Global Governance Efforts in Tension between Humanitarian Concerns and Statist Sovereignty Rights

by

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Abstract:
The paper focuses on the role of justice claims for global governance. It connects to debates on Ethics in International Relations (cosmopolitanism/communitarianism) as well as on global justice in International Political Theory (IPT) and International Relations (IR). The paper seeks to contrast these normative debates with empirical case study analyses. It asks whether and how differences in justice claims of states relate to norm conflicts. The paper also aims to show that conflicting justice convictions of states can become considerable stumbling blocks for multilateral negotiations. Justice claims of states which aim at strengthening individual rights, such as human rights or human security, often collide with statist sovereignty convictions such as the right of non-intervention, territorial integrity and non-interference. The paper seeks to exemplify such clashes of ideas in examining different recent negotiation processes and governance efforts at the United Nations, such as Responsibility to Protect (R2P) or the Arms Trade Treaty (ATT).
1. Introduction

Global challenges and interdependent problems such as poverty, migration or world economic crises set limits to the policy options of each single nation state. Severe human rights violations mobilize the world public and set the international community of states under pressure to take actions even without the prior permission of the country in conflict. But what do humanitarian interventions imply for human rights norms and world order policy? Is the constitutional norm of sovereignty and its underlying principles of non-intervention, self-determination, territorial integrity and non-interference an anachronism and no longer sacrosanct? The realist scholar Krasner argues that sovereignty is nothing more than “organised hypocrisy” and rightfully stated that no principle has been more often breached than the constitutional norm of sovereignty (Krasner 1999). Nevertheless, global governance regulations emerge that underline shifting grounds of international order. New norms increasingly reflect a careful balance between human rights concerns and notions of sovereignty. When viewing multilateral negotiations, states often clash in their positions: Some states argue for the strengthening of individual human rights, while others insist on the continuing value of the constitutional norm of sovereignty. We argue that from a social constructivist perspective, the dynamics of global governance regulations can be grasped more adequately than insisting on a (neo-)realist perspective.

The clash of ideas between individual rights and states’ claims of sovereignty is picked as a central theme by international political theory (IPT) and by some schools of thought in International Relations. Some theorists of International Ethics and Global Justice argue that world order reflects signs of cosmopolitanism insofar as individual (human) rights outweigh statist concerns of non-intervention and non-interference. The protection of individual rights is given priority over the constitutional norm of sovereignty (Pogge 1992: 58). Universal principles of justice are to be owed to every human being, independent from origin and nationality (Caney 2005: 102-147; Moellendorf 2002: 36). From such a cosmopolitan perspective, states and human beings alike bear a moral responsibility to prevent human suffering and are obliged to fight against global injustice. This preference of individual rights is primarily countered by states of the Global South which argue that in the process of decolonisation the institution of the state and the constitutional norm of sovereignty have become a symbol of liberation and emancipation. While some of these states favour the strengthening humanitarian aspects of world politics, they frequently voice their suspicion that Western states hide strategic interests
behind their efforts of pushing human rights beyond their own borders. In the practice and routines of multilateral negotiations different notions of justice collide and often become stumbling blocks to effective outcomes. Negotiations are turned into arenas where opposite positions of justice reflect countering beliefs about a rightful world order.

In our research project we seek to examine the causal mechanism of rival justice claims on global governance regulations. Our dependent variable is examined at three different stages: the generation process, the dynamics and normative deepening of the regulation, and finally the application of the regulations in zones of (post)-conflict. We believe that unsolved justice conflicts not only inhibit effective generation processes, but ultimately reemerge at review conferences and also affect the application of regulations. For the project, we choose three relevant policy fields: humanitarian intervention, humanitarian arms control and women’s rights. The independent variable concentrates on deciphering contrasting justice claims of state agents. We start from the assumption that a basic clash of ideas exists in the question of individual/state rights which is expressed in the antagonism between human rights versus sovereignty. Moreover, rival justice claims can also be identified beyond this antagonism. We start with the categorization of Nancy Fraser and roughly distinguish between justice claims of distribution, recognition and participation (Fraser 2008).

For this ECPR paper we chose to present a small section of this larger project. Here, we concentrate on two case studies of two different policy fields: R2P can be defined as a case of successful global governance when concentrating on its generation process; it has been accepted unanimously by the UN General Assembly in 2005. The Arms Trade Treaty is our unsuccessful case, since states failed to reach consensus in two negotiation rounds. We seek to exemplify the causal mechanism of conflicting justice claims and its effect on the negotiation outcome of the two different negotiations. Despite the differences in the objects of regulations both show a similar clash on ideas of justice and more prominently in the antagonism between human rights and sovereignty principles. The paper and the project seek to connect to a desideratum of global governance research and follows Michael Zürn’s demand for a broader perspective rather than just focusing on questions of legitimacy and effectiveness of regulations (Zürn 2008: 577).

In Chapter 2 we start from a social constructivist approach and demonstrate where our empirical research on global justice connects to existing research on norms and global governance. Chapter 3 concentrates on aspects of justice in negotiations and presents an overview of the “state of the art”. We then elaborate on the core ideas of justice which often become conflict-
ual in multilateral negotiations. Chapter 4 discusses the methods we draw on in our research project. Chapter 5 and 6 present some first and preliminary results on the two case studies of the R2P and the ATT.

2. Global Governance and Norms in IR

Several IR theories address the role of norms at different stages of global governance regulations. While rationalist approaches such as neo-institutionalism and regime theory point to the relevance of states’ interests for generating and maintaining institutions, constructivism assigns relevance to the effects of persuasion and norm socialization (Checkel 2001; Hasenclever/Mayer/Rittberger 1997; Klotz 1995; Müller 1993). More recent rationalist approaches stress the socialization process of the *homo economicus* and highlight the nexus between interest- and norm-based agency (Grobe 2011: 731; Hindmoor 2011). Nevertheless, neither rationalist nor constructivist approaches concentrate systematically on the effect of rival justice claims for the generation processes of global regulations, their norm dynamics and their compliance. We define justice as part of the larger moral system and as a *metanorm* which affects all other political means, as for example the process of norm generation and their dynamics. An order is just, if all actors receive their share (*suum-cuique* principle) whereas the principles of distribution might remain contested at a global scale. Such contestation about distributive justice often ends in rival claims of justice and conflict between the negotiating actors (Welch 1993).

