Justice conflicts and norm development: The Responsibility to Protect

Paper prepared for the panel
*The Development of R2P within the UN Framework*  
(Panel ID 48)  
at the 4th ECPR Graduate Student Conference, 4-6 July 2012, Jacobs University Bremen

Author: Gregor P. Hofmann (M.A.), Peace Research Institute Frankfurt (PRIF)

E-Mail: hofmann@hsfk.de

1st draft: Please do not cite without permission of the author!
Introduction

The debate on the relation of human rights and sovereignty and therefore also on the Responsibility to Protect (RtoP) at its core also revolves around the question how international justice concerning the international order and the use of force is defined: as formal equality and independence of states, in terms of sovereignty and the principle of non-interference or as conditional sovereignty that entails the obligation to protect individuals from unnecessary harm (Foot 2003: 12f.; Ayoob 2002). While the first view finds supporters above all in countries of the global South and is understood by representatives of the English School as an expression of a pluralistic perspective on International Relations, the second interpretation has rather to be ascribed to the liberal states of the north and is called solidarism (Foot 2003: 4f., Hurrell 2003, Linklater / Suganami 2006). If one looks at the development of the modern international society, the sovereignty principle and its corollary, the principle of non-intervention, are the prevailing ordering principles at the international level (Brunnee/Toope 2006: 127). These norms are meant to minimize the harm which different states can inflict upon each other by establishing rules for adequate behavior in interstate relations. Starting from a perspective of a critical theory based on the English School (Linklater/Suganami 2006: 155-188), one can describe the sovereignty norm and the principle of non-intervention as international harm convention, which reflects the prevailing moral consensus about the relations between states (Linklater/Suganami 2006: 202f.). However, above all in the second half of the twentieth century, other harm conventions developed, focusing on the protection of the individual. These cosmopolitan harm conventions on which the states have agreed are understood by some authors as a newly developing moral consensus, because they condition the sovereignty principle (Linklater 2001, 2006; Shapcott 2008). The RtoP could be seen as such a cosmopolitan harm convention: RtoP is an attempt to reconcile two aims of the United Nations Charter: human rights (Art. 55) and sovereign equality on the basis of the non-intervention norm (Art 2.7). The General Assembly of the United Nations (UNGA) has adopted unanimously the RtoP during the World Summit in 2005. Even though, the scope conditions were limited to genocide, war crimes, ethnic cleansing and crimes against humanity (UNGA 2005a: § 138-139), RtoP questions the prevailing normative consensus about the bases of the international order – sovereign equality of states based on non-interference in the internal affairs. However, this paper will show that RtoP does not represent a new moral consensus on the use of force for humanitarian aims, since conflicts over individual versus collective justice still persist within international society and because processes of communicative action aimed at the development of a shared moral norm played only a minor role in the development of RtoP.

By looking at the tension between justice and order identified by the English School, one can assume that normative arguments, like justice claims, play a central role during negotiations in the society of states on the newly evolving RtoP norm as well as in discussions about its application: In the context of norm development and norm contestedness (Wiener 2008), justice can be seen as a Metanorm, which serves an actor as a benchmark for the legitimacy of a normative order and which offers a guideline for the development of new norms in unregulated policy fields (Müller 2010: 4-5). Justice claims have a quality beyond rhetorical action (Müller 2010: 5): After all, rationalist approaches cannot explain, why actors introduce justice claims in the discourse, even though this is of no strategic utility (Müller 2010: 5).

Studies of empirical justice research support these assumptions: In his study *Justice and the Genesis of War* David Welch shows that justice motives – in terms of an actor’s drive to correct a perceived discrepancy be-

---

1 Harm is defined as „violent death, physical harm and personal or collective humiliation” (Linklater 2006: 342)
tween entitlements and benefits (Welch 1993: 19) – can play an important role in the outbreak of wars.² Like Welch, William Zartman (1997) examined the role of justice in conflict resolution. His studies indicate that power cannot completely explain the outcome of negotiations; in the absence of established institutions at negotiations in a conflict case, the actors must first achieve an agreement on an adequate justice concept and on the reference point of justice demands (Zartman 1997: 123). An agreement on the justice criterion offers a basis for an order satisfactory to all sides or a criterion for the solution of the conflict. His results indicate that justice claims take an important place during international negotiations. Cecilia Albin confirms these findings in her studies on justice claims in international negotiations (Albin 2001). She shows that these play a role in all negotiation phases and that the consideration of procedural justice criteria and the inclusion of justice principles, like equal treatment of the opposing parties, increases the durability of peace agreements (Albin/Druckman 2010).

According to Welch’s study, one can assume that justice conflicts aggravate international conflicts and that without a solution for these justice conflicts, a violent conflict resolution or a deadlock in negotiations becomes more likely (Welch 1993: 216). Therefore, progress in conflict resolution will only be possible, if a minimum consensus develops among the relevant actors. Hence, international justice can only encompass what all relevant actors understand it to be. Zartman confirms this and shows that “[t]he selection of an agreed sense of justice, however, does allow the parties to move on to a more detailed settlement of their conflict, and in its absence no such settlement is possible” (Zartman 1997: 135). Hence, to identify a moral consensus on a new norm, the consideration of justice-related justifications of the actors is of central relevance. Particularly when questions of sovereignty are at stake, considerations of justice can be seen as a guideline for the behavior of states, since “[t]he ‘recognition of sovereignty’ is one of the most important entitlements which collectivities demand for themselves” (Müller 2011: 3). Two understandings of justice clash in this case: one referring to the individual, the other to independence, national self-determination and territorial integrity. Hence, based on Welch, sovereignty can be conceptualized as an entitlement:

“The rights or duties of the international communities – or even single states – to foster justice by coming to the rescue of oppressed individuals in badly governed states versus the insistence of most Southern states that sovereignty remains the overarching principle. Behind this insistence lies an understanding of justice which regards the restoration of uncompromising collective self-determination as a moment of restitutive justice for the dark ages of suppression of such autonomy under colonialism and imperialism; the right to a self-determined development – with all the errors and horrors which this might involve – is seen as the right to do the same as the autonomous development which Western societies and their political systems have pursued in their own history.” (Müller 2010: 7)

Having said this, the research question of this explorative paper is the following: Which justice claims regarding sovereignty and its conditionality in cases of mass atrocities are observable within international society, and to what extent can one identify a new moral consensus on international order concerning the use of force with RtoP as a new cosmopolitan harm convention? The relevance of this research question arises from the existing lack of empirical evidence for the theoretical debate on international ethics. Moreover, the analysis of justice claims contributes to closing a gap in the literature on norm development processes, since the justice motive did not get much attention as a driving force for state behavior so far.

