

### Justice and Peace: Good Things Do Not Always Go Together

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# **Justice and Peace: Good Things Do Not Always Go Together**

Harald Müller

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# Justice and Peace: Good Things Do Not Always Go Together

**Harald Müller**

## **Introduction**

Good things do not always go together. This is certainly a much weakened version of Murphy's law, but it is an important statement nevertheless. It is important notably in the Western political discourse. As children of the enlightenment with an intuitive belief in progress and betterment, we are inclined to think about the positive possibility to not only prevent collective bads, but to create collective goods – not only inside our own political community but also universally. Nowhere is this creed as strong as in the leading Western nation, the United States (Huntington 1970; Pakenham 1973). We continue to believe in the good prospect of very large-scale social engineering which will bring about a better world: nation building, state building, democracy promotion, active democratization. The end of the East-West Conflict has pushed this belief to new heights. Notably the supposed twin pair of democracy and peace has made an enormous political career. It has infested the thinking of Western states with a clear idea where the world is to be moved (Ish-Shalom 2006; Smith 2007). The fact that democracies have found ways to solve their conflicts – which no doubt persist – with peaceful means is certainly one of the greatest achievements in human history, and worth celebrating (Russett/Oneal 2001). It has been used, however, to establish the thesis of the superiority of democracy over all other forms of government and a self-explanatory empowerment of this group of mighty and wealthy states to run the world like their own shop, for the good of all, to be sure, but without the voice of all. Humanitarian intervention, responsibility to protect, league of democracies, forceful regime change are keywords of an imperial discourse that has been of considerable influence in the Western world (Smith 2007).

But good things do not go together necessarily. To the contrary: Shit happens. Democracy and peace is a harmonious couple only if democracies meet. Towards non-democracies, democracies can behave in quite violent ways. Processes of democratization are infested with risk, frequently violent (Mansfield/Snyder 2005), and they may end in stable hybrid systems between democracy and autocracy with a fairly high level of violence (Zinecker 2004). Interventions by democracies for the good of the people in the target countries have led to very sobering results. In Bosnia-Herzegovina, one of the better successes, at least a bloody war was terminated. Yet –, peacekeepers are, after 15 years, still watching over a precarious “living together” of two rather hostile political entities, based on large-scale ethnical cleansing. This is a far cry from the peaceful multiethnic democracy which we wanted to create. In Kosovo, NATO, after resolutely finishing a dirty guerilla war from six kilometers above ground, has presided over an inverse ethnical cleansing which left only a tiny share of the Serbian population in the country, and in a precarious state at that. The Alliance has presided over the installation of one of the most corrupt and criminal governments in Europe which has made Kosovo a focal point of drug trade. In Congo, EU peacekeepers have guarded the – admittedly smooth electoral victory of one warlord over another; afterwards violence continued unabated. And these were the less bloody interventions. In Afghanistan and Iraq, Western forces have relearned the lesson taught long ago by Carl von Clausewitz (1969), that war is not the strategic action of a superior mind against an object, but a bloody interaction in which each side tries to outwit the other by doing the unexpected and incalculable, with the consequence of an unpredictable trajectory of death resulting from the interaction. We are also learning that it is not good enough to have a concept that functioned well in our own societies

when we know little or nothing of the power structure and social relations on the ground, and that our well-minded intentions mix up with more pedestrian selfish interests in an inextricable amalgam (Wolff/Wurm 2011). Iraq and Afghanistan are thus lessons in the pitfalls of large-scale social engineering in alien societies, and powerful caveats to think more than twice before one uses military force to change other societies. Whatever lofty ideals and good intentions we brought to the place of our supposedly just wars, the bodies are as dead as if we had been rogues: Killing strangers is the Siamese twin of saving them (Wheeler 2000).