IR theorists generally differentiate the research on norms along two perspectives. The research on norm socialization grasps norms as stable phenomena and independent variable. This strand concentrates on the conditions of norm generation, the processes of norm application and on the effects norms might have on shaping states’ politics (Checkel 2001, 1999, 1997; Risse et al. 1999). The second perspective in IR-research identifies norms as changing objects and concentrates on the complex processes of norm dynamics. Throughout their life cycle norms remain contested. Norm contestation nevertheless allows norms to gain legitimacy insofar as the validity and meaning of norms are more clearly defined. However, the norm

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1 Norms can be defined as “a standard of appropriate behavior for actors with a given identity” (Finne-more/Sikkink 1998: 891). For the purpose of the paper, we draw on the definition of regime theory which differentiate between principles, norms and regulations for constituting regimes (Müller 1993: 26). However, we do not treat norms as given or stable facts: even though norms can be stable for a certain period in time and thereby guide actors’ behavior, they are at the same time dynamic and contested, because they have different meanings for different actors (Wiener 2008: 50).
life cycle might also include degeneration and the erosion of norms (Wiener 2009; McKeown 2009; Rosert/Schirmbeck 2007; Cortell/Davis 2005, 2000). Such a perspective perceives norm generation and norm application as continuous negotiation and interpretation process. Only through such processes of interaction and conflict norms can evolve and become inter-subjectively shared standards of appropriateness which also encompass regional or local adaptations (Archaya 2009; 2004; Capie 2008; Sandholtz 2007; Wiener 2008; Elgstrom 2000). Even from this perspective norms have some stabilizing effects as part of the global world order, but this view stresses more rigorously the moments of contestation and continuous disputes between negotiating states (Wiener/Pütter 2009; Wiener 2007). Whenever such norms prescribe changes in states policies and ask for curtailing states’ sovereignty, the level of conflict and opposition against such regulations might increase (Deitelhoff 2009: 189; Zürn 2008).

**Fundamental norms** such as sovereignty can become contested between negotiating parties. Disputes about the constitutive role of sovereignty emerge particularly in those negotiation situations where sovereignty clashes with other fundamental norms, such as human rights (Sandholtz/Stiles 2009; Wiener 2009). States seem to have different subjective preferences in regard to universal and particular values which are also reflected in their preferences for certain justice claims. Conflicts about fundamental norms have become part and parcel of a larger justice perspective: Justice conflicts in multilateral negotiations often arise when states either push for statist rights (sovereignty) or individual rights (human rights). Nevertheless, the problem of “justice is conflict” encompasses more aspects than the dispute about the validity of fundamental norms. So far, the question of rival justice claims has not been systematically addressed as part of IR’s research on norms. To what extent are different notions of justice engine or stumbling block for successful norm generation processes?

The research on global governance in IR also concentrates on the conditions for successful regulations. From this perspective, the legitimacy and effectiveness of regulations are key variables for their successful evolution.\(^2\) Legitimacy as the ‘right to rule’ points to the appropriateness and acceptance of norms, their compliance, as well as to the role of democratic institutions (Hurd 1999: 388). Insofar, legitimacy encompasses aspects of justice, such as fairness and equal participation rights (Deitelhoff 2009; Müller 2007; Lynch 2000). Approaches of global governance stress in particular the role of deliberative procedures and rou-

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\(^2\) Zürn criticizes the monism of global governance and asks for more innovative approaches of global governance research which reaches beyond the question of legitimacy and effectiveness (Zürn 2008: 577).
tines in order to gain legitimacy of norms (Risse 2000: 7). Empirical case studies nevertheless indicate that commonly shared interpretations of norms and a common lifeworld as a shared reference ground are rare and limited among diplomats at the United Nations (Müller 2007: 216; Müller 1994: 33). Therefore, our project seeks to address to what extent convergent notions of justice are a necessary condition for effective global governance.

3. Justice in Negotiations

In the discipline of International Relations there are only a few studies on the role of justice in multilateral negotiations. In contrast, justice plays a more prominent role in other scientific disciplines such as social psychology or evolutionary biology. Brain researchers seek to identify those areas in the human brain where reactions to perceived injustice can be located (Singer 2007). Anthropologists categorise cultures according to their mixtures of justice systems (Fiske/Haslam 2005). There are numerous other scientific disciplines where the empirical research on justice has gained prominent space. Among them, empirical sociologists undertake laboratory studies to measure the types of justice principles human beings use in distributive conflicts (Liebig/Lengfeld 2002). This form of empirical research on justice aims at analysing justice as one of the core motives of social relations. In contrast to normative approaches of political theory and philosophy justice does not become a yardstick for morally rightful behaviour or a criterion for judging social institutions. Empirical research on justice merely asks for social conditions of choosing specific notions of justice. Our social constructivist approach reflects some parallels to these forms of sociological empirical research on justice. Both rely on the idea that human beings argue by drawing on different justice claims which frequently become objects of renewed conflicts. Ultimately, rival justice claims also affect negotiation outcomes of global governance.

The few existing empirical studies on the role of justice in IR draw on Welch’s (1993) examination of the relationship between perceived justice and decisions to wage war. His findings indicate that justice claims aggravate negotiations and enhance the probability of using force. He also points to the tension between justice claims of states and an insufficient international order which cannot guarantee that legitimate claims will be realized and enforced (Welch 1993: 196). Albin and Albin/Druckman identify conflictual notions of justice as decisive issue for multilateral negotiations and in particular for peace negotiations after ending civil wars. Conflict solutions become more sustainable and lasting if the peace agreement also incorpo-

Substantive justice claims, such as distributive justice, as well as aspects of fairness strengthen peace agreements and help to prevent a new outbreak of violent conflict (Albin/Druckman 2010: 110). Zartman concludes that a consensual agreement on contrary justice claims is a necessary condition for effective and sustainable conflict resolution (Zartman 2007). This contradicts the findings of Mayer who admits only a weak relationship between justice and the robustness of regimes (Mayer 2006).

For the purpose of our research on the role of justice conflicts in multilateral negotiations we start from the research on norm contestation and the role of fundamental or constitutive norms in IR. Justice conflicts play a prominent role in moral philosophy as the debates between individual versus state rights in cosmopolitanism and communitarianism reflect. Similar antagonisms exist in the English School of IR between solidarist and pluralist approaches. At the core of the debate the question of solidarity beyond borders is critically reflected in both moral philosophy and in IR. Are there universal moral obligations that justify state actions beyond their own borders to prevent gross human rights violations and protect foreigners if their own government fails to do so?

Divergent positions of state actors on the role and relevance of human rights and sovereignty as antagonist justice claims or fundamental norms can be identified in multilateral negotiations. Especially in the policy field of security, the generation processes of global governance regulations are dominated by conflicts on the priorities of fundamental norms for world order purposes. For a starting point, two main perspectives can be identified. From the first perspective, state actors argue that sovereignty and the principle of non-interference are anachronisms and stumbling blocks on the path of a universal value system which might constitute a future world order system: Such positions are mostly articulated by state actors of the Western hemisphere. From the second perspective, state actors argue that the fundamental norm of sovereignty continues to remain a norm which guarantees statist rights of autonomy, postcolonial independence and equality in a world order which is perceived to be fundamentally unjust. Such arguments and positions are primarily relied on by states of the Global South. Both sides nevertheless argue that their opponents use their justice claims with strategic intent in order to hide strategic interests and to realize their convictions of world order. From our point of view, this assumption needs to be questioned. To argue that justice claims only hide rational-

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3 For the purpose of the paper, we start from ideal-type assumption. Our empirical analyses indicate a far more diverse picture. For a first overview we refer to Chapter 6: Conclusion.
utilitarian interests of states overlooks the possibility of different logics of appropriateness which are behind these contrary notions of justice. The project seeks to examine norm generation processes and the role of conflictual justice claims. We aim at contrasting the normative approaches in moral philosophy and IR, which assume that world politics increasingly reflects cosmopolitan values, with empirical cases of multilateral negotiations of regulations in ‘hard’ cases of the field of security policy where the ideational conflict between justice norms such as sovereignty/human rights is particularly relevant. In order to identify the different dimensions of justice (distribution, recognition and participation/fairness), we first rely on the conceptualizations of moral philosophy and political theory (Fraser 2008).