---

² In his investigation of five wars - Crimean war 1853-56, German-French war 1870/71, first and Second World War as well as Falkland war 1982 – he comes to the conclusion that justice motives played a significant role in all except first of these wars, contributed with to the outbreak of these wars and were, besides, a part of the problem and not the solution (Welch 1993: 186-216).
The focus of this paper lies on the behavior and argumentation of eight important actors – the permanent members of the Security Council (P-5), India (as example of a rising power), Canada (as norm entrepreneur), and the Non-Aligned Movement (NAM). After an introduction into the theoretical framework and the research design, this paper examines the different positions and justice claims of these actors in the debate on humanitarian interventions and the ICISS report. Those will be compared with their behavior and argumentation during the World Summit of 2005 and the negotiations in the run-up to the World Summit, when RtoP was officially discussed for the first time in the UNGA and in the end became part of the Outcome Document. The results are contrasted with the debates in the UNGA in 2009, 2010 and 2011 as well as with the open Security Council debate on the protection of civilians in May 2011, when, among other things, the NATO intervention in Libya 2011 was discussed.

Moral consensus and cosmopolitan harm conventions

Cosmopolitan harm conventions (CHCs) are, according to critical English School theory, a developing new moral minimum consensus which arises from the negative obligation to avoid unnecessary harm for others through one’s own actions (Linklater 2001, 2006; Shapcott 2008). Triggers for their development are conflicts over the limits and the adequate exercise of sovereignty which originate in the increasing interdependence between states within the pluralistic society of states (Humrich 2006: 452-53). According to Andrew Linklater, increasing transnational harm, caused by national decisions, requires agreement on such conventions, because international harm conventions, which regulate interstate relations, were not sufficient for this anymore. The development of CHCs in international law was, according to Linklater, an expression of moral-practical learning in international society. The genocide convention of 1948, the apartheid convention of 1973, or the statute of the International Tribunal for the Former Yugoslavia were examples of progress in the integration of CHCs in modern international law (Linklater 1998: 176; 2001: 270). Linklater identifies three types of violence, which are addressed by CHCs:

“[I]nternational legal measures to combat concrete harm are already evident in the development of international humanitarian law and in conventions that prohibit genocide and defend universal human rights. Similar declarations that respond to abstract harm are evident in international conventions on the environment (such as the Rio Convention which obligates sovereign states not to cause injury to neighbouring populations by polluting their environment), and in support for the precautionary principle which is designed to protect present and future generations from the unforeseeable consequences of technological development. Conventions that deal with the harms that despotic governments inflict on their own populations remain weak, but the growing trend towards the prosecution of war criminals is a crucial advance in dealing with concrete harm within sovereign states.” (Linklater 2001: 273)

According to these three types of CHCs, the RtoP, as regards content, could be seen as a Cosmopolitan Harm Convention that addresses the third type of harm; harm that despotic governments inflict on their own populations.

---

3 Every society has developed harm conventions which establish which actions are permitted, what is obligatory, and what is officially forbidden (Linklater 2001: 264). They are an essential part of the social regulation of human conduct within separated communities and they are not less importantly in the regulation of the mutual relations of different communities. Moreover, most societies have also developed CHCs (Linklater 2001: 264). A CHC does not differentiate between insiders and outsiders in relation to harm and suffering. Cosmopolitanism in this sense does not state the absence of national affiliation or the prioritization of global loyalties before obligations towards the own political community. Rather this is to be understood in terms of philanthropy and a profession of the equality of all people (Linklater 2001: 264).
However, does RtoP really point to a new moral consensus? Ultimately, one must not forget that the developing “cosmopolitan culture” in international society arises from the dominant Western culture and that the mentioned conventions have developed under western economic and political dominance (Bull 1977: 317; Linklater 2001: 268). An international system would have to be evaluated in historical comparison according to what extent global arrangements “have the consent of everyone who may be affected or who is in danger of being harmed by them” (Linklater 2001: 270; cf. Linklater 1998). Hence, the formation of CHCs must proceed in an open dialogue. For the development of cross-cultural, shared assessments about what counts as harm, whether a certain action is injurious and whether it should be sanctioned – the basis for a CHC – an open dialogue aimed at building a consensus must take place between the actors involved (Shapcott 2008: 199-200). Hence, open dialogue incorporating a dialogic ethics is the primary means to reach consensus and to guarantee justice (Linklater 1998: 210-11), without imposing certain cultural standards on others (Shapcott 2008: 200).

Rational dialogue as foundation for moral consensus

In the process of the development of RtoP as a moral norm the society of states would, therefore, have to agree on a new moral consensus on international order concerning the use of force, with RtoP as the CHC which conditions the prevailing normative consensus of sovereignty as non-interference into internal affairs. This moral consensus should be free from unresolved disputes over justice and based on a common understanding of sovereignty among states, since sovereignty claims are often framed as a question of justice by state actors. In order to investigate whether a moral consensus has developed, a theoretical framework is needed, which makes it possible to assess the exchange of moral arguments as well as genuine shifts in states’ interests through communicative action. The Discourse Theory of International Governance by Nicole Deitelhoff (2006; 2009) offers such a framework. Her basic assumption is that the development of moral norms requires an “ideal speech situation”, i.e. actors putting aside their particular interests, and has to be based on a mode of communicative action in which actors are open to normatively superior arguments and change their interests in reaction to them (Deitelhoff 2006: 291). In short: If actors are open to the power of the better argument, persuasion can take place:

> “Discourse theory views the creation of legal norms as the result of rational discourses. Discourses are expected to transform actors’ preferences by the ‘noncoercive coercion’ of the better argument. […] This view presupposes that actors share a common frame of reference, which implies common knowledge and normative understandings, that is, that their life worlds sufficiently overlap. […] Furthermore, to ensure that agreement depends solely on the strength of arguments, a discourse has to ensure inclusiveness, equal communicative rights, sincerity, and freedom from repression and manipulation. Discourses need to be safeguarded against the asymmetric power resources of participants and everyone affected must be able to participate to ensure that the public interest prevails.” (Deitelhoff 2009: 43)

The aforementioned conditions for open dialogue – a overlapping of life worlds, persuasion by the better argument, no power asymmetries, inclusiveness and equal communicative rights – hardly exist on the international level. However, “the ideal speech situation is not meant as a statement about the empirical world or – even worse – some utopian ideal; instead it constitutes primarily a counterfactual presupposition” (Risse 2000: 17). In situations which are more fruitful for open dialogue, actors may act as if they were in an ideal speech situation. Hence, certain actors, mainly norm entrepreneurs, may establish such situations purposefully, by constructing
normative links and institutional frames, that enable a non-coercive discourse based on the power of the better argument (Deitelhoff 2006: 23, 282-286).

Research Design

Using Process Tracing, including expert interviews and content analysis of verbatim records, this paper investigates whether these enabling conditions were observable during the UN World Summit in 2005, in order to assess whether there has been persuasion at work among actors and whether the justice claims expressed by the different actors have been dropped or converged during the debate – which would point to the development of a moral consensus within international society on the relationship of sovereignty, human rights and the use of force in the form of a CHC, since actors would have rethought their interests concerning the normative foundation of international order.