### **Justice and Peace: A first cut**

If democracy and peace do not go together necessarily, but only under specific circumstances, what then about another prominent pair: peace and justice? Thinking the two together has a long and distinguished pedigree, featuring giants of the history of thought like Augustinus, Thomas Aquinas or Immanuel Kant, to name only three in a long row. It has a safe anchor in today's Churches which think of peace as "just peace" only (Deutsche Bischofskonferenz 2000; Arbeitsgemeinschaft Christlicher Kirchen 2005). It has stimulated much debate and writing in peace research. My own mentor, Ernst-Otto Czempiel, has defined peace not as a state of affairs, but as a process of decreasing violence and increasing justice (Czempiel 1972). Johan Galtung in one of the most influential approaches in the discipline has coined the term "positive peace" as opposed to "negative peace". The latter term means only the lack of violence. "Positive peace" – in contrast – exists when not only physical, but also structural violence is eliminated. Structural violence is characterized by a difference between the potential of human happiness and its actual realization. Now, it is easy to see that this leads to an inflation of the term violence; it is equally easy to see that what Galtung had in mind was that peace is identical with justice (1972).

This is not a satisfying solution. If the two things are identical, why do we need different terms to describe them? Obviously, the fact that these different terms exist and are widely used in everyday's language and in academic parlance suggests that they refer to distinct scopes of practice in the real world (Müller 2005). The acceptance of that distinction marks the more frequent uses of the terms. Peace is defined as a social relationship where physical violence as a tool to achieve political objectives is absent among collectivities. Justice is defined as a state of affairs where actors obtain what they are entitled to. Very obviously, once actors get what they are entitled to, one pivotal reason to use force falls by the wayside. It is thus evident that justice, once existing and perceived as such by all relevant actors, takes a positive influence on peace (defined minimally as the absence of the use of violence for political purposes). It has to be emphasized that this effect occurs only if the participants in the conflict are satisfied with the state of justice applied (reflecting their own understandings). It is, obviously, not dependent on the judgment of an observer measuring the situation with allegedly universalist justice criteria. And, vice versa, the absence of violence makes it easier to agree on a harmonious distribution of goods according to entitlements, and there is less risk that people are earning undeserved harm – down to being killed. On this plane of abstraction, it does not seem unreasonable for these two good things to go together.

We can summarize our deliberations at this point: It is reasonable to take peace and justice as terms describing two distinct, but mutually related states of social and political affairs. Justice describes a state in which actors get – in terms of resources, representation and recognition (Fraser 2009, see below) – what they are entitled to according to commonly agreed standards of distribution as a consequence of the installation of such standards as valid norms guiding the relations between these actors (see below), while peace describes a state in which actors retain their physical integrity and are not threatened by physical harm or even death by the willful acts of other actors wielding, or aspiring to, political power.

### **Justice and peace at odds**

Following Nancy Fraser, justice concerns the distribution of three types of goods (good conceived in the broad sense): First, material goods which humans need for survival, welfare and well-being.

We may count “security” under this heading. Security relates to a both materially and ideationally constituted environment to a profound individual and collective human need. It plays, naturally, a major role in international relations. Second, the distribution of the very fundamental value of recognition. In the context of justice, persons and collectivities long for recognition as potential or actual bearers of entitlements. To be recognized as a person, as a legitimate party in a conflict, as representing a politically meaningful minority, or as a legitimate state is constitutive for becoming an actor in the respective settings and a bearer of rights and entitlements. The “recognition of sovereignty” is one of the most important entitlements which collectivities demand for themselves. Finally, justice relates to the opportunity of political representation and participation in the making of decisions the consequences of which relate to the actors enjoying or seeking such representation and participation. Across these three fields of justice concerns, different types of conflict among actors can emerge up to the point where they jeopardize peace.

In each of these three values, the justice principle of “*suum cuique*” which appears to be widely accepted across cultures all over the world (Küng 1999), can become quite controversial once it is transposed from this lofty level of abstraction to a more substantial meaning and to specific cases where it is to be applied.

Thus, justice claims can lead to social and political conflict. The very few empirical studies in international relations which exist have confirmed this suspicion. Cecilia Albin has shown that justice concerns are ubiquitous in international negotiations (Albin 2001; Albin/Druckman 2008). Jim Welch, in a study of two hundred years of major war, has found that in many cases the justice motive claims work as powerful conflict drivers (Welch 1993). The proposition by leaders that one’s own just entitlements are at stake in a given dispute (very frequently found in territorial quarrels), and the acceptance of this proposition by the domestic audience traps leaders into the necessity of pressing the claim. Compromising would be seen by followers as giving in to injustice against their own kin. This trap tends to harden positions and to instigate high emotions. All this makes compromise and peaceful solutions more difficult and motivates justification narratives which imply that force is the only, necessary and inevitable way to ensure that justice is done.

