

HUMR 5131

The Politics of Human Rights

The Challenge

- International law, including IHRL and IHL, is a weak legal system; compliance is largely a question of states' self-binding. On the other hand: A broad system of human rights protection has been developed on the basis of UDHR. Which reasons do states have for signing and ratifying HR conventions, and which reasons do they have for not doing so? And which reasons do states have for in practice to respect and fulfil their HR obligations, and which reasons do they have for not doing that?
- How can the international human rights regime be strengthened with a view to having a greater impact in international relations? Or is this a goal unrealistic and not worth struggling for?

Introduction and Background

- World War II as a critical juncture in the development of the modern human rights system.
- Both the UN Charter and the Universal Declaration of Human Rights constitute a reflection of that historical shift in the role of the international society for the protection of basic human rights.
- The shift also introduces a more pronounced tension between two fundamental principles in contemporary international relations: The principle of **state sovereignty** vs. the principle of **human rights protection**.
- We will discuss approaches and possible solutions to the dilemma.

Outline

- International relations and HR: Some basic approaches.
- How do global challenges impact HR and how do HR impact inter-state relations?
- A relevant question for the current crises: What happened to the principle of Responsibility to Protect (R2P)?
- A critical issue: HR and the 'Justice vs. Peace'-debate.

Challenges in the study of HR in international relations

- Understanding the nature of the **international society** (Realism vs. Liberalism/Institutionalism)
- Understanding the nature of **international institutions** (Principles of state sovereignty and non-interference vs. globalisation/international regimes)
- Understanding the dilemmas involved in choosing **human rights based solutions** (Justice [criminal or structural] vs. [pragmatic] peace).

Human Rights and the games states play

- Does human rights fit into the International Relations perspective on the world?
- IR realist perspective: State oriented, unitary actor, national interest, security, state sovereignty. Focus on **relative power** and conflicts of interest in an anarchical world;
- IR institutionalist/liberal perspective: Not unitary actors, interdependence, international organisations, international regimes. Focus on **rules and procedures**, negotiations.
- The unlikely path of protective mechanisms for individual rights into inter-state politics. HR=domestic politics vs. universal obligations. UDHR: A normative revolution as a response to the atrocities of WW II. (WW I: self-determination, religious minorities).

HR in inter-state relations

- International relations:
 - Explaining inter-state behavior: “Grand theory”
 - Unit of analysis: state
 - Unitary actor
 - Hierarchy of interests
 - Independent variables
 - Structure of power
 - Norms and rules
 - Institutions matters?
- Human Rights:
 - A set of norms, rules, and institutions, no unified theory
 - Proponents are struggling to have states recognise HR as binding obligations on state behaviour
 - Why should states bother about HR (vs. national interests) in their external relations??

Some important authors (Classics, see references)

- IR:

- Hans J. Morgenthau
- Kenneth Waltz
- John J. Mearsheimer
- Stephen Krasner
- Graham Allison
- Joseph Nye

- HR & IR:

- Jack Donnelly
- David Forsythe
- Thomas Risse
- Peter Baehr
- R.J. Vincent

(Recommended: Review article:
Monshipouri 2001)

HR in international relations: Topical issues

- Challenges: Aspects of globalisation: How are HR affected?
 - Globalisation and development (MDG, SDG)-> ?
 - Globalisation of conflicts (WoT/R2P) ->?
 - Free trade agreements (GATT-WTO, TTIP) ->?
 - TNCs and human rights (CSR)->?
 - Global climate change (Paris, Kigali 2016)->?
- On which level in the international system should such problems be solved? How do HR come into the equation from a policy perspective?

How do HR impact international politics?

- HR obligations: Do they carry any weight? How do we know?
 - UN procedures (UPR, Treaty bodies, etc.)
 - International criminal justice (ICC etc.)
 - Regional instruments (ECHR/ECtHR, African Court on Human and Peoples' Rights, Inter-American Court, etc.)
 - NGOs, public opinion (Risse et.al.).
 - State obligations vs. democratic legitimacy? (PluriCourts project)

Special case: The Responsibility to Protect (R2P)

- Unanimously adopted by all members of the United Nations General Assembly at the 2005 World Summit and articulated in paragraphs 138-139 of the 2005 World Summit Outcome Document:
 - 138. Each **individual State** has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity...
 - 139. **The international community, through the United Nations**, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with **Chapters VI and VIII of the Charter**, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity... we are prepared to take **collective action**, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, **should peaceful means be inadequate** and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

Humanitarian intervention under R2P.

[International Commission on Intervention and State Sovereignty \(ICISS\)](#)

- **Just cause:** There must be "serious and irreparable harm occurring to human beings, or imminently likely to occur".
- **Right intention:** The main intention of the military action must be to prevent human suffering.
- **Last resort:** Every other measure besides military intervention has to have already been taken into account. (This does not mean that every measure has to have been applied and been shown to fail, but that there are reasonable grounds to believe that only military action would work in that situation.)
- **Proportional means:** The military means must not exceed what is necessary "to secure the defined human protection objective".
- **Reasonable prospects:** The chance of success must be reasonably high, and it must be unlikely that the consequences of the military intervention would be worse than the consequences without the intervention.
- **Right authority:** The military action has to have been authorized by the Security Council.