There are no direct indicators with which persuasion processes can be identified empirically (Deitelhoff/Müller 2005: 171). One must use indirect indicators to work out whether a norm development process is due to authentic shifts in interests: First, the result of negotiations may not be derived from the distribution of power between the actors. If at the end of the negotiations the position of powerful states has come closer to that of weaker states, this is a first indicator for persuasion processes, because a hegemonic exercise of power can be excluded; Since powerful actors do not depend on the better argument to put their interests through (Deitelhoff 2006: 151-52, Risse 2000: 18-19).

Second, it is crucial to what extent fostering conditions for communicative action – situations of open dialogue uninfluenced by power asymmetries – have been constructed in the negotiation process by activities of certain actors, particularly norm entrepreneurs. One has to evaluate if changes in the normative and institutional setting of negotiations are observable, e.g. if actors link the norm under negotiation to new normative reference frameworks and whether in camera negotiation settings or situations are observable in which a direct exchange of arguments with experts and other negotiators is possible and actors can speak openly (Deitelhoff 2006: 140-46; 153-54). Third, one has to search for turning points in the debate which are not due to the interest constellation of the actors and their agreement on the smallest common denominator or by compensatory payments or package solutions (norm genesis by balancing of interests). If these changes in position are accompanied by affirmative speech acts5, which express a change in point of view, or by a changed argumentation structure, or if other discourse participants express their approval with the position of the respective actor, this hardens the signs for persuasion processes being at work (Müller 2007: 214-15). A fourth indicator can be found in the argumentation itself: if actors are accused of having injured norms of adequate behavior and if they do not just block the accusations, but justify their behavior, then this can also be an indicator for communicative action (Risse 2000: 18-19).

Fifthly and most importantly, one has to evaluate the actors’ positions and their respective justifications for them. If, therefore, the position of an actor on the discussed norm and the normative grounds proposed by him change in the course of the negotiations, this is a further sign for an interest change (Deitelhoff 2006: 150, Fn 35). Based on the aforementioned crucial role of justice claims, a change in the justice claims of a certain actor or a convergence of justice claims and understandings of sovereignty by different actors in the course of the

4 Based on the CINIC-Index (Correlates of War Project 2010), the P-5 and India are seen as Great Powers, Canada is seen as a middle power.
5 Speech Act Theory states that not only physical behavior but also verbal expressions can be treated as actions (Searle 1974).
negotiations is seen as an indicator for a developing moral consensus. The articulation of justice claims is hence treated as a speech act. If the negotiation result was a true moral consensus, actors should be open to rethink their interests in reaction to a argumentative discourse. Interests and justice considerations are interwoven, since justice claims refer to the actors’ respective understandings about what ought to be and what is conceived as the “right thing to do”. Based on the work of Harald Müller (2010), it is assumed that appeals to the justice serve as strong justifications for states’ positions during international negotiations. To operationalize justice, the definition of David Welch (1993) is used, which states that justice claims are based on entitlements perceived as legitimate: “once an actor believes that she is entitled to obtain or maintain something, this goes beyond a simple interest in this something. An entitlement means that the term “suum cuique” applies. With that, a justice claim is made” (Müller 2010: 9). Since „the mode of reasoning involved in the defense of one’s entitlements differs fundamentally from the mode of reasoning involved in the pursuit of other goods: it tends to be categorical and deontological rather than utilitarian” (Welch 1993: 21). Having said this, actors should be open to drop or change their justice claims and to reformulate their conceptions of sovereignty in order to reach a moral consensus.

By using a typology, the actors’ different conceptions of justice become accessible. The used typology was developed within the current research project Just Peace Governance of the Peace Research Institute Frankfurt (PRIF) (Müller 2010). It is complemented by a sovereignty typology, which should help to understand the different conceptions of sovereignty, drawing on on Krasner(1999) and Annan (1999). With help of a code system for content analysis based on these typologies, the basic lines of contested justice claims and understandings of sovereignty will be analyzed.

**Initial positions of the examined actors regarding the use of force for humanitarian aims**

Great Britain, the United States, France and Canada proved with their intervention in Kosovo that they are willing to intervene in humanitarian disasters, if necessary even without authorization of the UN Security Council (UNSC) in order to bring an end to human suffering. However, the deadlock of the UNSC was seen as a serious problem for the future. Hence, at the end of 1999, the British foreign ministry tried to reach a definition on intervention criteria for the UNSC with a non-public paper which was distributed among the P-5. However, the proposal soon fell under the table and was never discussed publicly (Bellamy 2009: 26). In contrast, China and Russia saw a danger for the interstate order in the attempt to prioritize the protection of civilians and in the pursuit of a justice agenda directed on the individual (Foot 2003: 12). In a joint statement, Russia’s President Vladimir Putin and the Chines State President Jiang Zemin declared in July 2001 that the concepts of humanitarian intervention and conditioned sovereignty were undermining international law and present an obstacle for the development of a fair and rational international order (China/Russia 2001). The Non-Aligned Movement (NAM) represented a similar position in the 1990s and early 2000s: Many decolonized states see the sovereignty norm as an instrument to protect their independence. Hence, they have an almost emotional attachment to it, which derives from the colonial past and the unconditional wish for self-determination (Thakur 2006: 266). Selectivity and double standards in relation to decisions on humanitarian interventions as well as the unauthorized NATO Intervention in Kosovo fed the mistrust that the concept of the “international will”, even in the form of the decisions of the UNSC, was a fig leaf for the pursuit of the national interests of the intervening states (Ayoob 2002: 88). India, as a member of the NAM, had a similar view of humanitarian interventions, although it had initially justified the intervention in East-Pakistan in 1971 as humanitarian (Finnemore 2003: 75). India was concerned
that powerful, mostly Western states undermine the rules of international law and abuse them to intervene in the internal and external matters of weaker states (Bajpai 2003: 259).

A basic difference is recognizable in the concepts of justice and order between the West and many emerging or developing countries (cf. Table I): While the West tried to forbid or limit the unlimited use of force aimed at the establishment of order inside of states and demanded thereby justice within states, states of the global South wanted to forbid justice-based interference in their internal affairs by external actors and demanded rather justice among states. (Ayoob 2002:99-100; Thakur 2006: 279). Hence, different justice claims were clashing: On the one hand claims to reparation of past wrongs in the light of gross human rights abuses as well as equal treatment of serious humanitarian crisis situations, on the basis of criteria for the use of force, and, on the other hand, legal entitlements to sovereignty as well as egalitarian justice claims for equality in the relations between states. The USA was, in a way, standing in between these positions: It supported claims to justice for individuals, but was opposed to criteria guiding the use of force (Feinstein/De Bruin 2009).