3.1 Ideas of Justice in Conflict

Moral philosophy and political theory first and foremost concentrate on questions of justice within the state. From the perspective of political theory states are responsible for their citizens and for realizing a just society. In his ”Theory of Justice” (1979) Rawls draws on the model of a liberal-democratic state. In “Justice as Fairness” (2001) he continues to stress the relevance of democratic principles of decision-making and prioritizes them over other principles of justice. Nevertheless, Rawls remains critical about the possibilities of establishing common principles of justice at a global scale. In “Laws of the People” (1999) he develops a two-tier model for principles of humanitarian law in liberal foreign policy. While social justice should be realized at a national level, democratic states bear the responsibility of realizing basic justice principles in the international system. Such minimal principles of justice encompass rules of non-intervention, the right to self-defense and the general acknowledgement of human rights principles (Rawls 1999: 37).

With the establishment of international political theory and international ethics as a discipline, theorists more rigorously concentrate on the question of global justice. Some political theorists even claim a change of paradigm caused by these debates on global justice and on the responsibilities beyond state borders (Broszies/Hahn 2010: 12). Indeed, different schools of thought debate various aspects of global justice. For the purpose of the paper, we concentrate on the two main schools, namely cosmopolitanism and communitarianism, because the clash

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4 Rawls distinguishes states along their political constitution. Liberal democracies can acknowledge non-liberal societies as long as they live up to certain human rights standards. Vis-a-vis „burdened societies“ liberal democracies have a responsibility of assistance (Rawls 1999: 63).

5 Other schools of thought are for example discourse ethics, ethics of war and peace, feminist ethics or post-colonial theory. For an even broader overview see Shapcott 2010; Hutchings 2010.
of ideas on justice can be most clearly identified in these two antagonistic schools of thought. Proponents of cosmopolitanism⁶ argue that Rawls’ differentiation between the national state and the globe are insufficient. Instead, cosmopolitanism proposes a broader set of justice principles which sometimes even includes principles of social justice for the international realm. Pogge, for example, transfers Rawls principle of difference to the international arena and argues from an institutional cosmopolitan perspective that poverty must be curbed and principles of distributive justice have to be realized at a global scale (Pogge 2007: 134). Other cosmopolitan theorists criticize Rawls for accepting illiberal regimes and argue that he undervalues basic civil rights such as liberty and equal opportunity in his thoughts on global justice (Moellendorf 2002: 15; Tan 2000: 66).

Moral cosmopolitanism starts from an individualist and universalist assumption. Based on Kantian rationalism human beings are equally equipped with rationality and therefore capable of coming to terms with principles of global justice. From such a cosmopolitan perspective, human beings have a positive obligation to prevent suffering and injustice beyond state borders (Shapcott 2010: 15; Lu 2000: 263). As a consequence, individual human rights are prioritized against principles of state sovereignty (Pogge 1992: 58). While cosmopolitanists are convinced that universal principles of justice can be identified and established for the international realm, they differ in the question of which human rights are most important and whether they must encompass aspects of economic and social justice (Caney 2005: 102-147; Moellendorf 2002: 36). Pogge nevertheless stresses that human rights must more rigorously become part and parcel of a just world order (Pogge 2008). As a consequence of such thinking, some cosmopolitanists argue that gross human rights violations justify the use of force. Some of them propose the institutionalization of “just war” norms as guidance for humanitarian intervention (Caney 2005; Téson 2005; 2003; Moellendorf 2002).

Communitarians criticize these universal positions and argue that cosmopolitanism overlooks the profound normative and cultural pluralism in world politics. Principles of justice can only be established within the context of national communities and might be different, depending on culture and whether human beings are citizens of the United States or of China (Walzer 2006; Brown 2002: 92-93; Brown 1992). For this reason, global justice must be perceived as contextual and cannot be of universal range (Miller 2007: 263; Miller 2005). Communitarians

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⁶ Within the debate of cosmopolitanism different strands have emerged. For the purpose of our paper we mainly rely on the positions of moral cosmopolitanism which relies on the idea of a „common human community” (Shapcott 2010: 15). Other variants include institutional, normative and legal cosmopolitanism (Beardsworth 2011: 29-40).
point to the relevance of borders and argue that global justice must acknowledge the principle of state sovereignty (Nagel 2005: 113-147). However, even from a communitarian perspective, some weak universal principles of global justice can be established if citizens from different nations meet in transnational space. Such norms of action include basic human rights principles, such as a negative duty to prevent harm (Shapcott 2010: 59; Shapcott 2006; Miller 1999: 197; Walzer 1994: 103).

The clash of ideas between cosmopolitanism and communitarianism contains two main aspects: First, the two schools of thought differ in their perception on the adequate domain of justice. Can justice be truly global or is it limited to the state? Secondly they differ regarding the relevant dimensions of justice. Nevertheless, even strong communitarians would acknowledge that there is a minimal common duty among human beings and states to protect people and prevent harm. Similar “clashes of ideas” on the question of the adequate domain of justice and the range of its principles can be identified within IR-theories. Particularly the English School articulates the tension between statist sovereignty norms and human rights concerns. While in the pluralist variant of the English School states cooperate in institutions to minimize the risk of war and the use of force, both modes of violence cannot be eradicated through forms of international order. Pluralists remain rather sceptical when it comes to universal principles of order. Instead, they stress the continuous relevance of sovereignty and non-interference as core ordering principles in the international system of states. Therefore, realizing justice remains within the nation state (Jackson 2000; Dunne 1998; Wheeler 1992: 477; Bull 1977). Similar to communitarians, pluralists identify some minimal duties to assist needy states which are enshrined in humanitarian law. Linklater sees as a possible compromise between the two schools of thought the “harm convention” which proposes minimal duties of states beyond their own borders (Linklater 2006).