If peace and justice can be at odds, how can we measure to what degree either is realized? Violence can appear within societies and between them in different degrees. Peace, that is, exists across a continuum, not as an absolute. Likewise, ideas of justice can be realized in concrete societies or the relation among them in a rudimentary state or close to perfection. Measured by their own intrinsic criteria, then, the qualities of both peace and society can in principle be measured on a scale. We would also wish to have “peace” with as much justice (seen through the eyes of those affected by it) as possible, and to have “justice” at the lowest level of violence we can think of. In addition to scaling according to the intrinsic standards of both peace and justice, either can be scaled according to how much of the other term it realizes at a given state.

### **Types of justice conflicts**

There seems to be an obvious way to deal with the problem of the right principle of justice. Philosophers and political theorists strive to define principles of justice that can be universalized because they can be demonstrated to be acceptable to everyone (with the exception of those who do not want justice anyway: the bad guys or, in Kant’s more elaborate and gentle parlance, “unjust enemies” (Kant 1798, 473)). While this approach seems plausible at first glance, it risks missing the fundamental pluralism in transnational and international relations that exceeds by far the well-ordered pluralism found in Western societies. The world is a place of many value systems, religions and traditions, and it is far from self-evident that we can, even with our best efforts, deduce what would be acceptable as an universal principle to all the bearers of these very different world views.

The plurality of justice understandings exists already within our own culture; it even exists among liberal philosophers themselves, most of which work in the Kantian tradition and who propose a variety of justice concepts. It is no surprise, then, that one has to expect an even broader pluralism of understandings about justice in international relations where all the cultures of the world,

including the growing number of hybrids, are represented. Different meanings of justice are likely to abound, and so does the probability of justice conflicts.

In a Type 1 conflict over justice (application conflict), differing justice-related demands which are derived from the same principle of justice – thus using the same justification – come into conflict with each other. Such conflicts might emerge from a different factual assessment of a given value distribution. For example, in the area of technology transfer in the international arms control regimes, parties dispute whether technology holders do enough to help developing countries to enhance the peaceful uses of the nuclear, chemical, biological, space technology, respectively, or not.

In Type 2 (conflict of principle), both differing justice-related demands and different underlying principles are opposed. One example is whether the decision-making power in the UN Security Council should be derived from “international responsibility” (a view of the present Permanent Five), merits for the UN (a view of Germany and Japan) or from equal regional representation (a view of most developing countries, in particular African ones).

In Type 3 (conflict of values), justice-related claims collide with other demands related to the common good which are independent of questions of justice. A quite frequent dispute of that kind is whether the decision-making rules of an international organization should reflect equal representation and thus inclusiveness (a justice concern), or decision-making speed and effectiveness and thus exclusivity (a functionalist concern).

In the case of Type 4 (conflict of goals), justice-related demands and narrowly defined self-interests collide. We assume that players make sensible and practical justice-related demands and therefore acknowledge the claims of others as principally sensible and can even accept them as being justified. This does not mean, however, that they behave accordingly. In the question of sharing the costs of climate protection on the planet justly between the North and South, for instance, the principle is accepted but national and vested economic interests prevent an agreed specification of how this principle is to be operationalized.

Lastly, a conflict over justice of Type 5 (conflict of recognition) is characterized by the fact that players unilaterally or bilaterally deny to other actors the right to make justice-related demands at all. Such conflicts occur in, for instance, the question of the right of group representation, representation in decisions with consequences that cross borders or in relation to the question of the role of individuals and non-state groups in international law. Israel’s right of existence as a state is being refused by the present Iranian government, and the holocaust, a constituting element of Israeli history and identity, is being stubbornly denied by Iran’s president. There is also the question whether recognition rules in the system are just. The recognition of ethnical autonomy movements appears largely arbitrary. Kosovo did not enter the Western political agenda as long as the Kosovarian autonomy movement followed the non-violent strategy of its leader Rugova, but became politically salient in the West after the UCK was formed and applied guerilla and terror tactics. And similarly configured claims (Abchasian, South-Ossetian, Chechnyan) did not arouse the same Western commitment to recognition as in the Kosovo case for reasons of political expediency, pointing to highly inconsistent and thus unjust rules of recognition.