R2P: The cases of Libya and Syria

- State sovereignty vs. Treaty obligations. The weight of experience. Cases where the intl society failed to act: Biafra 1969, Rwanda 1993, Sebrenica 1995, Kosovo 1999, Darfur 2006, Gaza 2009 and 2014, Libya 2011, Syria since 2011.
- Libya: Several UNSC resolutions in 2011-2012. Syria: No resolution.
- Responsibility to protect is about three things (Ignatieff 2004):
 - Prevent, react, rebuild.
- R2P: An agenda to be misused by powerful states? Can it be prevented by developing rules monitored by UNSC?
- The Syria backlash.

R2P: UNSC resolutions

- Darfur: [Resolution 1706](#) in 2006
- Libya: [Resolution 1970](#), [Resolution 1973](#) in 2011, [Resolution 2016](#) in 2011, and [Resolution 2040](#) in 2012
- Ivory Coast: [Resolution 1975](#) in 2011
- Yemen: [Resolution 2014](#) in 2011
- Mali: [Resolution 2085](#) in 2012 and [Resolution 2100](#) in 2013
- Sudan and South Sudan: [Resolution 1996](#) in 2011 and [Resolution 2121](#) in 2013

R2P: Structural problems.

Paris, Roland (2014-12-09). ["Is it possible to meet the 'Responsibility to Protect'?"](#). *The Washington Post*.

- **The mixed-motives problem** - The legitimacy of R2P rests upon its altruistic aim. However, states will often be wary to engage in humanitarian intervention unless the intervention is partly rooted in self-interest. The appearance that the intervention is not strictly altruistic consequently leads some to question its legitimacy.
- **The counterfactual problem** - When R2P is successful, there will not be any clear-cut evidence of its success: a mass atrocity that did not occur but would have occurred without intervention. Defenders of R2P consequently have to rely on counterfactual arguments.
- **The conspicuous harm problem** - While the benefits of the intervention will not be clearly visible, the destructiveness and costs of the intervention will be visible. This makes it more difficult for proponents of the intervention to defend the intervention. The destruction caused by the intervention also makes some question the legitimacy of the intervention due to the stated purpose of preventing harm.
- **The end-state problem** - Humanitarian intervention is prone to expand the mission beyond simply averting mass atrocities. When successful at averting mass atrocities, the intervenors will often be forced to take upon themselves more expansive mandates to ensure that threatened populations will be safe after the intervenors leave.
- **The inconsistency problem** - Due to the aforementioned problems, in addition to the belief that a particular military action is likely to cause more harm than good, states may fail to act in situations where mass atrocities loom. The failure to intervene in any and all situations where there is a risk of mass atrocities lead to charges of inconsistency.

Peace vs Justice

- A particular dilemma in the struggle for a human rights world order

The Questions

- What is the role of human rights in peace building?
- Does strengthening human rights make peace more attainable?
- Is peace the best guarantee for human rights protection?
- What comes first – peace or justice?

The dilemma in Kofi Annan's words

- “...[T]here cannot be real peace without justice. Yet the relentless pursuit of *justice may sometimes be an obstacle to peace*. If we insist, at all times, and in all places, on punishing those who are guilty of extreme violations of human rights, it may be difficult, or even impossible, to stop the bloodshed and save innocent civilians. If we always and everywhere insist on uncompromising standards of justice, a delicate peace may not survive.
- But equally, if we ignore the demands of justice *simply to secure agreement*, the foundations of that agreement will be fragile, and we will set bad precedents.” (Kofi Annan, 25.09.2003).

Controversial Questions of 'Peace vs. Justice' in Peace Negotiations

- (1) Addressing massive human rights violations
 - Should leaders be held responsible for crimes committed during the conflict and for example be handed over to ICC?
 - Should they be accorded impunity for such crimes?
 - Is a formal process of reconciliation an alternative that could be justified from a human rights perspective?
- (2) Addressing core political issues of the conflict
 - Should the core issues be addressed on the basis of international human rights and humanitarian law standards?
 - Should negotiations focus on reaching an agreement on the basis of the Parties' negotiating positions?

The Answers

- Let us discuss three conflicting positions:
 - (1) **Human rights promoters**: Compliance with international standards must be secured at all levels!
 - (2) **Realists**: Let them fight it out!
 - (3) **Peace pragmatists**: Reaching agreement is the overriding aim!
- My argument: Human rights positions tend to be squeezed between realists and pragmatists, backed up as they usually are by strong actor interests. The challenge: How to strengthen the HR position as *the preferred option* by actors involved. A rational actor approach.

Human Rights Promoters 1

- Basic argument: Rebellion and war is normally caused by injustice; For a peace process to be sustainable it must address the causes, including the injustices, that brought the conflict.
 - Strong support in UN norms and founding documents. References can be made to the preamble to the UDHR and Article 55 of the UN Charter.

