law Commission (2018), Chapter IV, UN Doc. A/73/10 2018, 112 para. 17’s quoting of GR No. 35: “the pronouncement may serve as a catalyst for the subsequent practice of States parties.” From a socio-legal perspective, “they [international and transnational soft-law instruments] are not binding legal instruments in themselves; rather actors aim to catalyze [my emphasis] through these instruments the adoption, recognition, and enforcement of binding, authoritative legal norms in nation-states” (Halliday and Shaffer 2015: 14).}

From this perspective, treaty bodies are thus more than mere agents following the orders of their principals, standing today as powerful actors in human rights law and for the improvement of human rights protection around the
globe. Their general comments are tools of choice for the expert committees but also for the many human rights organizations who have traditionally worked with them on alternative monitoring. Rather than assess the treaty bodies’ application of formal rules of treaty interpretation in a legal exercise, I am, as I said, primarily interested in how the treaty bodies engage in their interpretations in the face of resource constraints and government backlash against human rights. To be clear, I presume neither that all treaty interpretations are the (sole) outcome of a TLC, nor that all general comments impact the development of international human rights law. But as these instruments, which require no further ratification by states, may sway the future course of human rights protection, then it is important to study how and by whom they are drafted.

1.2 TRANSNATIONAL INFLUENCE ON INTERNATIONAL LAWMAKING

While the book’s first contribution is to the scholarship on the UN human rights treaty bodies and their interpretations of human rights law, it speaks to and builds upon a variety of scholarship on IR and specifically on IOs. For one, it seeks to contribute to the rich literature on processes and procedures of international lawmaking. IR scholars have provided excellent contributions to the design of international agreements (Koremenos 2016; Tallberg et al. 2014; Voeten 2019) and the procedures of international lawmaking. This vein of literature has seen substantive contribution by IR scholars regarding, for example, practices of making new rules and norm change (Finnemore and Sikkink 1998; Raymond 2019; Sandholtz 2008), yet most of its scholarship remains focused on negotiations among states, inevitably producing a perspective on lawmaking as a “diplomatic practice riven with power, interest, and values amid sociopolitical hierarchies” (Mantilla 2020: 9). When lawmaking, as in the human rights treaty bodies, is a practice by a committee of independent experts, dynamics are different. As human rights treaty bodies are composed of independent experts, this book is also a study on expert committees, connecting scholarship on their role as bodies or entities within IOs with that on experts and the role of legal and other technical or functional expertise (Kennedy 2005; Leander and Aalberts 2013; Littoz-Monnet 2017).

For another, the literature on transnational regulation regimes increasingly challenges conceptions of a state-led order (Shaffer 2012), yet multilateral rule-making remains central to the work of non-state actors (Hickmann 2015, 2017). In the absence or stagnation of such formal rule-making processes (Pauwelyn, Wessel, and Wouters 2014), they remain reliant on international legal

16 For an overview, see Fitzmaurice 2013.
frameworks for norms inherent to their work. As such, this book departs from
the observation made by others, that actors increasingly seek alternatives to
formal treaty-making in global governance (Benvenisti 2007; Krisch 2014;
Pauwelyn, Wessel, and Wouters 2012; Rodiles 2018). It remains focused instead
on alternatives given within the formal order: the interpretations of norms of
international public law. IL and IR scholarship has recently begun to explore
the strategic use of interpretations by states to influence how others interpret
international legal obligations and redefine meanings of rules (Daku and Pelc
2017; Krieger 2019; Putnam 2020). A focus on interpretative practices has
highlighted the agency of international legal institutions to generate change
in international law (Stappert 2019).