As a reaction to Kofi Annan’s demand to find a new consensus on the relation between human rights and national sovereignty after NATO intervention in Kosovo (Annan 1999), Canada formed the International Commission on Intervention and State Sovereignty (ICISS) in 2000. The final report included many perceptions which had been formulated during regional round table talks and national consultations of the commissioners with government members, academics and NGO representatives (Thakur 2005: 183) and identified three interrelated national and international responsibilities concerning the protection of civilian populations from mass atrocities: to prevent, to react, to rebuild (ICISS 2001: XI). In May 2002 the report was discussed during the annual, non-public in-camera meeting of the UNSC (UNSC 2002 (S/2002/685): §82-86). A former staff member of Kofi Annan who had prepared this meeting and had taken part in it said in an interview with the author that in this meeting all members of the UNSC, including the P-5 and even Syria, welcomed the basic idea behind RtoP, i.e. the prevention of mass atrocities. Nevertheless, the P-5 were critical about the implications of the ICISS-report for the use of force and not a single member of the UNSC would commit in advance to being willing to stop these four crimes whenever they occur. They would rather approach every situation case-by-case.6

The United States still did not want to be obligated to intervene and tried to avoid being drawn into conflicts unintentionally. Moreover, the USA wanted to decide on their own under what conditions the use of force was the last available means and which authority should decide on it (Welsh 2003a: 180). Observers of the meeting came to the conclusion that the Bush administration would never accept a formal declaration or a resolution on the content of the ICISS report (Feinstein/De Bruin 2009: 183). China was also skeptical of an obligation for intervention and feared that the sovereignty principle could be undermined by excessive interventionism7. Russia shared this view and held the position that the UN was already prepared enough to handle humanitarian crises and that the RtoP supports unauthorized interventions which would undermine the UN charter. Moreover, Russia was very doubtful of regulations which would limit its veto power (Welsh 2003a: 204, Fn 4). Great Britain and France supported criteria for the use of force but also doubted that such criteria would guarantee the political will and necessary consensus for an actual answer to humanitarian crises. Both states together with the USA, rejected the view that unauthorized interventions should be excluded as an available measure (Welsh 2003a: 180, 204, FN 4). The NAM rejected RtoP explicitly in the beginning, naming it a possible rebirth of the humanitarian in-

---

6 Interview with a former UN official and staff member of Kofi Annan
7 Ibid.
tervention for which there was no basis in international law (Bellamy 2009: 68). At that time, there were no explicit statements by India on RtoP. A further development and discussion of the idea within the UN was complicated by the use of humanitarian motives for the legitimation of the Iraq War by the USA and the UK (Wheeler 2005; Weiss 2006: 749-50).

With the publication of the ICISS report, Canada started to advocate RtoP by trying to persuade other states to accept RtoP in a resolution of the UNGA or in national declarations and by pushing for an operationalization of RtoP through initiatives for the protection of civilians in armed conflict. Moreover, Canada looked for ways to strengthen a timely and decisive response to mass atrocities by the UNSC (Banda 2007: 10, FN 37). Since the UNSC did not discuss RtoP officially and a Canadian initiative for a procedural resolution of the UNGA on RtoP in late 2002 failed, due to resistance of the non-aligned states, (Banda 2007: 10), Canada “approached likeminded states, regional groups, and civil society, while the new Prime Minister at the time, Paul Martin, significantly stepped up the international advocacy of R2P” (Banda 2007: 11). The Canadian Government supported civil society projects which engaged in RtoP advocacy and organized a row of Workshops and meetings with permanent representations in New York (cf. Banda 2007). Besides that, it pursued massive lobbying in the capitals of the world and advocated RtoP in regional consultations. On the basis of the assessment of opinions from these consultations, the ICISS commissioners and Canada stressed those aspects of the ICISS report which limited the possibilities for the use of force for humanitarian reasons to cases in which a government should prove unwilling or incapable to protect its own population, and only if the “just cause” of mass atrocities was fulfilled (Bellamy 2009: 73). After Lobbying by Canada and the former ICISS commissioner Gareth Evans, the High Level Panel on Threats, Challenge and Change (HLP) took up RtoP and included it into its report on UN reform (HLP 2004: §199-209). Kofi Annan included most of the HLP recommendations in his report In larger Freedom (Annan 2005) and presented it to the UNGA for consultation at the World Summit in 2005.

**Negotiations on the 2005 World Summit Outcome Document**

In the negotiations on the World Summit Outcome document that started at the end of 2004 RtoP was part of the agenda from the beginning (Bellamy 2009: 83-84). The high thresholds for a just cause as well as the view that the responsibility lies with the individual state first found wide support. Hence, there was hardly any opposition to RtoP in principle. While the USA were rather indifferent in the early phase of the negotiations, Canada and European states advocated RtoP, above all Great Britain which held the presidency of the Council of the EU at that time (June – Dec. 2005). India expressed doubt regarding the legal foundation of RtoP in international law. In spite of the existing differences, there was constant progress between March and August 2005. Western states had made significant concessions in the issue area of development, indeed, without reaching clear agreements in areas most important to them, like Terrorism, reform of the UN secretariat and Humanly Right Council (Bellamy 2009: 84). Within the global South, there was still much discomfort with RtoP: Some NAM and G-77 states saw in RtoP an imperialistic plot and the danger that it is going to be misused for regime change or to chase their natural resources. Many countries of the south still were cautiously about RtoP. However, since the NAM did not reach a common position and due to the fact, that within the NAM there were strong supporters of

---

8 Interview with a German diplomat who participated in the negotiations  
9 Interview with a French diplomat who participated in the negotiations  
10 Interview with an observer of the negotiations  
11 Interview with a Canadian diplomat who participated in the negotiations
RtoP – like Rwanda or Tanzania – progress was possible. The position of the USA changed significantly during the negotiations from indifference to slightly supportive, after a report of the US Institute of Peace concluded that RtoP could help to stop atrocities in the future and that it was compatible with the US national interest (Task Force on the United Nations 2005). But the USA in addition demanded a possibility to act without Security Council authorization if there was an emergency situation. This went against the emerging consensus within the UNGA (Bellamy 2009: 82). Moreover, the USA also prevented a formulation by Kofi Annan that stated an obligation of the international community to react to mass atrocities (Bellamy 2009: 85, FN 81).

A draft version of the Outcome Document from August 5, 2005, reflected a growing willingness among the UN member states to accept RtoP (UNGA 2005a). The whole situation changed when John Bolton became the US ambassador to the UN on August 3, 2005 and demanded the renegotiation of hundreds of the paragraphs in the draft Outcome Document and the elimination of many other (Bellamy 2009: 85-86). With his massive demands, Bolton gave other delegations the possibility to withdraw from the negotiated compromise: At the end of August, China put forward great reservations against RtoP, although it had already signaled approval two months before, under the condition that the responsibility lies first with the state and that interventions are bound to the UNSC (Bellamy 2009: 87-88). Russia also started to oppose RtoP again and questioned its foundation in international law. Some NAM and G-77 states followed China and Russia (Bellamy 2009: 88-89). However, there were still supporters of RtoP on the side of the developing states, like South Africa, Ruanda, Tanzania and Latin-American states (Evans 2009: 21). Canadian efforts to persuade southern states to support RtoP proved fruitful and led to the only observable point of interest change during the negotiations, after the Canadian ambassador Allan Rock persuaded other African diplomats to support RtoP during an in camera meeting of the African Group. Moreover, the advocates of RtoP won the support of many countries of the south by repeating the scope conditions of application of RtoP - genocide, ethnic cleansing, war crimes and crimes against humanity - within the RtoP paragraphs several times. Canada’s ambassador also had an effect on the Russian side and persuaded them to reconsider their obstructive position on RtoP (Bellamy 2009: 87).