Human Rights Promoters 2

- UDHR, Preamble:

- “- whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law;”

The logic here is that if human rights are effectively protected, we will not have tyranny and oppression, and people will not rebel. Or simply: “No peace without justice”.

UN Charter, Article 55

- With a view to the creation of conditions of stability and well-being **which are necessary for peaceful and friendly relations among nations** based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:
 - A) higher standards of living, full employment, and *conditions of economic and social progress and development*;
 - B) solutions of international economic, social, health, and related problems; and *international cultural and educational cooperation*; and
 - C) universal respect for, and observance of, *human rights and fundamental freedoms* for all without distinction as to race, sex, language, or religion.

Opposition to the Human Rights Position: Realists 1

- **Realists**: Peace must be based on *relative strength*, a balance of power, that reflects *real* relations of power. Conflicts erupt when parties fight to establish a balance of power favourable to themselves.
 - The function of war: A decisive test of strength that creates clear winners and losers, establishing a new balance of power and thus peace and stability. "War is nothing but a duel on a larger scale" (Carl von Clausewitz).

Opposition to the Human Rights Position: Realists 2

- Carl von Clausewitz: “[w]ar is thus an art of force to compel our enemy to do our will...Attached to force are certain self-imposed, imperceptible limitations hardly worth mentioning, known as international law and custom, but they scarcely weaken it. Force – that is, physical force, for moral force has no existence save as expressed in the state and the law – is thus the *means* of war; to impose our will on the enemy is its *object*. To secure that object we must render the enemy powerless; and that, in theory, is the true aim of warfare.” (GWB, Jan 02).

Opposition to the Human Rights Position: Realists 3

- Realists' solution: Let them fight it out! Invoking or imposing humanitarian law or human rights standards on the warring parties *before* the struggle has produced a winner and a loser will only function as distractions from defining the parameters of a stable solution based on the balance of power because such standards normally seek to protect the weaker party and prevent a clear outcome. (The logic of dominant parties).

Opposition to the Human Rights Position: Peace Pragmatists 1

- **Pragmatists:** Peace understood as agreement between conflict parties to end hostilities and establish peaceful relations.
- “...linking of human rights protections with peace-building is often challenged as partisan and/or idealistic. The view that human rights law provides negotiable minimum universal standards is often presented as in tension with the need for a pragmatic peace involving compromise, including compromise on human rights.” (Bell 2000:5).

Opposition to the Human Rights Position: Peace Pragmatists 2

- Derogating from human rights standards or ignoring humanitarian law might be *essential* in order to achieve a peace agreement. This might relate to both legal and political issues in the negotiations.
 - Ignore demands for extradition of leaders to criminal courts;
 - Avoid questions of retributions for past crimes;
 - Avoid or postpone any political questions that might lead to the breakdown of negotiations.

Opposition to the Human Rights Position: Peace Pragmatists 3

- Example Bosnia: Vance-Owen/Vance-Stoltenberg-plans versus the Dayton Agreement.
- “...thousands of people are dead who should have been alive – because moralists were in quest for the perfect peace.” ... “What had the critics done between 1993 and 1995: Had they prolonged the war and multiplied the deaths? Are their victories to be found in the graveyards of Bosnia? What lessons should the human rights community learn from this sorry tale?” (Anonymous, Human Rights Quarterly 18, 1996).

Opposition to the Human Rights Position: Peace Pragmatists 4

- Solution: The function of negotiations is to identify a possible common ground as the political foundation of a peace agreement. Demands for strict human rights compliance might deter and distract the parties from finding this common ground. Bad guys who command important political influence should be included in order to strengthen the outcome. The soft law of diplomacy, preferably within the UN system, is a more effective way of promoting HR standards than the hard law of criminal justice (Forsythe).

Realists and HR promoters: A meeting point?

- We can see one similarity in the reasoning as represented by Realists and Human Rights Promoters, respectively: They both argue for solutions that go to the root of the problem, *as they see it*: The Realists want a *decisive test of strength*, the HR Promoters want to root out *injustices*. The two positions may argue for conflicting solutions, but there is a parallel in thinking: They both want to find a *'cure for the illness'*, not only address the *symptoms* as the Pragmatists allegedly do.

Meeting point 2: Neo-Cons?

- If we combine Realists with Human Rights Promoters, what do we get?
 - Voila: **Neo-cons!** (– at least on the face of it). Many US liberals converted to this position post 9/11. (Ignatieff).
 - But the question is: Is military force and strategies of ‘regime change’ applied by neo-cons with the intention of promoting democracy and human rights – or is the ideology of democracy and human rights invoked in order to legitimise military power?

The Challenge

- For discussion:
 - International law, including IHRL and IHL, is a weak legal system; compliance is largely a question of States' self-binding. On the other hand: A broad system of human rights protection has been developed on the basis of UDHR. Which reasons do states have for signing and ratifying HR conventions, and which reasons do they have for not doing this? And which reasons do states have for in practice to respect and fulfil their HR obligations, and which reasons do they have for not doing that?
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