Treaty interpretations clarify, and often create, new norms and thus also spur
the interest of non-state actors to directly influence their outcome (Squatrito
2012). IO scholarship has demonstrated that this interest is mutual, establishing
the “opening up” of IOs to transnational actors as a constant trend over time and
across all issue areas (Jönsson and Tallberg 2010; Sommerer, Tallberg, and
Squatrito 2015; Tallberg, Sommerer, and Squatrito 2013). The increased partici-
pation of transnational actors in international organizations, such as NGOs,
advocacy networks, corporations, epistemic communities, and unions, reflects
this changing nature of global governance. International organizations no
longer saliently represent cooperation forums for states alone, and regularly
invite transnational actors to provide expertise or services and publicly commu-
nicate their efforts in this regard (Carayannis and Weiss 2021; Ecker-Ehrhardt
2018). Even if they do so simply for means of self-legitimation, any IO today must
justify these actors’ noninclusion more than their inclusion (Jönsson and
Tallberg 2010; Risse 2013; Tallberg, Sommerer, and Squatrito 2013). While
access to agenda-setting, implementation, and monitoring is well documented
and well explained, opportunities for their involvement are least extensive in the
phase of decision-making (Steffek 2013; Tallberg et al. 2014: 770). This phase
includes lawmaking, where some studies have well explained how non-state
actors can nevertheless be successful in shaping the outcome of interest (Betsill
and Corell 2001; Dany 2012; Glasius 2002; Rietig 2016).

Explanations for non-state influence can be briefly distinguished between
norm-based models, resource-based models, and those looking at both per-
spectives to explain varying degrees of impact on different international
organizations (Liese 2010). The decision whether and to what extent access
is granted to what type of actor is not random, as research on the design of
international institutions (Koremenos, Lipson, and Snidal 2001; Tallberg,
Sommerer, and Squatrito 2016; Voeten 2019), democratic practices, and legit-
imacy in international institutions all tells us (Dingwerth, Schmidtke,
International institutions have different functional and normative incentives to include non-state actors (Nasiritousi, Hjerpe, and Bäckstrand 2016); for example, the involvement of civil society actors stands for more transparent decision-making (Scholte 2011), and non-state actors have different strategies to make use of these incentives and with different effects (Dellmuth and Bloodgood 2019; Dellmuth and Tallberg 2017). On an informal cooperation level with the rule-makers, non-state actors can be influential intermediaries (Abbott, Levi-Faur, and Snidal 2017). Organization theories with a focus on organizational culture have, for example, provided explanations as to why not every NGO is equally successful in every international organization, although they support the same norms (Hopgood 2006; Wong 2012). Yet, given the nature of international policy – and lawmaking – these studies focus mainly on intergovernmental settings. This creates an emphasis on visible public institutions and processes in international organizations. By contrast, the conditions and circumstances for participation, access, and, ultimately, influence on lawmaking in expert committees are different, and their strategies to engage with independent experts are less visible than when engaging with diplomats or states representatives in international negotiations (Türkelli, Vandenhole, and Vandenbogaerde 2013).

1.3 THE ARGUMENT IN BRIEF: TRANSCONTINENTAL LAWMAKING COALITIONS

TLCs, to bring the concept back to the fore, both shed light on the particularities of the treaty interpretation process and provide an analytical lens to understanding the key role expert bodies and issue professionals – working informally and sans government-involvement at the boundaries of an IO – play in the development of human rights law. As this book’s empirical work will show, TLCs are typically found in situations where state action to tackle global challenges is absent or stuck or social pressure is not (yet) high enough to engage in formal law-making (Mantilla 2020). In that sense, TLCs are no new phenomenon. Efforts by individuals and organizations from civil society, academia, international institutions, and other public and private spheres to advocate for global solutions and lobby for preferred regulations exist in all places where policies are made. Yet, TLCs notably differ in their organizing pursuit: Rather than work toward persuading governments or intergovernmental negotiations, individuals in TLCs deliberately choose international law as

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17 See for example Dellmuth and Tallberg 2017; Hanegraaff, Beyers, and De Bruijcker 2016.
a response to the above challenges, and their liaising as a coalition takes place in expert committees. The literature explains IO interactions with other organizations mainly from two perspectives: a more rational one in which the IO grants access in exchange for information or services, and a constructivist explanation based on a normative, often democratic, value of including non-state actors into the IO’s work, yet with different intensity across IOs and issue areas and policy phases. This provides for the establishment of both the relevance and the necessity of studying interactions between an IO and other organizations, including the formal and institutionalized access points and more informal processes of exchange often established at an individual, rather than an organizational, level.

On the side of the “other” actors, IO literature, with varying degrees of explicitness, presupposes that an abundant amount of actors – NGOs, social movements, companies, foundations, unions, and so on – want to interact. Here, the transnational actor literature, the second main body of scholarship this book addresses, is flush with richly detailed accounts of how they can effectively do so by way of advocacy networks and epistemic communities, which use IOs to make their ideas, knowledge, and demands heard to diplomats and governments. Here is where the UN human rights treaty system offers a fresh perspective on the relationship of IOs and these actors: the development of human rights law, thus the making of law, increasingly happens through treaty interpretations. The decision when such an interpretation is necessary, on which article(s) of the treaty and what aspects should be included, as well as the adoption of the interpretation, is solely left to the discretion of the human rights treaty body. This body is composed of independent experts.