However, observers and participants see an important influencing factor RtoP remaining in the Outcome Document in the non-transparent negotiations during the last days before the beginning of the World Summit: Many critics within the NAM were excluded from these negotiations: Ping, some UN official as well as some delegations went on working on a parallel level on the original draft and constantly considered different arguments from the debate without rejecting the achieved consensus from early August in principle, as it had been required by Bolton (Bellamy 2009: 89). However, only a few delegations seemed to have been involved in these last consultations:

“the negotiation process was such that they had no choice. Because as you remember, the last version was drafted during the last night by Pings people, with the help of a few diplomats. And it was ‘take it or leave it’. […] And I believe that the RtoP has been put in the text because of Adam Thompson, he was my British colleague, one or two people of the secretariat, Robert Orr, myself and the complicity of Anne Patterson. Anne Patterson was Bolton’s number two. And she knew that Bolton was against that. She was not very convinced herself. But we told her ‘that

---

12 Ibid.
13 Ibid.
14 “In the end, Canada’s Allan Rock approached the Russian permanent representative directly, intending to ascertain whether Russia had any deep-seated political or philosophical problems with the R2P. When the legal expert failed to mount a convincing case against the R2P, the permanent representative indicated that Russia had no objections of principle and would cease its obstructionism” (Bellamy 2009: 87)
In the end, US Ambassador Bolton, who has been against RtoP, received the instruction from Condoleezza Rice to accept the Outcome Document. However, important American demands had been included in the Outcome Document – e.g. that there is no obligation for the UNSC to react and no criteria for the use of force. The renunciation of a non-veto clause seems to be due to pressure from the P-5. On September 13th, the day before the beginning of the World Summit, negotiations on the text were still ongoing in the morning - which still contained many brackets. India was still critical, braced itself against RtoP and attacked its legal and moral foundations. However, the criticism of the Indian representative Sen was not included in the final document, in hope that the Indian government could be still persuaded (Bellamy 2009: 88). In the end, the remaining brackets in the text were deleted from the document on the day before the summit of the heads of states started, without involving all delegations in this decision, according to participating diplomats:

“it became twelve noon on September [13th] 2005, […] and the document was still completely obliterated by all these brackets and unresolved questions, executive decisions had to be made on the 38th floor [office of the SG, an. GH] in discussions with the president of the General Assembly, the Secretary General and his staff, to produce a clean document that we could table at one o'clock in the special session that had been called for the purpose.”

The final text was accepted for the transfer to the World Summit during a meeting of the UNGA on September 13th. At the summit and during the days before it, the Canadian Prime Minister Paul Martin, contributed substantially to persuade skeptics to vote in favor of that Outcome Document (Evans 2009: 21).

The actors’ argumentation during the World Summit

In the content analysis no signs for justifying reactions to accusations have been found. Also, there have not been any affirmative speech acts which stood in connection with a position change or a change of argumentation. Moreover, there was no essential change of justice claims or understandings of sovereignty; consequently, indicators for persuasion processes could not be found in the argumentation (cf. Table I).

In the use of justifications, strong differences appeared (Table I): China (2005a, 2005b, 2005d, 2005e), India (2005a, 2005b, 2005d), Russia (2005a, 2005c, 2005d), the NAM (2005b, 2005d, 2005e), and the USA (2005a; 2005b) called for full substantial and procedural respect for the UN charter. The USA interpreted the UN charter, however, as a legitimization for preventive use of force (USA 2005a). Moreover, these actors demanded the consideration of the needs of the respective situation in the decision-making regarding the use of force as well as case-by-case decisions (China 2005a, 2005b, 2005c, 2005d, 2005f, Russia 2005b). The perspective of the state in question and the position of regional organizations should always be respected as well as local practices and conditions. China and the NAM raised repeatedly egalitarian claims to sovereign equality (China 2005c, 2005d, 2005g, NAM 2005a). India demanded equality of opportunities for all states when human rights violations were addressed, by claiming that dialogue rather than external interference was the better strategy to deal with such violations (India 2005d). It also expressed doubts about the political objectivity of the UNSC in the authorization of interventions in the case of humanitarian crises (India 2005d). Russia founded its initial refusal of RtoP on a

15 Interview with a French diplomat who participated in the negotiations
16 Interview with a Canadian diplomat who participated in the negotiations
17 Ibid.
18 Ibid.
lacking foundation in the UN charter (Russia 2005a). The NAM took a reserved position on RtoP, because the developing countries were split in advocates and opponents of the RtoP, and pointed over and over again to parallels between humanitarian interventions and the concept of RtoP. It demanded equal opportunities in the form of a constructive, dialogue-based, fair treatment of human rights matters in the work of the UNSC, in order to prevent a new interpretation of the charter, which would not have been favorable for the members of the NAM (NAM 2005a, 2005b, 2005d, 2005e). It demanded exact analyses of the implications of RtoP (NAM 2005a, 2005b, 2005c, 2005e) as well as a stronger focus on the responsibility to prevent (NAM 2005d). India had similar claims (2005b, 2005d) and connected RtoP with the demand for a reform of the UNSC (India 2005c). In the beginning, Canada showed openness for these claims (Canada 2005a, 2005b). Substantially, Canada (2005b, 2005d), France (2005a, 2005b) and the UK (2005b, 2005d) referred to the rectification of past injustices, which victims of mass atrocities have experienced, in order to justify the necessity of RtoP. Moreover, these three actors referred in their justifications to legal entitlements, with international humanitarian law as the reference point. Great Britain stressed that infringements of international humanitarian law had to be punished (UK 2005a, 2005b, 2005c ) and that sovereignty contains no right to arbitrariness (UK 2005d). Canada argued, mostly with reference to the principle of equal treatment before the law that the sovereignty norm would be strengthened by the introduction of the RtoP (Canada 2005b, 2005c, 2005e). With reference to the principle of equal treatment before the law Canada also demanded the introduction of criteria for the use of force (Canada 2005e), which was hardly considered by the other actors. Only Russia was, with restraint, open in this point at the beginning of the negotiations, as long as such criteria would not hinder the work of the Security Council (Russia 2005a). However, Russia also stressed that more dialogue was necessary, because “some basic elements of these concepts raise well-grounded doubts of many Member States” (Russia 2005c). Finally, in a position paper by Russia from late August 2005, a position change can be observed concerning RtoP: Russia did not reject the RtoP any longer and tentatively supported the development of criteria for the authorization of the use of force, which should stress the participation of regional organizations (Russia 2005d).

