

Conference Report

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International sef: Expert Workshop 2015

Achieving International Peace and Security. Towards a New Normative Consensus

Michèle Roth

“Sovereignty remains part of the bedrock of international order. But in today’s world, the less sovereignty is viewed as a wall or a shield, the better our prospects will be for protecting people and solving our shared problems” – UN Secretary General Ban Ki-moon stated at a Security Council open debate, initiated by China, in February 2015. On that occasion, almost 80 speakers reflected on today’s meaning of the UN Charter’s core principles, revealing many nuances in their interpretation. The tension between national sovereignty and the principle of non-interference in internal affairs vs. the protection of fundamental human rights and the provision of global public goods became very obvious. Also heavily criticized was the selective implementation of so-called universal norms and principles. These lines of

conflict are in no way new, but they seem to be emerging with more emphasis and a greater variety of voices, offering an opportunity to overcome old divisions and reach new consensus. At this year’s International sef: Expert Workshop in Berlin on 7-8 December 2015, experts from various world regions tried to identify ways to overcome norm conflicts with regard to international peace and security.

2015 was a year of reviews, internal UN reform processes and negotiations on the international community’s norms and objectives. So where do we stand now? Surprisingly for many participants, the picture of growing tensions over security-related norms and principles in a multipolar world is only partly true. While there was an increase in international cooperation in the early 1990s, since the beginning of the new century, the trend seems to have reversed. Nevertheless, in many areas, a growing convergence on key norms – at least at the level of declarations – can be observed. As noted by one speaker at the sef: Expert Workshop, it is remarkable, for example, to what degree intrastate conflicts have become a topic in the growing number of Chapter VII resolutions adopted by the Security Council since the 1990s. Furthermore, almost all new peace operation mandates include the protection of civilians (POC) as well as the promotion of democracy and free elections. And the High Commissioner for Human Rights now regularly briefs the Security Council, which would have been unthinkable some 10 to 15 years ago. But despite this shift in emphasis, which can be ascribed to so-called Western liberalism, sovereignty still remains the pivot of international cooperation.



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Sovereignty and international responsibility. Who mixed up the order?

During the debate in the UN Security Council, Russia's Foreign Minister criticized pressure and threats of regime change "for those not willing to play ball with the dominant powers". However, the United States' representative asked for "robust action to protect human rights". China, in turn, tried to take a mediating role by claiming that "the mindset of confrontation should be discarded" in the interests of stronger cooperation for everyone's benefit. According to its representative, justice, not hegemony, should prevail in international relations, with due regard for others' sovereignty.

For centuries, sovereignty has been a contested norm. While it creates formal equality between states, leading to the principle of non-intervention, it withdraws internal affairs from the international community's influence. This ultimately gives a state the right to use internal force at its own discretion. However, after WW I and II, it was quite evident that such an absolute form of sovereignty can also become a threat to a country's own population as well as to the international community. The UN Charter therefore not only establishes the sovereign equal-



International sef: Expert Workshop 2015: Nicole Deitelhoff, Lothar Brock and Sebastian von Einsiedel (f.l.t.r.)

ity of all states and the principle of non-interference but also insists on the importance of fundamental human rights. With the Universal Declaration of Human Rights, a new international standard was developed to curtail the use of force at the internal level. However, with the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (1970), the principles of non-interference and national self-determination seemed to prevail again. Following a series of hu-

manitarian catastrophes and crimes against humanity in Somalia, Rwanda and the Balkans in the 1990s, the international community began to rethink the norm of sovereignty anew.

This resulted in probably the most prominent attempt to reconcile national sovereignty with the protection of human rights. The emerging norm of the Responsibility to Protect (R2P) states that national sovereignty entails the state's responsibility to protect its people from massive human rights violations and crimes against humanity. When a state is unwilling or unable to do so, the responsibility to protect devolves to the international community. Although R2P was a controversial issue at first, it soon gained widespread support and was unanimously endorsed by the heads of state and government at the 2005 World Summit. Nonetheless, it has remained a contested principle. Particularly after the military intervention in Libya in 2011, when R2P was invoked by the UN Security Council in Resolution 1973, it was widely perceived as having been misused by the West to assert its own interests and to justify regime change. In Africa, for example, R2P was initially regarded as a distinctive African concept. But especially after Libya, there was a strong sense of betrayal, as one Workshop participant noted. In Russia and in many countries of the Global South, the fears voiced during the initial stages of R2P – that the West could use the concept against them as well – resurfaced.