In contrast, the solidarist variant of the English School proposes a more far reaching concept of global justice. Contrary to the assumption of pluralism, the world order has profoundly changed since the end of the Cold War (Hurrell 2003: 26). Meanwhile, the normative structure of world society reflects signs of increasing solidarity and shared justice convictions among states and world citizens (Buzan 2004: 141; Wheeler 2000: 12). The ordering principle of sovereignty also includes global responsibilities to protect human beings and to secure human rights. Contrary to cosmopolitan positions, the solidarists seem to be more hesitant when it comes to the question of how to secure individual rights and protect people from gross human rights violations. Instead of humanitarian intervention they prefer preventive diplomacy
as a more adequate action for practicing solidarity beyond borders and securing human rights (Dinne/Wheeler 2004: 20). This more careful position sometimes collides with convictions held in liberal internationalism. Proponents of liberal internationalism argue more openly for forcefully intervening in conflicts if severe human rights violations have been acknowledged (Buchanan/Keohane 2004: 4-5; Evans/Sahnoun 2002: 101). State authority and sovereignty also implies recognizing state responsibilities for welfare and well-being of citizens – malpractice terminates the sovereign rights of such states. This form of “new humanitarianism” is part and parcel of a liberal conception of a new world order where the protection of human rights – conceptualized in the liberal values of liberty and equality – outweigh traditional conceptions of sovereignty such as non-intervention and non-inference.

Such concepts of liberal justice and human rights priorities frequently raise concern of the Global South, as decolonised states suspect that these moral values are just fig leaves for strategies of Western imperialism (Barnett 2005: 734; Duffield 2001). From an Indian perspective, for example, the state became a symbol for emancipatory representation during the process of decolonisation: statist sovereignty and non-interference have been perceived as guarantees for self-determination and institutions for human beings deliberated from colonial oppression (Bajpai 2003: 260). From such a point of view, human rights and Western proactive policies mask strategic interests and serve as legitimizing strategy of force and world order dominance. Moreover, prioritization of liberal human rights against social and economic justice reinforces such fears. In sum: This brief overview on different theoretical approaches should help to indicate the relevance of the clash of ideas on different notions of justice. Core among them is the clash between the constitutional norms – sovereignty and human rights.

4. Methods

In order to assess the influence of justice and other moral claims on the outcome of negotiations on new international regulations, we use process tracing to investigate whether or not the causal mechanism of rival justice claims is at work and influences the negotiation outcome (George/Bennett 2005: 211-212). Furthermore, as part of process tracing qualitative content analysis (Mayring 1997) is used. Based on a complex code book we investigate the relative

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7 Buchanan and Keohane argue that even the threat of violating human rights justifies preventive humanitarian military intervention. Both validate their claims by granting coalitions of democratic states special moral responsibilities in world politics. Due to their democratic constitution they become particularly reliable for realizing a cosmopolitan world order.
importance of justice claims in comparison to other types of justifications in the argumentation of the negotiation parties.

Building on the literature on the dynamic development of norms and norm contestation (Wienner 2008; Sandholtz 2009; Jetschke/Liese 2013) and on studies of empirical justice research, we see justice as a *metanorm*, which serves as a culturally-contingent standard of appropriateness for an actor to assess the legitimacy of a normative order. Views on justice thereby offer guidance for the development of new regulations in specific policy fields (Müller 2011b:282, 286). Claims for justice go beyond rhetorical action: rationalist approaches cannot explain, why actors introduce justice claims in the discourse, even though they are of no strategic utility (Müller 2011a).

As said before, David Welch’s study *Justice and the Genesis of War* points out that the justice motive can play a significant role in the outbreak of wars. The justice motive is understood as an actor’s drive to correct a perceived discrepancy between entitlements and benefits (Welch 1993: 19). We assume that justice conflicts aggravate international conflicts and that without a reconciliation of conflicting justice claims, a violent resolution of conflict or a deadlock in negotiations becomes more likely (Welch 1993: 216).

We treat the articulation of justice claims as a speech act, comparable to the notion of *securitization* by the Copenhagen School (Buzan et al. 1998). 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, we assume that appeals to justice serve as strong justifications for states’ positions during international negotiations (Müller 2010, 2011a, 2011b). To operationalise justice, the definition of David Welch (1993) is used which states that justice claims rest on entitlements perceived as legitimate by the respective actor: a perceived entitlement goes beyond a simple interest in something; the actor thinks that she has an entitlement get or maintain this something (Müller 2010: 9). The mode of reasoning involved in the defense of entitlements is deontological and categorical rather than utilitarian (Welch 1993: 21). Hence, justice claims can raise issues on a higher level of intensity and negotiation positions may harden. This assumption is based on studies in social psychology which show that “perception of injustice fosters hostility, distrust and social protest” (Austin 1986: 159; see also Deutsch 2011; Tyler 2012).

As mentioned before, we analyze claims to justice in three dimensions: distribution, procedure and recognition (Fraser 2008). We draw on a typology of justice claims (Müller/Müller/Wunderlich 2011; Müller 2011a; Müller/Wunderlich 2013) which was developed
as part of the common research program of PRIF called *Just Peace Governance*. However, we extended this typology to include other claims, based on moral argument or interest or the common good. Since we try to assess claims to moral or justice from the perspective of the respective actors, the codebook tries to cover different understandings of justice that have been deduced from the relevant literature. However, the codebook is open for inductive supplementation.

The Codebook has four levels: The type of regulation and connected enforcement mechanisms aspired by an actor is coded on level one. Codes on this level range from “no regulation” to “soft law” to “hard law” to “enforcement by use of force”. Codes on level two address the concept of sovereignty an actor advocates. On a basic level, we differentiate between absolute sovereignty and conditional sovereignty (Philpott 2001). Moreover, categories are inspired by the distinction between internal and external sovereignty and between authority and control (Krasner 1999). On the next level of the Codebook, we code which entity an actor names as being entitled to something: Since claims can refer to different levels of social aggregation and because an actor may not just claim something for himself but also in the name of others, we differentiate between different right holders: the individual, the state, a people, a religious community and other collectives. The fourth level is of special importance for our project because on this level we code the justifications actors use to make their arguments. We differentiate between five broad types of justifications which themselves are subdivided in different subcategories: 1. Cosmopolitan moral concepts refer to statements by which states demand or reject certain things or actions based on moral reasoning. 2. Justice claims have to be formulated as entitlement or as a “right to” something. This narrow definition and our differentiated code system should prevent miscoding. 3. Referrals to the “Just War Theory” may often be found in debates around the use of force. They might be used as justifications in favor or against military interventions. 4. References to the common good might also be used to justify negotiation positions. Examples may be arguments based on a utilitarian logic or arguments drawing on development or peace. Finally, we include 5. claims based on articulations of (national) interest as well as power-based claims of the respective actors in our analysis. Thereby we want to avoid the charge of being biased towards moral argumentations.
5. Case Studies

5.1 Negotiations on R2P in the 2005 World Summit Outcome Document

5.1.1 Human Rights, Sovereignty and R2P

The notion of “Responsibility to Protect” (R2P) entered international politics with the report of the International Commission on Intervention and State Sovereignty in 2001. Kofi Annan’s High Level Panel on Threats, Challenge and Change (HLP) took up R2P and included the concept in the report of UN reform (HLP 2004: §199-209). Kofi Annan incorporated 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. During the negotiations on the World Summit Outcome document (WSOD), R2P was part of the agenda from the beginning (Bellamy 2009: 83-84). While the USA were rather indifferent in the early phase of the negotiations, Canada, France and the United Kingdom were pointing to the necessity for a new norm guiding international reactions to mass atrocities. China, Russia, and the coded member-states of the Non-Aligned Movement (NAM), with the exception of South Africa, did not see any need to introduce a new concept. From their point of view, the UN Charter provides all necessary tools to deal with crises that threaten international peace and security. Especially India, Iran and Cuba expressed doubt regarding the legal foundation of R2P in international law.