A convergence of these justifications was not observable, except in a unique reference of China to international humanitarian law (China 2005e). The respective understandings of sovereignty also did not change. An implicit conflict over legal interpretations is recognizable, regarding which legal basis weighs heavier: the UN charter or international humanitarian law. Linked to the confrontation of demands for the consideration of the respective situation of the respective state on the one hand and the demand for the rectification of past injustices and an end of the impunity for mass murders, on the other hand, a conflict over the reference point for the establishment of justice is discernible. Different justice principles are in conflict: China, India, the NAM and less explicitly Russia called for justice between the states, in the form of sovereign equality and the respect for cultural differences. Canada, France and Great Britain demanded justice for individuals, in the form of the protection of the individual’s physical integrity as well as by punishment and ending of heavy human rights abuses. The USA shared the position of its allies, but was expressing reservations towards an obligation to act at the same time - a stance which was only held by the USA (2005b).
Table 1 - Results: Positions, Justice Claims and understandings of sovereignty regarding humanitarian interventions and RtoP before and during the World Summit

<table>
<thead>
<tr>
<th>Country</th>
<th>Jamaica</th>
<th>Brazil</th>
<th>Nigeria</th>
<th>Namibia</th>
<th>Russia</th>
<th>China</th>
<th>USA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Justice claims regarding humanitarian intervention II (1990s)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Egalitarianism/ westphalian sovereignty equality*</td>
<td>- legal objection to sovereignty as protection from colonialism*</td>
<td>- rectification of past injustices against civilian populations*</td>
<td>- legal objection to sovereignty as protection from colonialism*</td>
<td>- rectification of past injustices against civilian populations*</td>
<td>- Egalitarianism/ westphalian sovereignty equality*</td>
<td>- legal objection to sovereignty as protection from colonialism*</td>
<td>- Egalitarianism/ westphalian sovereignty equality*</td>
</tr>
<tr>
<td><strong>Justice claims regarding humanitarian intervention III (1990s)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- no data**</td>
<td>- no country: supportive</td>
<td>- support for using RtoP in humanitarian emergency situations</td>
<td>- no data**</td>
<td>- no country: supportive</td>
<td>- support for using RtoP in humanitarian emergency situations</td>
<td>- no data**</td>
<td>- no country: supportive</td>
</tr>
<tr>
<td><strong>Position at the end of the World Summit in Sept. 2005</strong></td>
<td>Approval, no change in position with respect to RtoP</td>
<td>Approval, no change in position with respect to RtoP</td>
<td>Approval, no change in position with respect to RtoP</td>
<td>Approval, no change in position with respect to RtoP</td>
<td>Approval, no change in position with respect to RtoP</td>
<td>Approval, no change in position with respect to RtoP</td>
<td>Approval, no change in position with respect to RtoP</td>
</tr>
<tr>
<td><strong>Justice claims during the negotiations</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- need respective situation of the state in question and positions of regional organizations to be taken into account</td>
<td>- legal claim for respect for UN-Charter Egalitarianism/ sovereignty equality</td>
<td>- rectification of past injustices against civilian populations</td>
<td>- legal claim for respect for UN-Charter</td>
<td>- equal opportunity: fair decision-making in cases of human rights violations</td>
<td>- legal claim for respect for UN-Charter</td>
<td>- legal claim for respect for UN-Charter</td>
<td>- legal claim for respect for UN-Charter</td>
</tr>
<tr>
<td><strong>Understandings of sovereignty</strong></td>
<td>Westphalian absolute authority</td>
<td>Westphalian equal authority</td>
<td>Westphalian conditional authority</td>
<td>Westphalian absolute authority</td>
<td>Westphalian conditional authority</td>
<td>Embattled Westphalian/ absolute and conditional authority</td>
<td>Westphalian conditional authority</td>
</tr>
<tr>
<td><strong>Indication of interest change?</strong></td>
<td>No, but slight change of position in comparison to 1990s; no change in justice or sovereignty claims</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No, but no common position within NAM</td>
<td>No</td>
<td>Yes, with reservations; changes from indifference to support, with reservations</td>
</tr>
</tbody>
</table>

* = These figures are based on secondary analyses and expert interviews, not on content analysis; ** = no statements available for that point in time
Process Tracing Results: Agreement by balancing of interests, not by communicative action

In the process of the development of the RtoP no hegemonic exercise of power directed to the establishment of the norm can be recognized: The most powerful actor, the USA, was not able to press through all of its interests, namely that other crimes than the four explicitly named mass atrocities should also be addressed by RtoP and that the use of force should be possible without authorization of the UNSC (USA 2005b). Moreover, in the time from 2001 to 2005, the powerful actors Russia, China, the USA, and India, have approached the positions of the norm entrepreneur Canada France and Great Britain and, in the end, supported the remaining of RtoP in the World Summit Outcome Document. The same applies to the NAM. However, this development is due rather to a compromise in the Outcome Document than a shift in their respective interests. The RtoP paragraphs in the Outcome Document clearly contain the central demands of Russia, China, the USA, India and the NAM: the primary responsibility lies with the individual state, the UNSC is the sole authority for decision-making on an intervention, and decisions have to be made on a case-by-case basis. Also criteria for the use of force are absent as well as a request to the UNSC to adopt a code of conduct for the P-5 to refrain from the use of their veto in RtoP-related cases. The demand from the rows of the NAM, for an explicit narrowing of the scope of RtoP on the four mentioned crimes, already becomes apparent in the heading of the sections 138 and 139 as well as in the repeat of these crimes in several places in the text. Furthermore, the linking of RtoP with UN reform in general might have contributed decisively to its acceptance: Thus, by approving the Outcome Document, the USA has, for the first time, recognized the MDGs as a framework for the coordination of development aid (cf. UNGA 2005b: §17). That has been an essential incentive for the NAM states to support the Outcome Document.

Among the powerful actors, merely Russia seems to have given up fundamental opposition at the end of the negotiations as a result of an open dialogue with the Canadian ambassador (Bellamy 2009: 87; cf. Russia 2005d). The change of the American position of indifference to a conditioned support for the RtoP seems due to domestic changes as a result of the mentioned report of the commission of the US Institute of Peace. The approval of the USA also seems to be grounded in the satisfaction of its demands. India remained critical up to the last minute\(^1\). Hence, its approval of the final document seems to be based rather on a cost-benefit calculation and the costs of a refusal of the summit document were deemed too high. China and the NAM found their central demands included in the Outcome Document.

However, the long-standing efforts of the Canadians in round table talks, workshops, and government consultations on RtoP were an essential factor for the fact that the RtoP found fundamental support in the international community at the beginning of the negotiations on the World Summit Outcome Document. Therefore, the Canadians created conducive conditions for communicative action with these open dialogues. The ICISS, financed by Canada, delivered the normative reference framework by connecting RtoP to the existing normative context – the UN Charter and international humanitarian law. During the World Summit negotiations, a turning point that indicates persuasion processes is observable on the side of the African states, as a result of the debate of the Canadian ambassador with the representatives of the African Group, mentioned above.