### **Justice and interests**

Before I pursue further the consequences of cultural diversity and the ensuing plurality of understandings of justice, an aspect which concerns, in particular, the application of justice research in international relations has to be addressed. In the following, I deal with conflict type 4 – conflicts over goals – in more detail. The reason is that this involves a category which is most prominent in international relations theory, namely (national) interest. Considerations that focus on the impact of morale, and of justice concerns in particular, on actors’ behavior is thus obliged to clarify how the relation between norms and interests is conceptualized. I subsume the justice/interest relation under this broader issue since I conceive of justice as a metanorm,

prescribing how human relations should be shaped across a broad spectrum of policy fields which are constituted and regulated by their own field-specific norms.

In mainstream international relations theory, interests (or “preferences”) are intuitively given priority. Norms are frequently used to explain the “residual variance” for which interests cannot account. There is no scientific logic in this sequence. At first glance, it could as well be the other way around: Norms reign behavior, and only a residual rest is explainable by the free pursuit of interest (in the same way as only a small portion of human behavior is unequivocally instinctive).

Analysts from the realist/rationalist camps deal with normative concerns in international relations as a peripheral issue without weight of its own. Since interests are the primary source from which international action is made, the utterance of justice concerns must be taken as diversionary measure behind which “real” motivations lie. It is part of strategy, purely “rhetorical action” behind which no normative substance must be suspected, but just hard-nosed interests.

This interpretation faces one unsolvable paradox: If strategic actors dismiss justice as irrelevant, why would they utter justice concerns in the first place? “Rhetorical action” presumes that the arguments made have a chance to be persuasive with the audience, otherwise the speakers would act irrationally which contradicts the assumption of their ontological status as rational actors. However, this would assume that the audience consists of ontologically different entities, as they should be accessible to justice arguments and thus not simply self-interested rationalists, but embedded in a social world of shared normative meanings. How come that these rationalists and normativists live side by side in a single universe (without the rationalist wolves devouring the moralistic sheep)? The one concession rhetorical action theorists make to their constructivist interlocutors is the concept of “rhetorical entrapment”: Rationalist speakers using justice arguments run into reputation problems if they make commitments to a notion of justice and then behave in a contrary way in the practical pursuit of their own interest. In order to keep consistency, they are forced to behave “as if” they believed their own justice arguments once the commitment is made. Of course, we face the same ontological paradox here: The reputation loss, and thus entrapment, is only to be expected if the audience takes the justice norms seriously, which places them in a different ontological universe than the rationalist speakers. And these ontologically different audiences must be quite powerful; otherwise the reputation loss would be of little relevance. Again the unanswered question remains: How come?

Both attempts to establish a hierarchy between “norm” and “interest” thus suffer from the same shortcoming: The notion that norms and interests can be analyzed as if they belonged to absolutely divorced ontological realms, different spheres of social nature, so to speak. This is implausible. What counts as an interest is obviously socially constructed. In most modern societies status is not defined by counting the slaves (or wives) of a man. Consequently, it is not the interest of men to collect either slaves or a harem (Hollywood celebrities may collect husbands and wives, but in sequence, not simultaneously!). It is thus very hard to conceive of interests as a self-standing entity untouched by social context. For centuries, the emperors of the Holy Roman Empire of German Nation attempted desperately to control upper Italy. Modern German political leaders showed no such intentions at all. The reason was that the Holy Roman Empire was constructed as the successor of Rome, and this implied, in the first place, control over Italy and the Holy City itself, while leaders in the last two centuries viewed themselves as sitting at the top of a national state confined to the area north of the Alps. When Germany emerged vanquished from World War II, it went without saying that the “Eastern Territories”, Pomerania, Silesia and Eastern Prussia, would be re-united with the motherland in due time; the “interest” in large territories and the “justice claim” to be historically entitled to these territories were amalgamated. There was no mood to recognize these areas as part of the Soviet Union and Poland. When Germany was eventually united in 1990, the country renounced solemnly all claims to these territories to which it had clung for the whole history of the Bonn Republic. Interests vary with time for the same actors, and so does their linkage to justice claims. They also vary with the socio-normative environment in which the actors operate.