During the debates in the run-up to the World Summit basic concerns about R2P had been raised as justice claims: China, Cuba, Iran and the NAM states emphasized sovereignty concerns and framed sovereignty in more absolute terms. They further called for justice between states in form of sovereign equality and non-interference in internal affairs. The NAM also pointed to parallels between humanitarian interventions and the concept of R2P. In a similar vein, Iran stated that R2P was a source of major concern at a time when “sovereignty and political independence of countries of the South has become subject to encroachment by the outside powers” (Iran 2005a). The state warned of undermining the principle of sovereignty, demanded equal standards of sovereignty for all nations and rejected “19th century parameters to relax the restrictions on the use of force” (Iran 2005b). Canada, France, South Africa, the UK and, at the end of the negotiations, also the United States advocated conditioned sovereignty and claimed that sovereignty includes responsibility for the own population. Even though South Africa emphasized that “the obligation of States to protect their citizens should not be used as a pretext to undermine the sovereignty, independence and territorial integrity of

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8 For this empirical illustration, we coded statements by different state actors during formal and informal negotiations in the run-up to the UN World Summit: the permanent members of the Security Council, Canada, Cuba, Egypt, India, Iran, Malaysia, the Non-Aligned Movement and South Africa.
States” (South Africa 2005), it did not refer to the concepts of non-interference or non-intervention. This is a remarkable difference compared to statements of other NAM states where those two concepts played prominent roles in the argumentation against R2P.

On the level of justifications there is an interesting difference in the argumentation of the actors: On the one hand, the states from the Global South referred to justice-based arguments more often, especially in regard to justice-based sovereignty claims. On the other hand, Canada, France and the United Kingdom argued on moral grounds based on humanitarian concerns and an assumed global moral responsibility. Other points of view came from China, Russia, the NAM and Iran but also the United States that pointed more often to legal rights based on the UN Charter.

For France, the universality of human rights was an important argument in favour of R2P during the negotiations on the WSOD. In contrast, the NAM also emphasized “that all human rights, in particular the Right to Development, are universal, inalienable, indivisible, interdependent and interrelated [but that] […] human rights issues must be addressed within the global context through a constructive, dialogue-based approach, in a fair and equal manner, with objectivity, respect for national sovereignty and territorial integrity, non-interference in the internal affairs of States, impartiality, non-selectivity and transparency as the guiding principles, taking into account the political, historical, social, religious and cultural characteristics of each countries.” (NAM 2005). Even though the argumentation of the Southern states shared similarities, NAM was not a unitary block during the negotiations. Developing countries were split in advocates and opponents of R2P. South Africa, for example, represents this special position: While demanding respect for sovereignty, it spoke in favour of R2P by framing the concept as a common moral responsibility. At the same time, the African state emphasized that unilateral action has to be ruled out under R2P.

Thus, while Southern states called for justice between states, in form of sovereign equality and respectively fair treatment before international law, advocates of R2P such as Canada, the UK and France pointed to moral responsibilities for the protection of the individual’s physical integrity as well as for the punishment and ending of heavy human rights abuses. The latter also emphasized legal duties derived from international humanitarian law. Great Britain stressed that infringements of international humanitarian law had to be punished and that sovereignty contains no right to arbitrariness.
Among the more powerful states, especially the P-5, an implicit conflict over legal interpretations is visible, regarding the ranking of legal bases for international action. While the argumentation of France and the UK was primary based on international humanitarian law, China, India, Russia, the NAM states, and the USA called for full substantial and procedural respect of the UN Charter.

In spite of the existing differences, there was constant progress during the negotiations on the WSOD between March and August 2005 (Bellamy 2009: 84). Within the Global South, there was still much discontent with R2P: Some NAM and G-77 states regarded R2P as an imperialistic plot and feared a misuse of the concept to legitimize regime change or foreign exploitation of their natural resources.

5.1.2 Just procedure

Hence, just procedure was a topic of utmost importance during the World Summit: Southern states demanded first and foremost a fair procedure for drafting the outcome document. Besides that, the assessment of human rights violations and decision making in the UN Security Council played a central role in the argumentation against R2P. During the World Summit, Cuba, Egypt, India, Iran and also speakers on behalf of the NAM demanded fair decision making and equal participation when human rights violations were addressed, by claiming that dialogue rather than external interference was the better strategy to deal with such violations. The same applies to the question of equal hearing in the discourse on international norms. NAM states complained about double standards and selectivity in the work of the Security Council and were thereby demanding equality before the law in the sense of fair procedures for the assessment of human rights situations in certain states. However, in this context, referral to cultural difficulties was rare. Even though Egypt, the NAM and Russia occasionally referred to the necessity to take into consideration the historical, political, social, religious and cultural characteristics of each country when assessing human rights situations, the universality of human rights remained unquestioned.

Especially Cuba, but also Iran – both strong opponents of R2P – claimed that the new concept of R2P would serve the interests of the powerful and criticized this as a symptom of an unfair world order:

“It would be suicidal to validate the so-called ‘right to intervention’, used so many times nowadays, within the circumstances of a unipolar and neoliberal world characterized by the existence of an economic and military dictatorship exerted by the superpower, where only one society model is attempted

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9 Interview with a Canadian diplomat who participated in the negotiations
to be imposed, there is a ‘nuclear Club’, ‘preemptive wars’ are promoted, double standards dominate the actions of the Security Council, some shape the contempt towards the General Assembly, the implementation of coercive unilateral measures proliferates and human rights are politically and selectively manipulated.” (Cuba 2005)

To counter these and similar claims by other NAM states, Canada demanded the introduction of criteria for the use of force as guidance for Security Council decisions and as new normative groundwork to improve the effectiveness of responses by the Security Council to atrocities. However, the criteria idea failed on the rejection by most other actors. At the end of the day, the P-5 did not want to see their hands tied by such criteria and many Southern states regarded them as a backdoor for great power interventionism (Wheeler 2005; Bellamy 2009: 83). Decisions made on a case-by-case were deemed the only acceptable mode of decision making regarding coercive measures, especially for the P-5 but also for Iran.