But at the end of the day, persuasion processes played a tangential role in the negotiations on RtoP. The work on the Outcome Document was described by participants as a mixture between open reasoning and hard negotiations in which opponents tried to weaken the RtoP sections linguistically\(^2\). This also points to the fact that, in the

---

\(^1\) Interview with a Canadian diplomat who participated in the negotiations

\(^2\) Ibid.
end, it was less a rational discourse than classical negotiations tactics which let RtoP remain in the Outcome Document:

“[…] the debate was not intellectual. It was really a question of process and it is likely that the Canadians played a part in terms of writing the right words and things like that, yes. But that was a negotiation in which nobody convinced nobody. I am sorry to say that, that is sad, but that is the way it was.”

Therefore, during the negotiations a more strategic mode of action would seem to have been more adequate for the actors than a mode of communicative action. This is also reflected in the negotiation process altogether: It is remarkable that not all participants had real influence on the final version of the Outcome Document. During the last determining days before the World Summit, consultations seem to have taken place only between the president of the UNGA, his supporters as well as well-chosen – mostly Western – delegations. Hence, the remaining of the RtoP in the Outcome Document seems to be due also to the nontransparent negotiation process. Therefore one cannot speak of a rational discourse here, because the condition of egalitarian reciprocity - the possibility for all actors to articulate their arguments - was not given.

The General Assembly Debates on RtoP in 2009, 2010 and 2011

In January, 2009 Ban Ki-moon published his report Implementing the Responsibility to Protect. This was the first comprehensive UN-document on RtoP. The report was discussed in July, 2009, in the UNGA. Only a few states expressed basic opposition against RtoP and dissociated themselves from the summit document of 2005 but most states welcomed the report of the Secretary General and supported his three pillar approach. Many states argued that the RtoP is rooted in existing international law and were reluctant to re-open the negotiations on the RtoP (ICRtoP 2009: 4-5; Bellamy 2010: 147). Out of these consultations arose the first resolution of the UNGA on RtoP, in which it welcomed the report of the Secretary General and decided to continue its consideration of RtoP (UNGA 2009). Among the actors examined in this paper, India changed its position in the course of this further development and signaled, beginning in 2009, its support for RtoP. This could be a result of the informal consultation in advance to the GA debate in 2009🐯 and the crisis in Sri Lanka in 2008 and 2009 that led to a change in the Indian position. However, this question requires a more detailed inquiry. The NAM had, as in 2005, no unified position (ICRtoP 2009).

In August 2010, the UNGA held an Interactive Dialogue on Early Warning, Assessment and the Responsibility to Protect. During this dialogue, the UNGA discussed the Secretary General’s report on this topic (Ki-Moon 2010). Many member states welcomed the SG’s report and reaffirmed their support for RtoP and called for further discussions on R2P in the UNGA. Only a few detractors questioned the definition of RtoP (GCR2P 2010). However, some states, like India, raised again concerns about potential abuses of RtoP for unilateral military interventions (GCR2P: 2010:8).

In 2011 the UNSC referred to RtoP in Resolution 1970 on the situation in Libya, as well as in Resolution 1973 which authorized the no-fly zone over Libya and the use of all necessary means to protect civilians. China, Rus-

---

21 Interview with a French diplomat who participated in the negotiations
22 In the run-up to the debate, there were different attempts to persuade member states to support RtoP by civil society groups (ICRtoP 2009: 2). In addition, the informal Group of Friends of RtoP organized numerous meetings “to ensure that supportive governments were engaged in the process of the debate and were prepared to offer constructive remarks in their statements” (ICRtoP 2009: 3). The Group of Friends of RtoP is an intergovernmental grouping, at that time co-chaired by the governments of Canada and Rwanda.
After the escalation of the crisis in Ivory Coast, the UNSC referred to RtoP in resolution 1975. The UNGA held another interactive dialogue in July 2011, focusing on the role of regional and sub-regional organizations in implementing the RtoP. Member States shared their thoughts on the report of the Secretary General (Ki-moon 2011). Similar to the UNGA-debates in 2009 and 2010, most of the member states demonstrated their will to implement RtoP. Even the events in Libya and Côte D’Ivoire did not diminish support for the norm. However, there were concerns about how NATO used force to protect civilians in Libya (ICRtoP 2011). Furthermore, some states identified a potential for abuse of RtoP as long as there were no criteria to guide the decision-making process on the use of force and to determine if peaceful means of conflict solution have failed (ICRtoP 2011). Other states insisted that there is a lack of consistency in the response of the SC to RtoP crises (ICRtoP 2011).

During the UNGA interactive Dialogues in 2009, 2010 and 2011, more or less the same positions and interpretations of sovereignty were observable among the examined states as back in 2005. Only India changed from obstructive behavior back in 2005 to a slightly supportive position in 2009 and 2010. The justifications brought forward by the actors also remain the same: Canada (2009), France (2009), the UK (2009) and the USA (2009) were emphasizing international humanitarian law and the righting of past injustices as framework for R2P. However, the UK (2009) was still critical about guidelines for the use of force by pointing out that every situation was different, a view shared by Russia (2009) and China (2011b), which demanded decisions on a case-by-case basis. France and Canada further demanded to bring those to justice who commit serious human rights violations (Canada 2009, France 2009) and asked all states to become party to the Rome Statute (France 2009). Like Canada, France expressed a “definition of national sovereignty, which gives nations lasting obligations toward their people” (France 2009). As mentioned above, India surprisingly shared this view and slightly supported a conditional concept of sovereignty, by claiming that “Sovereignty as responsibility has, however, always been a defining attribute for nation states” (India 2009, cf. India 2010) and admitted that it might be necessary to act under Chapter VII “on a case-by-case basis and in cooperation with relevant regional organizations with a specific provision that such action should only be taken when peaceful means are inadequate and national authorities manifestly fail in discharging their duty” (India 2009). However, India (2009, 2010) seems to be still critical about the potential for abuse inherent in R2P in terms of legitimizing unilateral interventions; a position shared by China, Russia (2009) and the NAM (2009). India (2009) again demanded a reform of the UNSC, in order to reflect contemporary realities and in order to address the problem of missing political will to react to atrocities. The USA demonstrated more openness towards the R2P than in 2005, which might coincide with the new Obama administration. It stated that RtoP complements international law, that states have a particular obligation to protect their populations and that the international community needs to be prepared to take collective action in cases of atrocities and, in extremis, has to resort to the use of force (USA 2009). However, China (2011), India (2009), Russia (2009) and the NAM (2009) demanded that further debate within the GA was necessary in order to reconcile the divergent views on RtoP. Moreover, Russia (2009), China (2011b) and the NAM (2009) pointed to the need to act in accordance with the UN Charter and the principles of non-interference and territorial integrity. Russia (2009) and China (2011b) emphasized that the primary responsibility to protect civilians lies with the single state.