In other words, it has not only been the emerging powers that have mixed up the international order in the past few years; key factors have been the old powers' attempt to redefine sovereignty and the way in which they make use of R2P. Alongside R2P, a number of other universally agreed norms have also been contested by Western powers, particularly the United States. Among them are the prohibition of torture (Guantanamo), the assassination ban ("targeted killing") and the prohibition of the use of force in general (extraterritorial use of force; overstretch of R2P). There are other factors, of course, that have put security-related norms under pressure, among them Russia's (failed) attempt to return to the status of a superpower, China's strong economic development, the attempt by a growing number of states to push more vigorously for their interests, the Arab Spring and its aftermath, and the shaking up of the international system by terrorist attacks. All these factors have led to a partial return of the Cold War in the voting behaviour of the P5 in the Security Council – despite the above-mentioned convergence on an abstract level.

Contested norms – and therefore alive?

Is R2P a dead norm, then? No, it is not, most Workshop participants argued. As is true of other emerg-

ing and existing norms, contestation and diffusion may even be essential to keep responsible sovereignty and international responsibility for human rights alive. R2P and the establishment of the International Criminal Court (ICC) have led to a shift of balance in the normative order, away from the security of the state to the protection of the individual. Furthermore, norm contestation may help to clarify the norm and support its implementation. New norms also have to make their way through the entire



International sef: Expert Workshop 2015: Jakkie Cilliers

system before a new balance is eventually achieved. And despite many differences, the Security Council's malaise should not be overstated. Since 1991, more than 90 per cent of Security Council resolutions have been adopted unanimously, especially those pertaining to peace and security in Africa.

Since Libya, references to R2P in Security Council resolutions have even increased. The principle of non-indifference towards what is happening in other states has gained more and more recognition. Following the NATO intervention in Libya, Brazil developed the concept of "Responsibility while Protecting" (RwP) which, among other things, prevents the international community's protection objectives from being subverted by other purposes such as regime change. With this concept, Brazil made a valuable input to the further development of R2P, especially to harmonization and monitoring of its implementation. And finally, even the parodic use of R2P, which is practised by Russia in order to justify its own interventions (serving back to the West its normative language when trying to justify its own military interventions) could eventually prove helpful in strengthening the norm by further clarifying the rules for its application. But as important and helpful as conflicts over this norm and others might be, it remains essential not to deconstruct their core – and thus risk losing them altogether, participants agreed.

It is not the norms themselves that are the problem but their interpretation and application

Are we facing a radicalization of norm contestation? This question aroused controversy during the Workshop debate. Sure, there is conflict about the meaning of norms and their relationship to each other in the international context, and a new common understanding might be needed. Norms are not very reliable, one speaker argued; they give no clear practical guidance as they are imprecise and their hierarchy is unclear. Norms only tell us what we should do but they cannot force us to act accordingly. Ideally, institutions – usually courts – are available to interpret norms, but often they are not. Instead, norm implementation is often controlled by major powers. Therefore, without central enforcement, all normative orders are unstable. But then, how do we measure a norm's robustness? How can we know whether a norm is still alive? Norms need to be applied in a reasonable manner, and others need to react to non-compliance. If non-compliance is no longer criticized, then norms die. The question, then, is: what can be done to avoid a loss of norms? Let's defend the core of norms but not every detail of their application, one speaker recommended. Norms are international but their implementation is decentralized. We should accept that there are differences in norm interpretation, but at the same time, we have to be on our guard if a different interpretation affects the core of a norm.

As discussed before, the implementation of the Libya resolution caused many concerns and acted as a deterrent in at least two ways: first, it was perceived as aiming at regime change and as such led to considerable mistrust of the West and the concept of R2P, and second, it failed to stabilize the country.

As regards the misuse of R2P, participants agreed that the concept of RwP could be a way forward towards just implementation of R2P. In particular, its insistence on the sequencing of prevention, accountability and oversight and the reaffirmation that the use of force should be a mean of last resort point in this direction. Despite the Western countries' concern that there might be too many reservations about RwP, thus preventing action, most Workshop participants agreed that this endeavour should be resumed, also taking into account the Chinese concept of "responsible protection".

The Libya intervention's failure to stabilize the country and prevent further atrocities reinforced the growing concern about the prospects of success for military interventions in general. With regard to Syria, the West was actually "lucky", as one participant put it, because it was able to hide behind the

Russian veto. It would have had no idea what to do to prevent mass atrocities in this country.