5.1.3 The impact of justice claims during the negotiations

By using justice claims, especially Cuba, the NAM and Iran and to a much lesser extent India, Malaysia, China and Russia signaled that the potential conditioning of sovereignty was of high importance for them. The combination of sovereignty and justice claims implies that especially weaker states from the South seem to regard sovereignty as an entitlement of which they must not be deprived of. By raising justice claims, NAM states lifted the topic of R2P on a higher level of intensity. The negotiation position of many states seemed to harden – a justice conflict emerged.

However, since the NAM did not reach a common position and due to the fact, that within the NAM there were strong supporters of R2P – like South Africa, Rwanda or Tanzania – progress was possible. Canada and other supporters of R2P showed openness for these claims. Canada referred to principles of fair decision-making and of equal treatment before the law to emphasize the necessity of the new principle: “in order to be legitimate, the Council’s approach needs to be clear and consistent. It must apply to both large and small states equally; it must apply to north and south equally” (Canada 2005). Moreover, Canada pointed out “that in the Responsibility to Protect, the concept of sovereignty is strengthened, not weakened, since the basis for intervention by the international community is narrowly limited to a failure to uphold the very obligations inherent in sovereignty itself” and that “the protection of civilians, and the concept of state sovereignty are mutually reinforcing” (Canada 2005). In order to address the concerns of NAM states, the supporters repeated the scope conditions of application of R2P – genocide, ethnic cleansing, war crimes and crimes against humanity – within the
R2P paragraphs several times. This lowered the heat of the debate and thereby contributed to the final compromise. After the linking of R2P to exceptional circumstances as scope conditions, the hardened negotiating positions on R2P mellowed. NAM states still demanded further consideration of the topic in the General Assembly but did not oppose the remaining of R2P in the WSOD anymore.

A draft version of the Outcome Document from August 5, 2005, reflected a growing willingness among the UN member states to accept R2P (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; Bolton 2007: 207-219). The USA shared the position of its allies but expressed reservations towards an obligation to act. She emphasized, that the responsibility of the host state to protect its citizens differs from the responsibility of other countries (USA 2005b). The USA in addition demanded a possibility to act without Security Council authorization in case of emergency. However, this claim contradicted with the emerging consensus within the UNGA (Bellamy 2009: 82). Moreover, the USA prevented a formulation by Kofi Annan that stated an obligation of the international community to react to mass atrocities (Bellamy 2009: 85, FN 81). Further, the United States were the only actor expressing caveats against the inclusion of a prohibition of the incitement to mass atrocities into the WSOD paragraphs on R2P because this was not compatible with the first amendment to the US constitution protecting freedom of speech (USA 2005b). In the end, this US claim failed.. But 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 R2P, although it had already signalled approval two months before under the condition that the responsibility first lies within the state and that interventions are bound to the UNSC (Bellamy 2009: 87-88). Also Russia refused to accept R2P 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 R2P 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 R2P proved to be

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10 Interview with a Canadian diplomat who participated in the negotiations
ful and especially the country’s ambassador had an effect on the Russian side in convincing them to reconsider their obstructive position on R2P (Bellamy 2009: 87).

However, observers and participants see an important influencing factor for the remaining of R2P in the WSOD 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: The President of the General Assembly, some UN official as well as some delegations went on working on the original draft and constantly considered different arguments from the debate without rejecting the achieved consensus from early August, as it had been required by Bolton (Bellamy 2009: 89). However, only a few delegations seemed to have been involved in these last consultations.

In the end, US Ambassador Bolton, who has been against R2P, 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 13, the day before the beginning of the World Summit, negotiations on the text were ongoing in the morning. India, Cuba and Iran remained critical and braced themselves against R2P, appealing to its legal and moral foundations. However, the criticism of the Indian representative Sen was not included in the final document, hoping that the Indian government could still be persuaded (Bellamy 2009: 88).

Finally, the remaining brackets in the text were deleted from the document on the day before the summit of the heads of states has started, without involving all delegations in this decision, according to participating diplomats. The final text was accepted for the transfer to the World Summit during a meeting of the General Assembly on September 13. Before and during the summit, the Canadian Prime Minister Paul Martin, contributed substantially to persuade sceptics to vote in favour of that Outcome Document (Evans 2009: 21).

However, the linking of R2P with UN reform in general has contributed decisively to its acceptance: By approving the Outcome Document, the USA has, for the first time, recognized the MDGs as a framework for the coordination of development aid (UNGA 2005b: §17). That

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11 Interview with a Canadian, French and German diplomats who participated in the negotiations
12 “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)
13 Interview with a French diplomat who participated in the negotiations
14 Interview with a Canadian diplomat who participated in the negotiations
15 Ibid.
has been an essential incentive for the NAM states to support the Outcome Document. Nevertheless, the influence of moral and justice-based considerations must not be underestimated: R2P in the WSOD represents a hybrid of different claims based on different understandings of moral and justice: the claim to condition sovereignty in cases of mass atrocities based on humanitarian concerns and an assumed common responsibility of mankind was reconciled with claims to secure sovereign equality and to strengthen equality before the law by binding it to the UN Charter and thereby ruling out the potential of unilateral abuse inherent in R2P.

The different moral and justice claims have been balanced within the WSOD. The R2P paragraphs clearly address the major demands of Russia, China, the USA, India, Iran and the NAM states but also the commitment to civilian protection brought forward by Canada and its supporters. The formula found enables coercive measures though the Security Council but rules out unilateral interventions. The NAM demand for an explicit scope definition of R2P, specified as the four mentioned crimes, is apparent in the heading of the sections 138 and 139 as well as in several places in the text (UNGA 2005b: §138-139). Even though the problem of selectivity and double standards could not be resolved, the most pressing fears of Southern States have been accommodated. Decisions based on R2P have to be made on a case-by-case basis and there is no obligation to intervene. There are no criteria for the use of force and no request to the UNSC to adopt a code of conduct for the P-5 to refrain from the use of their veto in R2P-related cases, as recommended by the HLP-Report (HLP 2005).

By accepting the Responsibility to Protect, human rights have been strengthened in international law. Since the primary responsibility to protect the population lies with the state, and because the international community promised to support the state in fulfilling its responsibility, a strengthening rather than a weakening of the state, as the organizational unit that has to protect human rights, could be recognized (Jetschke/Liese 2013: 37-38).

5.2 The Arms Trade Treaty (ATT)

The evolution of the Arms Trade Treaty (ATT) cannot be adequately understood without looking at its precedents in humanitarian arms control. With the focus on human security, conventional arms control generally gained a new impetus. In 1994, UNDP introduced the term “human security” in order to change attention from thinking security in statist terms. Instead of stressing states’ security and principles such as territorial integrity and non-interference, the focus changed toward individual human beings and their security needs. This
new framing of human security paved the way for a series of arms control initiatives which have some similarities: The Anti-Personnel Mine Ban Treaty (MBT) of 1997, the Program of Action on the Illicit Trafficking of Small Arms and Light Weapons (PoA) of 2001 and the Convention on Cluster Munitions (CCM) of 2008 were all initiated by transnational non-governmental campaigns which managed to persuade like-minded states to take up negotiations. All three global governance regulations stress the relevance of embedding humanitarian concerns and human rights into the arms control realm.