It is a truism of considerable triviality that some interests are invariable and natural: survival, security, power, economic welfare. The problem is that at that level of abstraction these terms lose any substance; they become “empty signifiers” whose meaning can be negotiated by “interest entrepreneurs” in a highly arbitrary way. Whether “survival”, for example means to cede a piece of territory to an otherwise dissatisfied neighbor or grab territory to expand strategic depth, whether it means preserving a dynasty in power because the king is identified with the land, or to get rid of an obnoxious leader in order to pacify the relations with great powers is very much in the eye of the beholders. We cannot get at the “interests” of a state without learning how the (leading) people tick, how they understand their identity and in what they believe. Once we are at that point, the border line between the interest-related and the normative becomes very much blurred.

The same can be said about norms. Norms and interests are no opposites. Many norms in modern society empower people to pursue “interests” that have been designed as being legitimate. Parties are encouraged to compete for power in elections. Politicians are entitled to compete for power within parties. Lawyers are supposed to make the case for their clients no matter what. Diplomats are required to foster the “interests” (defined as explicit policy goals) of their countries. Parents are obliged to support their children. Union leaders would be remiss if they would not try to achieve the best for their Union members. Businesspeople are, of course, expected to do their best to make profits for their company; under the motto of “shareholder value” this became the lead ideology for a whole generation of managers as well as economists. All these examples concern the normatively prescribed pursuit of interest. All the actors quoted would be seen as not behaving appropriately if they would not act in an interest-orientated way.<sup>1</sup> And yet, because appropriateness empowers them to behave in an ostensibly self-interested way, rationalism can well account for action patterns within the scope of this type of appropriateness norms. The most plausible approach to the justice/interest relationship is thus that norms and interests penetrate and depend on each other.

### **Intercultural justice disputes**

Back to justice conflicts: Understandings of justice are the result of path-dependent cultural developments in particular societies. This particularism has yet not been overcome by the forces of globalization. Globalization does not lead to a linear convergence of cultural understandings, but creates complex dialectics of convergence, amalgamation and particularist resilience. As a consequence, we cannot assume a priori that the values our history has produced apply universally (Walzer 1994; Hongladarom 2001). Cultural difference continues to impact upon negotiations across cultural borders (Cohen 1997, 2000). This includes different concepts of justice.

Thus, there is still a considerable width of the intellectual space that is opened by the notion of justice in the global political sphere. The contestation of norms in that sphere (Wiener 2008) relies to a considerable degree on these differences. One particular divide which does not necessarily only separate the West and the rest (recall Buddhist individualism) run between the specific subject of justice: Is it the individual which is at the centre of all post-enlightenment Western ideas about justice. Most Southern autocrats ignore that individuals are bearers of rights. In turn, the West ignores largely the set of collectivist conventions on human rights (right to development, right to cultural autonomy), though there are some pragmatic concessions to them in development policies.<sup>2</sup> Yet Muslim or South and East Asian societies have, in the average, still a stronger emphasis on collectivities than the Western world, and this shows in the way they conceive of justice. This is not to say that these societies are lacking people who emphasize individual rights; of course, they exist and we sympathize with their struggle. It is a statement about apparent relative strength and distribution.

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<sup>1</sup> Space is too limited to discuss the consequences of identity or role conflicts here. Cf. Müller 2003 and Becker et al. 2008.

<sup>2</sup> It is noteworthy to recall that not all international codifications of human rights are in the liberal-republican tradition!