The UNSC’s open debate on the protection of civilians in armed conflict in May 2011 proceeded in the light of the recent interventions in Libya and Côte D’Ivoire and showed that there was dissatisfaction among states with the aim of NATO to bring forward regime change in Libya. Canada, France, the UK, and the USA argued, refer-
ring to injustices against civilians in those countries and based inter alia on utilitarian principles, that NATO action in Libya and the strengthening of UNOCI in Côte D’Ivoire helped to prevent massacres and enabled humanitarian aid (France 2011, UK 2011, USA 2011). This view was not shared by all actors: India demanded that UNSC action to protect civilians has to respect the UN Charter, including the sovereignty and integrity of states, criticized the interpretation of the UNSC mandate to protect civilians by the interveners and asked for accountability: “Who watches the guardians?” (India 2011). Russia asked for punishment for those who commit mass atrocities but further emphasized that any action has to be in line with the UN Charter (Russia 2011a, b). China held the same position as back in 2005 and in the UNGA debates but was even more direct and stated that “[t]here must be no attempt at regime change or involvement in civil war by any party under the guise of protecting civilians” (China 2011a). As it seems, the misinterpretation of the UNSC mandate by NATO and its Arabian supporters further reinforced existing justice-based caveats against RtoP and the use of force for humanitarian aims. Russia and China but also India interpreted NATO’s overstretching of the RtoP mandate in Libya as an unfair abuse of the UNSC Resolution and thereby of RtoP.

Conclusion

In conclusion it becomes obvious that RtoP cannot be seen as Cosmopolitan Harm Convention. It is not a new moral consensus – because it has not been negotiated in an open dialogue on the basis of communicative action, and different clashing justice claims related to sovereignty and the use of force for humanitarian aims persist. RtoP addresses concrete harm against individuals on the national level and implies a responsibility of the international community to react in cases of mass atrocities. However, since we cannot observe a genuine shift of interests within the state community to prioritize the prevention of human suffering, we cannot speak of a new moral consensus on international order concerning the use of force for humanitarian aims. The acceptance of RtoP by the examined actors in the Outcome Document of the World Summit in 2005 is hardly due to communicative action and persuasion during the negotiations at the World Summit itself. The Outcome Document has to be seen as a compromise which seems to have come about by balancing of interests. The approval of powerful states, like China, Russia and the USA can be explained by concessions in the language of the Outcome Document which strengthened their position as permanent members of the Security Council. It is particularly interesting, that at the end of the day, a clandestine process and the exclusion of many RtoP-opponents from the final drafting of the Outcome Document led to the adoption of RtoP by the heads of states at the World Summit in 2005.

The comparison of the actor’s argumentation in 2005 with their argumentation in the UNGA dialogues in 2009, 2010 and 2011 as well as with the UNSC open debate on the protection of civilians in armed conflict in May 2011 shows that there is still no common view on RtoP existent within international society. Only India changed its position towards RtoP and seems to be rethinking its stance, but even in this case the justice claims used remain the same. Justice conflicts still remain within international society over what the point of reference for justice should be: the individual and its physical integrity or the respective national community and its entitlement to sovereignty. Canada, France, UK, and the USA refer to international humanitarian law and past injustices to forward a conditioned understanding of sovereignty while China, Russia and the NAM uphold the traditional view on sovereignty based on non-interference and territorial integrity as prescribed by Art. 2(4) and 2(7) of the UN Charter. Hence, hardly anything has changed since the late 1990s.
RtoP is still contested today. Even though the basic idea behind RtoP received much support during the UNGA debates in 2009, 2010 and 2011, the still remaining justice claims seem to hamper the application of RtoP. Many states see not just a basis for future interventions in the internal affairs of states in RtoP, but also a means for the protection of their sovereign equality by restricting interventions to cases of mass atrocities. Hence, the interpretation of the UNSC Resolution 1973 by NATO provoked a dispute which led to a deadlock within the Security Council: the justice claim on sovereign equality weighs heavy for states like India, China and Russia as well as for the NAM. Hence, forceful regime change seems not to be acceptable to them, not even as a consequence of a protection of civilians mandate by the UNSC. This becomes obvious in a debate on a draft resolution on Syria in October 2011, where Russia directly referred to the case of Libya, by stating that through NATO intervention “[t]he demand for a quick ceasefire turned into a full-fledged civil war, the humanitarian, social, economic and military consequences of which transcend Libyan borders” and that “these types of models should be excluded from global practices once and for all (Russia 2011b). The 2012 dialogue on RtoP, which will address the third pillar of RtoP (timely and decisive response) will show if the Libyan case lastingly diminished support for RtoP within the society of states.

From a theoretical perspective, this exploratory study points to the interesting finding that a moral norm can develop, notwithstanding persisting justice conflicts; but when it comes to the application of the respective norm, these justice conflicts seem to hamper a consensual reaction to cases of non-compliance. This is particularly interesting, since under these conditions one would not expect a norm to develop in the first place. Hence, further studies have to inquire which concrete influence considerations of justice have on the behavior of international actors in comparison to other factors and how they influence decision making processes.

Can the justice conflicts over RtoP be resolved? This paper focused on the development of RtoP within the UNGA. A follow-up study will concentrate on cases when RtoP was applied in practice in order to inquire ways to resolve the existing conflicts. However, going beyond the scope of this work, we can at least conclude that the concerns of the supposedly weak states in the global South, the West and the new powers like India and China must be brought together in an open dialogue to find solutions to problems in an increasingly multipolar international society. The intervention in Libya shows that RtoP-mandates by the Security Council must be more precise in order to avoid abuse by the interveners. The lack of political will in the case of Syria seems in parts also due to the newly fostered suspicion against measures under Chapter VII based on RtoP in the aftermath of the Libyan intervention. If the states critical of RtoP perceive the norm as a tool in the hand of the strong for the purpose of enforcing their own interests, there will not be a chance to reconcile the clashing justice claims on sovereign equality on the one hand and individual justice on the other. In order to reach a true moral consensus, mistrust has to be reduced in an open dialogue. The reform process of the United Nations, in which RtoP was originally embedded, must therefore continue to move forward.

References

Primary sources – verbatim records


Bibliography


Bellamy, Alex J. (2010): The Responsibility to Protect - five years on. in: Ethics & International Affairs 24(2); 143-169.

Brunnee, Jutta / Toope, Stephen J. (2006): Norms, Institutions and UN Reform: The Responsibility to Protect. in: Journal of International Law and International Relations 2(1); 121–137.


Deitelhoff, Nicole / Müller, Harald (2005): Theoretical Paradise . empirically lost? Arguing with Habermas. in: Review of International Studies 31(1); 167-179.


Ki-moon, Ban (2011): The role of regional and sub-regional arrangements in implementing the responsibility to protect. Report of the Secretary-General. UN Record Symbol: A/65/877.