TLCs are formed between these experts serving on state-empowered entities, who are authorized to interpret the meaning of international treaties, and individuals from their professional network external to the committee. Compositionally, TLCs consist of a small number of individuals. Actors in a TLC stem mainly from the pool of actor groups in advocacy networks and epistemic communities, for example, international and domestic NGOs, academics and intellectuals, international (and regional) organizations, foundations, or unions. TLCs primarily enact their work through the interpersonal relationships of their individual members. Empirically, this relationship renders within drafting processes from the following bases – either via a former professional relationship outside the IO (e.g., colleagues, supervisors, students) or via previous quality work experience directly with the expert body (e.g., former treaty body member or staff member of international
organizations.). The building of their coalition mainly takes place outside or at the boundaries of their organization, as experts are not regular staff of the IO.

Their coalition to draft a potentially law-impacting treaty interpretation is transnational because it is neither international nor domestic. What sounds odd at first reflects the reality that independent experts serving at the international level have acquired their expert status on account of their previous appointments and activities at the domestic or local levels. What is more, they continue in their professions across the duration of their committee service and interact both with actors who may be closer to the international level and with those more connected to their professional community at home. Similarly, the professionals they collaborate with are often found in these contexts sans any connection with the international level in their work.18

Through the instrument of treaty interpretations, these coalitions work on the clarification of state obligations in response to global challenges and crises. TLCs as a concept share in the micro-level scrutinizing seen in other actor-centered approaches to international politics by helping to identify which actors engage in which behaviors to deliver specific outcomes. In doing so, TLCs provide an explanation for the promotion of human rights through a variety of actors, like NGOs, TANs, epistemic communities, and international institutions, as all members simultaneously have ties to these organizations and facilitate not only the drafting of the interpretation but also its implementation and application. As such, they are of significance for scholarship on human rights, transnational actors, and IOs and contribute to broader debates as follows:

1.3.1 TLCs’ Significance for Human Rights Research

Human rights scholarship has always been deeply connected with the study of influential non-state actors (Brysk 2020; Forsythe 2012; Schmitz and Sikkink

18 As such, members are approached as transnational professionals (Harrington and Seabrooke 2020), allowing for the analysis of their contribution to the coalition based on professional expertise and knowledge, to overcome the state/non-state distinction and organizational focus on all “other” actors. The book will highlight that the “transnational” distinction attached to a multitude of actors is not predetermined for TLC membership. A transnational NGOs, for example, can be identified as “a particular type of transnationally operating non – state actor” (Mitchell, Schmitz, and Bruno-van Vijkeijken 2020: 10) in its accreditation status with an IO. In this book, professionals within a TLC often engage in a border-crossing activity for the first and often only time in their careers. They become transnational through the coalition and they “do not necessarily need to campaign for or invent issues,” and their “formal institutionalization is not a requirement to be considered relevant” (Henriksen and Seabrooke 2016: 725).
Obviously, this book follows a number of already-forged paths for detecting non-state influence on the making of international human rights law. To set the existing scholarly discourse on this participation: we know a lot about how and under which circumstances non-state actors can set agendas on the international level (Carpenter 2007; Heyse 2011; Joachim 2007), which role they play in the implementation of international policies (Gaer 2003) and enforcement of international law (Eilstrup-Sangiovanni and Phelps Bondaroff 2014), and how their monitoring can impact state practice (Krommendijk 2015). TLCs add further flesh to this picture in providing a framework to understand how and by whom human rights law can be developed through treaty interpretations, potentially impacting the protection of human rights.

1.3.2 TLCs’ Significance for IO Research

One finding of this book is that international lawmaking is characterized less by top-down or bottom-up narratives than by a (IO) border-crossing and networked structure. While existing scholarship on non-state actors offers many insights on how they influence the drafting of international legal texts (Dany 2012), the majority of these works focus on civil society in organized forms, which tends to privilege their formal roles, organizational structures, and access opportunities. Hence, a broader set of civil society activities and interactions with the treaty bodies are overlooked and remain understudied (De Búrca 2017). This locates the book in the broader research on informal governance (Roger 2020) and on decision-making outside of the “intergovernmental core” (Steffek 2013: 1009) in international organizations by diving deep into the practices of expert committees.