This form of “new humanitarianism” in arms control led to the ban of two weapon categories and initiated a series of arms control measures in order to tackle the illicit trafficking of small arms and light weapons. The successes to effectively insert ideas of humanitarianism and human rights into arms control have also inspired the non-governmental campaign of “Control Arms”. While the PoA envisaged the illicit trade of SALW, the ATT campaign aimed at regulating all global conventional arms exports. The transnational non-governmental campaigns stress the relevance of legal arms exports which have become illicit and affect human security in many parts of the world. Nevertheless, regulating arms exports also implies an infringement on the sovereign rights of states. While some progressive states favour a „strong and robust“ ATT and underlined the relevance of human rights as overriding criteria for the treaty, other states stress the continuous relevance of core principles of sovereignty as they are enshrined in the UN-Charta. This clash of ideas overshadowed the two negotiation rounds and became at least one part of the explanation why the ATT failed to be concluded under the rules of consensus. Instead, the treaty was accepted by vote in the UN-General Assembly on April 3, 2013.

5.2.1 Ideas of Justice in Conflict: Human Rights Concerns versus Sovereignty Claims

The ATT aims at reducing human suffering caused through irresponsible arms trade and induces global criteria for regulating the legal arms trade of states. During the two negotiation rounds which took place in July 2012 and March 2013, a broad consensus between states emerged demonstrating their principal support of human rights and humanitarian law as guiding principles for the emerging regulation. Nevertheless, a handful of states stated their concern that human rights remain essentially contested among UN member states. Particularly states from the Non-Aligned Movement (NAM) expressed their fear that an ATT could be used as another discriminating tool against states from the Global South. Indonesia stated that

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importing states must have “equal opportunity to define serious and systematic violations of human rights” (ATT Monitor 2012b: 4).\(^{17}\) Algeria argued the treaty should not include human rights or IHL or any other “arbitrary” approaches to regulate the arms trade (ATT Monitor 2012c: 2). On the opposite site, states from CARICOM insisted that the ATT was never meant to be just a trade treaty and that strong human rights and international law components must be at its core (ATT Monitor 2012f, 1).

The debate about the term “gender-based violence” shows a resemblance to the discussion about contested human rights. While some delegations, most prominently the Vatican, sought to replace it with “violence against women and children”, the vast majority called for recognition of the gendered impact of arms trade such as gender-based violence (ATT Monitor 2012a: 6). The question of women’s rights in general voiced concern of some Arab delegations such as Egypt and Algeria who insisted that this issue will remain a matter of national prerogatives.

While the meaning and interpretation of human rights was somehow contested, the clash of ideas between individual rights and states’ rights became even more visible in the discussion about the role of sovereignty. Numerous states, particularly from the Global South, stressed the relevance of their constitutional rights enshrined in the UN Charter. Some states such as Venezuela named sovereignty of states as the most important principle for the treaty to uphold (ATT Monitor 2012b: 2). A rift between interests developed between states which stressed the non-selectivity of the principles of the UN Charter such as Mexico and the EU and others who stressed only some of the sovereignty principles. India, Indonesia and Syria called, for example, for an unambiguous reference to territorial integrity. Ecuador and Iran stated the need to refer to the right to self-determination, non-interference, and the right to be free from colonial oppression or foreign occupation (ATT Monitor 2012b: 7). Numerous states expressed their right of self-defence in line with Article 51 of the UN Charter which includes, from their perspective, the right to acquire and sell conventional arms (ATT Monitor 2012d: 3).\(^{18}\) States’ ability to exercise self-defence was often coupled with the argument of meeting security needs. This indicates that justice arguments are in practice frequently merged with interest/security arguments. The DPRK argued that not all states are in a system of collective security which ultimately implies that the right of self-defence must also encompass the right to

\(^{17}\) Indonesia therefore stressed the need of establishing an independent advisory group to judge about human rights violations. Interestingly the concern about contested human rights is coupled with an idea of fair decision-making. Nevertheless, this fairness argument did not reach the unanimity of states.

\(^{18}\) Australia questioned the right of states to manufacture arms arguing that this is not a right under international law (ATT Monitor 2012e: 5).
manufacture and trade arms. Nevertheless, sovereign rights were not only raised by delegations from the Global South, but also expressed by Western states. The US and Canada stressed their sovereign rights of civil gun ownership which should not be touched by any global governance regulation including the ATT (ATT Monitor 2012e:4).

To summarize: The clash of ideas between human rights and statist sovereign concerns overshadowed the two negotiation rounds of the ATT. In the end, this clash of ideas also affected the outcome of the treaty. Progressive states, such as Germany and UK, stated at the outset of the negotiations, that human rights must become the “golden rule” and a core criterion for evaluating conventional arms transfers. A majority of states sought to get included human rights into Article 1, the object and purpose of the treaty, but failed. Furthermore, the efforts to include human rights into the criteria only partially succeeded. The criteria of the ATT differentiate between a prohibiting norm (Article 6) which encompasses UN arms embargoes and situations of genocide, crimes against humanity as well as grave breaches of the Geneva Conventions of 1949. Article 7 then lists further criteria of export assessment where human rights are mentioned among others. States such as Norway or Switzerland south to get included IHL and IHRL also into Article 6. Furthermore, the US delegation insisted that the contributing effect of arms to peace and security should be included into Article 7 as well. As in many exporting countries human rights concerns are frequently outweighed by strategic security considerations, this rule further weakened the gravity of the human rights argument. Negotiated under the rules of consensus (fairness), sovereign concerns and the contested nature of human rights prevented a stronger norm which would have made human rights a golden and unanimous rule.

5.2.2 Justice Claims in the ATT Negotiation Process

The two negotiation rounds in July 2012 and March 2013 were overshadowed by the strong tension between exporting and importing countries. The question of the “right balance” of the treaty became a core concern for states and also an issue of justice. Particularly states from the Global South frequently argued about the imbalance of the treaty between arms exporting and importing countries. Egypt, for example, called for the treaty “to address the current imbalance by safeguarding the rights of arms importing developing countries, and by ensuring that the major arms exporters are accountable in this respect” (ATT Monitor 2012a: 6). Aspects of distributive justice and the question of equal burden-sharing was reiterated by the delegation of DPRK who saw the treaty as a danger of legally consolidating inequalities between exporting and importing states if it does not address arms production and disarmament. Indonesia
also envisaged a treaty which would strike “a fair balance between the interests of importers and exporters, noting that the treaty should not generate political conditionalities (ATT Monitor 2012b: 5). Some states that previously voiced concern, including Syria, Iran and DPRK, finally opted against the ATT when the second round of negotiations failed in March 2013.