This different emphasis on individuals and collectivities as bearers of justice claims has immediate consequences for contemporary hot issues debated in international politics: The rights or duties of the international communities – or even single states – to foster justice by coming to the rescue of oppressed individuals in badly governed states versus the insistence of most Southern states that sovereignty remains the overarching principle. Behind this insistence lies an understanding of justice which regards the restoration of uncompromising collective self-determination as a moment of restitutive justice for the dark ages of suppression of such autonomy under colonialism and imperialism; the right to a self-determined development – with all the errors and horrors which this might involve – is seen as the right to do the same as the autonomous development which Western societies and their political systems have pursued in their own history. No one told the US to abolish slavery or to stop the genocide of the native American population; no one forced Switzerland to give voting rights to women. It was done through their own contested, slow and incremental political evolution, sometimes through seas of blood and tears. Defending sovereignty no matter what is an expression of the desire to have an equal right to one's own history – finally. It is a claim for historical justice.

This perspective explains why even well-situated Third World democracies like India oppose “humanitarian intervention” and have insisted on embedding the “Responsibility to Protect” – against the best wishes of its Canadian inventors – in a panoply of substantive and procedural caveats. Rather than being a *carte blanche* for intervention in case the responsibility was neglected by a government, the 2005 adoption of the principle by the UN General Assembly emphasized state sovereignty and the rules of the Charter (which lay the decision on using force exclusively in the hands of the UN Security Council).

### **The “cultural uncertainty principle”**

The key cognitive difficulty for universalist political ethics is rooted in a kind of “cultural uncertainty principle”: Even with the best attempt to strip the particularistic cultural heritage off one's values, one's own universalist claims run the risk that our judgment about the universality of a certain value – a justice principle for example – is still caught in the cage of cultural particularism. It may be so or not, but we cannot know, because we can never exclude the possibility of cultural bias ourselves. Even those who try self-critically to reflect upon their own cultural prejudices still do so from within their own particularistic cultural mold, and the problem cannot, of course, be solved by a controversial discourse within one's own culture. Even when we are arguing truly universalistically, we cannot know it with certainty. Of course, the same problem applies to all ideologies with universalist ambitions.

There is no better demonstration of this problem than the most influential approach to justice, John Rawls' “Theory of Justice” and its application to international politics (Rawls 1971). Rawls' approach struggles to account for the mentioned pluralism of ethical orientations (and the concomitant variation in notions of justice), in that it abstracts from substantial ideas about justice. Yet, already at the starting point of his considerations, a lot of people would part company. First, Rawls is looking for principles on which to found justice in a post-transcendental era. There is a considerable part of mankind, as vividly demonstrated by the religious revival over the last generation, who believe happily that they are living forever in a transcendental era. They do not need principles of justice deduced by abstract reasoning, because they find them in their holy books and/or traditions. Second, Rawls starts under the veil of ignorance his law-makers have about their position in life. They thus start as universalist individuals. Yet we face many cultures in the world where the individual cannot be divorced from the community to which he/she belongs. From this vantage point, Rawls' smart thought experiment begins with an unacceptable moral flaw. In the extension of his theory to international relations (Rawls 1999), Rawls refrains wisely from this operation and admits pluralism in that he accepts “decent autocracies” into the international community which is entitled to make and enforce rules. Yet this apparent pluralism – which has attracted quite heavy criticism by more radical universalist justice theorists such as Charles Beitz

(1979), Alan Kuper (2004), and Thomas Pogge (2003) who are completely intolerant of ethical deviations from their own prescriptions – shows two flaws if confronted with today’s international reality. First, according to Rawls, “decency” is assessed by the smaller group of liberal democracies which are thus the masters of the game, because they are empowered to admit non-liberal members to the law-making community. Second, the criterion for a claim to participation in law-making is not law-abiding among those affected by international law, but additional criteria: States which lack the possibility to fulfill their state functions completely (brittle states, states at the edge of failure) have no say in decision making, nor have autocracies which do not consult in some way their citizens in domestic affairs. Since it would appear to enhance the legitimacy of international law and reduce perceived injustice if all law-abiding actors that are affected by law would be accepted as legitimate participants, even Rawls’ approach betrays an inherent pro-Western bias prone to establish a hierarchy of power in international relations which would be seen by a majority of state actors as patently unjust.