TLCs’ contribution here lies in their providing of an explanation for the agency of expert committees in IOs. Delegation of tasks to expert committees, who are allowed the leeway to carry out decision-making processes on treaty interpretations sans the involvement of governments, can be argued as leading to shifts of authority in lawmaking (Broude and Shany 2008). Transnational actors have traditionally contributed to and benefited from such shifts of

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19 In contrast to bottom-up approaches to international law (Land 2018; Levit 2007), the top-down perspective approaches the perils of human rights as an international elite-driven project (Hopgood 2013; Møyn 2018).

20 The formal roles of civil society for the treaty body system have been subject to many studies in International Law and International Relations, for example, in Brett 1995; Clark, Friedman, and Hochstetler 1998; Gaer 2003; Martens 2006; Noortmann, Reinisch, and Ryngaert 2015; Price Cohen 1990.

21 Several scholars have highlighted research preferences on formal governance, for example, Biermann and Koops 2017.
authority across all policy fields (Josselin and Wallace 2001; Noortmann, Reinisch, and Ryngaert 2015). TLCs help to explain how actors who are not formally authorized to interpret the treaties can do so anyway. The book sheds light on expert committees in their distinctness from intergovernmental entities and the bureaucracy of an IO. This focus produces empirical insights that support broader arguments to understand IOs from an open-system perspective (Hanrieder 2014; Koch 2015). Members of these expert committees are embedded in professional networks (Seabrooke and Henriksen 2017) before their election, allowing for their recognition as experts in the first place; and in order to fulfill the various functions expert bodies are equipped with, like monitoring or advising, they do so outside the regular meetings and sessions of the committee.

1.3.3 TLCs’ Significance for Wider Debates in Global Governance

On a broader note, TLCs matter for IR because they highlight the central importance of the individual as actor in global governance (Bode 2015; Fröhlich 2014; Partzsch 2017; Weiss 2011), who manifests and exerts influence primarily through the personal ties of its members to enable collective action. To be influential in the interpretation of international law, the expertise of the individual and a trustful relationship with the independent expert are decisive. This foci-shift to the micro (i.e., individual) level and their interactions helps explain non-state influence on what usually presents one of the last fortresses of state sovereignty in global governance: the making of international law.

Finally, TLCs contribute to the body of work on “human rights experimentalism” (De Búrca 2017). Although global experimentalist governance theory (De Búrca, Keohane, and Sabel 2014) mainly seeks to explain the interaction...
between local and international actors for treaty implementation, a point well elaborated upon by way of the spiral model (Risse, Ropp, and Sikkink 1999, 2013), TLCs add to its explanation for how exactly change can happen by taking the implementation experiences of human rights professionals as a source for the treaty bodies’ agency to develop human rights through treaty interpretations.25

1.4 Method and Structure of the Book

From an anthropologist’s perspective, human rights treaty bodies are “unpredictable microstructures” (Halme-Tuomisaari 2018: 456). This book aims to facilitate research on these expert committees and their collective decision-making processes and collaborations. To this end, it introduces an analytical framework for the study of transnational actors in international human rights lawmaking, which acknowledges the peculiarities of these microstructures yet applies the benefits of IR methods and tools to identify how macrostructures might reduce the complexity of treaty bodies’ behavior and arrive at generalizable findings. My field research26 in Geneva took place between 2013 and 2019, during which I observed the sessions of various treaty bodies, researched the archives of the UN, held background interviews with many different stakeholders, and gained access to informal briefings. Overall, this book’s analysis relies on different primary and secondary sources: official documents (e.g., general comments and session summary records), internal documents (e.g., general comment drafts, material from non-state actors, official correspondence with the treaty bodies, confidential correspondence among drafting group members), interviews and background talks (committee members; civil society; OHCHR staff; stakeholders from other UN agencies, international organizations or academia, see Appendix D), and other sources (e.g., field notes). Based on the collection and analysis of these sources this book is structured as follows:

As the very concept of TLCs rests on this notion of their being a lawmaking coalition through treaty interpretations, the general comments, the next chapter introduces the UN human rights treaty bodies and gives data on their international nongovernmental actors and institutions and the way they inform, implement, and give shape to the regime and the treaty in practice” (De Búrca 2017: 309).

