4 The ILO and compliance

Since the end of the World War II, there has been a proliferation of international organizations and treaties that regulate behaviour, create norms of conduct, and enforce international law. The question, however, arises whether in the context of international labour standards the ILO does make a difference. Does the ILO for instance alter state behaviour or simply codify existing behaviour? Does it promote cooperation that would not have existed otherwise? These questions are closely related to the discussion that evolved around the topic of compliance. The ILO offers the unique possibility to observe compliance mechanisms described by diverging theoretical approaches working in practice in one single organization and thereby promises to at least answer some of the above posed questions. The ILO allows examining in detail how compliance mechanisms function in reality: when and how does the ILO apply different compliance mechanisms – explicitly or implicitly. Objective of the following parts is specifically not an empirical test of the degree to which different compliance mechanisms work in terms of changing state behaviour. Neither is the objective to explain the extent to which each of the applied mechanisms work in different degrees in the context of the ILO. Main obstacle for doing so is the fact that the compliance mechanisms applied by the ILO strongly correlate which makes empirical testing of single mechanisms difficult. Apart from that, in order to carry out empirical test of the effectiveness of specific compliance mechanisms, the data base would have to be improved. So far, only for parts of the mechanisms sound data exist, whereas for others this is not the case. Despite these methodological constraints, the ILO is worthwhile studying given that it is one of the few international organizations in which basically all of the mechanisms to induce compliance described in theory are applied in practice and can be observed. Specifically, we can examine how different mechanisms, formulated as abstract alternatives, interrelate and interfere in practice. The ILO, as hardly any other case, allows for observation of compliance mechanisms at work, which allows providing insight into the effect, effectiveness and conditions of the strategies proposed by the four compliance schools. These findings are not so much empirical results, but are treated as deductively and inductively elaborated hypotheses to be studied and eventually refuted or confirmed in future research. Vice versa, the ILO experience with different compliance mechanisms can shed light on the practical preconditions, the interactions and to a certain extent effectiveness of the theoretically founded strategies.
Despite not focussing on effectiveness specifically, data on the functioning of specific mechanisms in practice are provided where available, even though given the correlation between various compliance mechanisms, it is not possible to draw generalizable conclusions. The following ILO procedures will be discussed under the monitoring criteria of rational institutionalism: the regular reporting procedure for ratified Conventions, reporting on unratified Conventions, the submission of instruments to the competent authority and finally the monitoring and reporting under the 1998 Declaration. In terms of sanctioning, the ILO provides for a special procedure according to Article 33, a naming and shaming procedure of the Conference Committee and finally the loss of membership rights due to arrears in budgetary contributions. Under the legalization approach, the following quasi-judicial ILO procedures are discussed: the regular supervision procedure, the representation and complaints procedures according to Articles 24 and 26, and finally the special freedom of association procedure. Managerial mechanisms of the ILO comprise technical cooperation, but also the adoption of flexible standards and the adaptation to changing circumstances, the discussions in the Conference Committee and direct contacts procedures. Finally, legitimacy mechanisms comprise of the principle of tripartism as well as the acceptance of adopted norms.

4.1 Rational institutionalism

Compliance, according to the institutionalist school, is based on monitoring and sanctioning. Actors are more likely to comply if non-compliance is detected and norm violations are threatened with credible sanctions that alter the cost-benefit calculations of states as rational actors. Monitoring mechanisms can be distinguished by asking who carries out the task. Based on this, three ideal types of monitoring exist: self-evaluation, centralized, and independent monitoring. Self-evaluation operates by imposing reporting obligations upon states, which have to inform other state parties on the extent to which obligations arising out of a treaty have been implemented. More sophisticated forms of self-evaluating monitoring exist where secondary procedures and rules clarify the content, scope and regularity of reporting. Self-evaluating monitoring economizes scarce resources by relying on the administrative capacities of the addressed parties. Centralized monitoring in contrast does not depend on state reporting alone, but has an institutional structure that allows gathering information, either through the examination of documents, hearings of parties or even on-the-spot investigations. Finally, independent monitoring combines the two mechanisms described above and supplements them with reporting of non-state actors. Such a strategy ensures a more independent monitoring at a lower cost and prevents political considerations from prevailing in the monitoring process (Neyer and Wolf 2005: 52).