Western philosophers believing in the absolute truth of their convictions, at this point, tend to utter the verdict “relativism” or “culturalizing justice” against this approach, a verdict that has the potential to silence the critic in the light of what happened at Auschwitz. First, we have to dryly restate that the plurality of cultural values and ensuing principles and practical judgment is not the invention of unprincipled relativists, but a fact on the ground in an ethically pluralist world. Second, the superiority of our own value judgments is not granted in each and every issue. The systemic superiority of democracy over other forms of rule, for example, is relative, not absolute. Third, to push forward from a conviction in the absolute rightness of one’s own conviction, whether derived from religious faith or transcendental deduction, is always liable to lead into bloody crusades or jihadism and thus should be countered by a healthy antidote of self-reflexive and self-critical awareness of the liability of error in all human judgments.

Yet the absolute boundary of the Auschwitz situation seems to obviate the luxury of self-critical irony and turns it into inhuman passivity, an absolute violation of any notion of justice. Is there any way to escape this verdict? First, there is no doubt that there are absolute limits for the tolerable; and these limits are well formulated in the 2005 UNGA criteria for when the international community must consider overcoming the stipulation of Art. 2(7) of the Charter which prohibits interference into the realms usually counted under the internal affairs of the state. Genocide, large-scale ethnical cleansing, war crimes, and crimes against humanity are cited as events which could trigger an international response unless the states concerned takes action to remedy the situation by itself. The international response is entrusted to the due procedure contained in the UN Charter. There is nothing relativistic in these criteria, nor is it relativistic to insist on the “due procedure” criteria. Acting on one’s own judgment alone is treacherous, as this is not the realm of convictions rooted in principles, but of practical judgments. Such judgments, by their nature, are always burdened by the risk of error: Error about facts, error about the subsumability of a specific situation under a principle, error about the probable outcome of one’s own intervention et cetera. To minimize the error risk – we are talking about issues of life and death and a lot of potential “collateral damage” here – an inclusive procedure giving as much “voice” as possible to views other than our own is the only available instrument to reduce, though not eliminate, this risk of error.

The duty to follow this prudential path derives from the relationship between justice and peace that has already been alluded to. The satisfaction of justice demands by actors on the ground is conducive to minimize violence. There is thus a causal arrow pointing from justice – meant not as a hierarchy of abstract principles, but as the perception of actors in a conflict that solutions are just – to peace. In the other direction, peace, as the absence of politically motivated violence, is the best conceivable environment for justice to grow, including aspects of justice so dear to our Western mind, such as liberty and human rights. This relationship is well captured in the preamble of the UNGA “Declaration on the Right of Peoples to Peace” (UNGA Res 39/11m 12, Biv, 1984, a document conspicuously unquoted in the Western discourse on human rights) which states: “Convinced that life without war serves as the primary international prerequisite for the material

well-being, development and progress of countries, and for the full implementation of the rights and fundamental human freedoms proclaimed by the United Nations” and there from derives that “The peoples of our planet have a sacred right to peace”. Yes, without justice, including the realization of human rights, sustainable peace will never be complete, but without peace, human rights (and thereby justice in our Western understanding) will not be.

### **Avoiding particularism in empirical justice analysis: Proposal for a formal understanding**

Can we avoid the uncertainty principle in empirical inquiries of justice which aim at identifying “justice conflicts”? Is it not necessary for such an analysis to have a substantial or procedural understanding of justice in the first place before one can identify its role in conflicts? Must not this understanding be rooted in one of the many definitions of what justice means, thereby unwittingly taking side? And does this not mean that one remains inevitably a prisoner of one’s own particular(istic), culturally bounded understanding of justice?

We might never be able to fully escape this communitarian trap. But this does not negate our duty to try our best. It appears to me that the most promising way out is to adopt not a substantial or a procedural, but a formal definition of justice, built on speech act analysis. The topic “justice” enters a conflict through the perceptions and assessments of actors and becomes intelligible through actors’ speech acts. When “justice” is uttered in a conflict situation, it becomes a part of the conflict. This is so independent whether the speaker “means it” or uses it as an instrumental device to better achieve what in reality are “hard interests” (see above). Uttering “justice” (or any of its synonyms, circumscriptions, or indicative terms) pursues at any rate a performative objective. It is not cheap talk but must be characterized as a distinct type of speech act, conveying a specific perlocutionary substance. The speech act “justice” designs the conflict in question not as an ordinary distribution of, say, pieces of chocolate, but as something with a very grave normative dimension. Distribution of the good in question cannot be done arbitrarily, but must be done in a specific, normatively prescribed way, namely in accord with the principles of justice the speaker deems valid. Deviations are a serious matter and shall be avoided lest the result would justify resistance on normative grounds: Clashing justice claims always open the specter of a future escalation into violence if justice is not done: *Fiat justitia, pereat mundus*.<sup>3</sup>