Within the UN, there is a wide gap between major normative questions, which are frequently discussed at Security Council level, and practical reform processes, which ignore the big questions such as the convergence of norms and the UN's capabilities. There is a lack of ideas about what the UN could or should do about a number of major challenges facing today's world, such as terrorism and organized crime. The UN peacekeeping capabilities have long been overstretched – with peacekeeping often taking place in regions where there is no peace to keep. How can states be motivated to contribute to peacekeeping, given the high political costs when soldiers die? Is their contribution driven solely by states' interest

new meta norm – a norm to respect norms, reliably based on mutual trust – did not seem the right way forward, as it would not solve the problem of power imbalances.

Instead, institutional justice and a balancing of power are needed, as well as a voice for those affected by the implementation of norms on the ground. An important role could fall to regional organizations, one speaker argued. A lot of innovation and power come from them. They should have a fair say on issues concerning their region. New institutional arrangements are needed to this end, e.g. in form of another meta norm on regional consultation. Furthermore, Security Council mandates could include the general rule that intervening states should cooperate with regional institutions. Granting regional organizations control over the application of norms could increase their acceptance (while not necessarily reducing double standards) and strengthen global governance. If regional organizations were strong enough to act, this would even help in making the use of the veto in the UN Security Council less attractive.

On the other hand, a stronger role for regional organizations could also lead to more fragmentation in the global system. Who would control norm application by these institutions? Furthermore, to some extent, problems within regional organizations will probably be the same as on the international level. Finally, many regional organizations are not yet up to such a task. This is certainly true of Africa, which still needs the UN's support and funding as it takes on responsibility for its conflicts (as it is doing now). The fact that Europe does not really need the UN does not mean that other regions do not need it either, one speaker warned. Also against this background, the potential of informal institutions or coalitions of the willing and their possible role as providers of global norms was viewed rather critically.

The body which attracts most criticism for its selectivity and inefficiency is the Security Council. Due to its confrontational policies in the past, it will struggle to cope with the growing number and changing character of conflicts – fuelled by ever accelerating but unsustainable growth of the world economy – and international terrorism as the new normality. The Security Council needs to increase its effectiveness and legitimacy, and constrain power politics, participants agreed. According to one speaker, Africa is the only region where the Security Council is able to act effectively as it has no P5 member state. But the veto power is a particular source of frustration for many African countries as well as for India and others. It can be seen as the heart of the problem of the UN, as one speaker put it. The manifold attempts to initiate Security Council reform since 1965 have brought no progress as far as the composition of the Council and the veto of the Permanent 5 are concerned. Although the latest framework document on Security Council



International Security Expert Workshop 2015: Susanna P. Campbell, Marc Baxmann, Angelika Spelten and Johannes Sperrfechter (f.l.t.r.)

in demonstrating their own capabilities and thereby becoming a regional leader? As a case of particular interest, China was mentioned as being more engaged since the late 1990s with regard to number and type of peacekeeping mission (including Chapter VII) – largely because it wants to be perceived as a constructive player.

Power politics vs. justice and fairness in norm application

A particular challenge with regard to universal norms is the fact that their application often seems to be selective and dominated by the interests of the powerful. Global governance claims to be rules-based and just, but this does not fit with reality, as recurring complaints clearly show. So how can procedural fairness in applying (and making) norms be achieved? How can it be guaranteed that decisions really are motivated by norms and not by other interests? For most Workshop participants, the idea of a

reform, accepted by the UN General Assembly by acclamation in September 2015, was promising with regard to its content, movement will be extremely difficult to achieve. There is nothing one could really offer the P5 to induce them to give up their veto, as one speaker put it very clearly. Only a shift in paradigm is able to unblock the reform process.

The Institute for Security Studies (ISS) is currently trying to initiate such a shift with its global “Elect the Council” campaign. The idea is that the P5 need to be confronted with a global consensus to encourage them to eventually soften their position. The campaign advocates for countries to be elected to the Security Council in accordance with a set of criteria. The elected Council would have 24 members, eight of them being regional leaders, who would be reelectable. The rest would be non-reelectable. The P5 would remain on the Council – two of them with an additional seat and three with a semi-permanent reelectable seat. Furthermore, the Security Council should



International sef: Expert Workshop 2015: Erna Burai, Lars Brozus and H.E. Maria Luiza Ribeiro Viotti (f.l.t.r.)

exclude five Chapter VII issues from the veto. With this campaign, ISS is trying to generate momentum for civil society to have a voice in the process. It is an attempt to reach preemptive change instead of waiting for a major crisis to happen.