25 In a similar vein, activist theories of human rights (Ackerly 2008; Ackerly 2011) highlight that theoretical reflections about the universality of human rights and corresponding theories of change are reflected in practice where “despite focusing on different kinds of rights and different causes of rights violations across a broad range of contexts, activists have a remarkable consensus on the meaning of rights” (Ackerly 2011: 222).

26 The term “field” is used to describe my research stays at the UN human rights treaty bodies, the UN archives, and NGOs located in Geneva.

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decision-making rules, their membership, workload, and, on the instrument of interest for this book, the general comments. This chapter explains what they are, the degree to which the UN treaty bodies use general comments in different functions, and how state parties and scholars understand – and contest – their legal substance. Moving beyond notions of formal authority, the chapter argues for the possibility of general comments’ authoritativeness because they serve as necessary reference points to human rights, especially because a broader community (NGOs, domestic courts, specialized agencies) enacts them in the realms of domestic law, politics, and civil society. Ultimately, what this chapter makes eminently apparent is that general comments’ authoritativeness depends less on state recognition and more on the multitude of actors breathing life into their interpretations.

The third chapter presents the book’s core theoretical contribution of the TLC, a concept that brings fresh insight to the IR and IO literatures. Operating outside the IO borders of the treaty body system, TLCs are informal and temporary coalitions of state-empowered expert bodies and issue professionals that, in pressing for clarification of state obligations through the instrument of treaty interpretations, can contribute to the development of international law without direct government involvement. This chapter distinguishes TLCs from other collective transnational actor-types, introduces the main triggers of a TLC’s genesis, explains the logic behind its members’ participation in such a coalition, and articulates how TLCs organize their drafting work and under which conditions they are influential.

The fourth chapter forms the book’s empirical entry point into the TLC in practice by showing one such coalition as this story’s protagonist. More specifically, the chapter draws on novel data sources from interviews, background talks and archival research to reconstruct GC No. 15’s drafting process – telling the story of how water became a human right – to ultimately unearth the TLC and the various aspects of its lawmaking agency in a specific case. With its November 2002 adoption, GC No. 15 on the Right to Water of the ICESCR provided an authoritative base upon which states could better implement their obligations, and individuals and communities could more effectively advocate for the fulfillment of their right to water – and, in doing so, closed a significant gap in human rights law. Shown with an insular drafting core that both coalesces around a single CESCR member and comprises a select few non-UN technical and legal experts who become involved with great autonomy, the TLC detailed here contours the theoretical expectations advanced in the preceding chapter.

Chapter 5 delves into three additional cases of treaty interpretation by the human rights treaty bodies. The aim of the chapter is to probe the plausibility
of the TLC concept across the human rights regime. I use insights and findings gathered from the drafting process of GC No. 15 to articulate a typology that distinguishes the treaty bodies by their likelihood to need external input when drafting general comments. Drawing on a combination of data – documents and existing scholarship, as well as interviews and personal observations – the case studies ultimately demonstrate the TLC concept to be applicable to drafting processes in other treaty bodies, even where their formation is less likely.

Chapter 6 addresses the absence of the state from the procedures described throughout the book with a forward-looking eye on the TLC and the present status of the human rights regime. On the TLC, this chapter advances the argument that such coalitions are in no way to be seen as a mode of international lawmaking without governments, as states, in their status as the treaty body system’s ultimate arbiters, have ample opportunities to mold the system to their liking – by way of, for example, elections, ratifications, budget, willingness to participate in the procedures, and compliance with their obligations. Indeed, the Treaty Body Reform 2020 initiative reflects their awareness of autonomy of the treaty bodies themselves. With it likely that states cannot enact this reformation while also maintaining presence in the human rights regime, it will be crucial to see how this conflict plays out in the future.

The concluding chapter summarizes the key insights vis-à-vis the TLC concept – how TLCs form, who they involve, and all other meaningful empirical points about them to know, for example, what makes them legitimate and effective. It discusses how the book’s findings contribute to wider debates in global governance, highlights the concept’s contribution to different strands of literature in International Relations and International Law, discusses the concept’s generalizability beyond the human rights regime, and gives incentives for future research.