Fairness arguments or issues of procedural justice were also frequently stated. This concerned, on the one hand, the question of fairness and fair decision-making in the negotiations, but on the other hand also questions of fairness embedded in the norms of the treaty itself. Most prominently, the issue of fairness was raised when the ATT was voted at the UN General Assembly on April 3, 2013 after negotiations in consensus had failed. Russia and China stressed that they were abstaining because they opposed the adoption of a multilateral arms control treaty through a majority vote at the UNGA (Holtom/Bromley 2013: 7). Particularly the states of the Global South argued that a fair ATT would need some form of collective decision-making and institutions in order to independently evaluate incidents of human rights violations. A diverse group of states such as the Bahamas, Chile, Colombia, El Salvador, Guatemala, Jamaica, Mexico and Peru called for a consultation mechanism allowing recipient states to address concerns to avoid a transfer denial. Another aspect of fairness was the question of entry into force (EIF). While some states opted for a low number of EIF, others voiced their concern that the EU states alone could set the ATT into force if they ratified the treaty (ATT Monitor 2012e:5). The P-5 states argued for 65 ratifications before EIF which should include the major exporting countries. Ecuador argued that major arms exporters do not necessarily need to be party to the treaty for it to enter into force, otherwise this would result in the possibility of those states to have a veto. Fairness arguments are here combined with arguments about the power status of states. Another point of contestation was the right of reservation which is a standard in IHL and is often argumentatively linked to statist sovereign rights. While particularly the Arab group said that the right of reservation must be safeguarded, Latin American and Caribbean states argued for the opposite, particularly regarding scope and criteria (ATT Monitor 2012a: 7). Also, Article 20 became an object of contestation: the dispute focused on the question whether amendments to the treaty can only be decided through the consensus of all member states. In the end, a compromise was elaborated where consensus-building should be tried, but three-quarter majorities might be an option if all other efforts have been exhausted.

The question of negotiating under the rule of consensus has already been a matter of controversy in the four PrepComs preceding the negotiations of the ATT. The United States made
the consensus rule a condition for their participation in the ATT negotiations. In the end, a fair
decision-making system allowed a handful of states to hinder the negotiations to succeed. The
US and Russia blocked consensus in the July negotiations 2012 arguing that the text of the
ATT would not pass domestic legislation. In March 2013, DPRK, Iran and Syria voted against
the treaty.

Fairness in the negotiations themselves also became a matter of controversy. Particularly
states with smaller delegations complained about the numerous informal negotiations and
argued that they felt disempowered. However, informal sessions often helped to find solutions
for disputes and wordings for contested norms and regulations. States from the Global South
stressed the need of “equal footing” and their rights to voice their points of concerns in the
plenary. Aspects of procedural justice were sometimes closely related to the question of
recognition. During the first round of negotiations, in July 2012, the debates were upheld for
two days because Palestine demanded full voting rights for the negotiations.

6. Conclusion

Differences in claims of justice between states characterize multilateral negotiations and ulti-
modely also affect their outcomes. Cosmopolitan perspectives often envisage a world society
where universal principles of justice and common human rights standards are being realized
but the empirical practice of negotiating global governance regulations sound a note of cau-
tion. Instead, most states perceive constitutional norms such as sovereignty, non-intervention,
self-determination and territorial integrity as legitimate justice claims and still consider them
as part and parcel of a just world order. Our first view onto the two case studies of the R2P
and the ATT generation processes clearly indicate that state borders remain a relevant point of
reference in world politics. Both cases reflect that the clash of ideas between individual hu-
man rights concerns and sovereignty considerations overshadow multilateral negotiations in
the security sector and also impinge on the outcomes and effectiveness of global governance
regulations. Moreover, sovereignty considerations are more frequently raised by states of the
Global South as they fear that new norms and regulations might further contribute to imbal-
ance and injustice in the system of world politics. Nevertheless, the issue of sovereignty is
also raised by Western states. However, our two case studies have shown that also states from
the Global South demand collective responsibilities to secure the rights of human beings be-
yond their own borders. Human rights issues such as gender-based violence are for example
particularly highlighted by African states. Latin American and Caribbean states often stress the relevance of human rights and international humanitarian law. Our very preliminary findings might be interpreted as contrasting empirical results to the normative and antagonistic debates in IPT (cosmopolitanism versus communitarianism) and in IR (solidarist/pluralist English School). Both domains of justice – the individual human being and the state – are core reference points for efforts of generating global governance regulations. Moreover, our empirical analysis also brings out the concerns of the Global South that such governance efforts of “new humanitarianism” might be used to mask strategic interests and shape world order according to Western liberal values while generously overlooking Southern social justice claims.

The analysis of the two case studies indicate that beside the clash of ideas also other dimensions of justice become a matter of contestation and ultimately affect normative outcomes. Fairness arguments are stated when fair-decision making during negotiations become a matter of controversy. Procedural justice issues are also raised when concrete norms are at stake, which for example foresee mechanisms of dispute settlement. Moreover, it seems that especially weaker states refer to justice to foster their negotiation positions. Our empirical case study analysis also indicates that justice claims are frequently raised in combination with security interests or power arguments. While the schools of thought in IR have frequently debated whether rational or moral motives explain states’ action, empirical realities demonstrate the relevance of mixed motives and an amalgam of interest/moral claims in the world of diplomacy. Such findings are confirmed by empirical research on justice in other scientific disciplines. More recent rational-choice approaches talk about the “socialized” homo economicus and about the fact that interest- and norm-based action often merge in practice (Hindmoor 2011; Grobe 2011). While constructivist research has frequently stressed the importance of values and norms in politics, it has not systematically addressed the particular salience of justice concerns and their potential for conflict in multilateral negotiations.

Our results properly fit into the results of constructivist norm contestation research. Contested norms such as rival justice claims do not only affect the outcome of negotiations, but also continue to remain a source of conflict in the longer lasting norm cycle. In the case of the R2P unresolved justice conflicts inhibit effective norm application. A recent example can be found in Syria: The NATO-intervention in Libya found massive criticism by emerging powers, because support for the Libyan rebels and the following regime change was conceived as unlawful external interference into the self-determination of the Libyan people. This provides now
an excuse for China and Russia for continuing their blockade of the UN Security Council regarding Syria. In the case of the ATT, an evaluation is too early to draw, but other cases of humanitarian arms control such as the PoA demonstrate such effects. Nevertheless, both global governance regulations indicate that despite controversial issues of justice, a cautious minimal consensus on basic moral obligations might be identified. While states remain responsible for the protection and security of their inhabitants, premises of human security and human rights have led to a reframing of issues. This reframing enabled transnational initiatives for new global governance regulations in the realm of humanitarian intervention as well as humanitarian arms control.

7. Literature


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