Challenges on the ground

What role can universal norms play when it comes to practical action on the ground, as in the context of peacebuilding or peacekeeping missions? Do they constitute a helpful framework? These proved to be contentious issues at the Workshop. One speaker clearly voiced concern about the role of universal norms in this regard. She has noted a push for universal norms and standards for UN missions over the

past 20 years. In her view, universal norms would mean universal implementation, institutionalized in the peacebuilding industry. They would have to be mainstreamed in the mandate of all UN institutions plus other layers of bureaucracies, but “that’s what we don’t want from a local perspective”, she added. Peacebuilding has to start from the ground up, whereas UN headquarters is one of the problems and will not produce solutions, she continued.

Most participants agreed that the local level is decisive for successful peacebuilding. Field level leadership, field-based planning, local training, achieving local relevance by consulting with locals and allowing them to hold you accountable – these were crucial success factors named during the Workshop. Furthermore, the bottom-up process should go beyond structures and institutions and include content as well: different views and perceptions have to be accepted. This usually stands in sharp contrast to the approach adopted by international institutions and donors with their standardized bureaucratic procedures and peacebuilding scripts.

But are universal norms really the problem? Or couldn’t there be a universal norm to first consult the local level and build from the bottom? Such a procedural norm would contradict many existing peacebuilding structures and institutions; to make it work, one would have to incentivize local feedback and many more visits on the ground would be necessary. Besides the country level, local and regional perspectives would have to be taken into account.

The New Deal for Engagement in Fragile States was mentioned as an example of this trend. According to one speaker, it showed that the agency of host governments has changed considerably over the past few years, largely unnoticed by academia. The New Deal’s core aim is to implement norms in a way which is sensitive to the local level, making use of the countries’ own systems and based on their own vision. It also aims to create space for dialogue about fragile countries’ concerns on a global level and to bring global agreements down to the national level. It could also offer a framework for the implementation of the Sustainable Development Goals (SDGs) in fragile states.

Other participants criticized the New Deal as an example of how national governments are once again taking the lead on harmonization, without taking regional or local perspectives into account. It was also questioned who actually decides on the direction of transformation when the peacebuilding goals are agreed upon at the global level. One participant answered that it was the beauty of a procedural norm that it sets the goals but that their interpretation has to be negotiated in specific cases. But if norms are localized within the process, how do they

transform back to the global norm? And is it not a welcome excuse to refer to local peculiarities in order not to implement internationally agreed norms? An experienced practitioner asked for patience. Universal norms, values and goals – as laid down in the 2030 Agenda, for example – will consolidate over time. The claiming of national or local constraint will therefore not be sustainable over a longer period.

Conclusion

The Workshop showed that the key issue is not so much the disagreement between major powers on norms; there is actually remarkable convergence on a number of key norms. What is contested is the interpretation and implementation of these norms. Furthermore, a new normative order is in the making, moving further from the protection of states to the protection of individuals. This shift is contested – but only by being disputed can norms emerge and become relevant.

Three main problems became evident during the Workshop: the misuse of emerging norms by major powers accepting and violating norms at the same time; the overstretch of the UN with regard to security and peace, the blockade of Security Council reform and a lack of ideas what the UN could and should do; and the tension between universal norms and bottom-up processes of peacebuilding – with the global peacebuilding and development industries having their own agendas. An enhanced role for regional or-

See also

International sef: Expert Workshop 2014

New Alliances for Global Public Goods? What emerging powers expect of Germany and the EU
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International sef Expert Workshop 2015: participants

Marc Baxmann, Marianne Beisheim, Lothar Brock, Sarah Brockmeier, Lars Brozus, Erna Burai, Susanna Campbell, Jakkie Cilliers, Nicole Deitelhoff, Matthias Dembinski, Sebastian von Einsiedel, Thomas Fitschen, Sabine Gerhardt, Rebekka Hannes, Heike König, Anja Papenfuß, Daniel Peters, Siswo Pramono, Maria Luzia Ribeiro Viotti, Michèle Roth, Leon Schettler, Angelika Spelten, Johannes Sperrfechter, Gerhard Süß-Jung, Karen Taylor, Norman Weiß, Herbert Wulf.

ganizations, notwithstanding their weaknesses, along with pressure for reform through leadership from the heart (e.g. on RwP) and civil society campaigns could help to tackle these problems

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