The speech act “justice” gives signals of seriousness to three distinct audiences: First, to the conflict partners it conveys the stubborn intention of the speaker to see the conflict through: Justice is nothing one can drop lightly. The speaker declares her own duty to insist on the claims made; otherwise, she would admit injustice and thus commit an immoral act. Second, to the community for which the speaker is raising the justice claim, she signals that one has to rally behind the claim because of its ultimate moral justification; here, the speech act serves as a rallying cry, a move at mobilization. Third, to interested third parties, the speech act signals that they should come to the assistance of the claimant in order to keep the moral integrity of the whole system to which they all belong.

The formal structure of a justice speech act has been analyzed by Jim Welch, the pioneer of justice research in international conflict (Welch 1993). Welch defines a justice claim as a claim for an “entitlement”. The claimant puts forward a demand for something he pretends belongs to him. The claim, in communicative terms, contains the promise to give a valid justification why the claimed object should belong to the claimant. On request, this justification is given. In this definition, Welch adapts Hans Küng’s finding that one of the few intercultural shared moral ideas is justice as “*sum cuique*” (Küng 1999): Justice reigns if actors have got what rightfully belongs to them; of course, what this might be is highly controversial within and across cultures. But this does not matter: As long as a speech act in politics has the structure of a claim for an entitlement, it satisfies the formal structure of a justice claim, independently of how it is substantiated.

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3 It means: “Let there be justice, though the world perish.”

## Empirical findings

In an one-year project conducted with graduate students, we analyzed notions of justice in seven different fields of international politics: Security Council reform; the Security Council as universal legislator (focusing on UNSC resolutions 1373 and 1540)<sup>4</sup>; Responsibility to Protect; humanitarian intervention (with the focus on Darfur/Sudan); the Nuclear Non-Proliferation Treaty; and two regional/bilateral conflicts: the Middle East conflict and the conflict between Georgia and Russia. In each case, working groups identified key actors and content-analyzed utterances by them in international fora. They used a codebook that was based on Welch's definition of justice claims as "entitlement claims", and expanded this crisp definition in a typologization of justice-related speech acts and claim justifications, and into a list of key indicator terms, indirect indicators, and rules for dealing with context in order to avoid over- and undercoding. All texts were coded by two investigators, and they had to mete out agreements, if needed in the entire group.

While one can always dispute individual coding decisions, as always in content analysis, the following findings appear to be safe: Justice claims are ubiquitous in international relations. There are hardly statements where none do appear and quite a few statements where they abound. Justice claims appear side by side with more conventional arguments, such as security or effectiveness. Justice, thus, is itself an established topic in international discourse and negotiations.

Actors show different frequencies of justice-related speech acts; not too surprisingly, less powerful actors tend to appeal to justice more than powerful ones. As a consequence, developing countries speak justice relatively more frequently than industrialized ones, and small powers more than great powers. Since it is plausible that stronger actors are more satisfied with the status quo than weaker ones because they have better chances to satisfy their demands, the justice problematique is more virulent for the disadvantaged actors. This means that justice speech acts are more germane to demands for change than in the defense of the status quo. Nevertheless, powerful actors feel compelled to make justice arguments as well in order to defend the status quo, though a bit less often than their less powerful challengers.

Very interestingly, though, justice principles that espouse notions of inequality (e.g. status-related justice) are hardly used; there appears to be a kind of political correctness in international relations that makes arguments for inequality on justice grounds a virtual taboo. But even though this unwritten rule narrows the corridor for possible conflicts over principles, there is still an inclination for the South of the world to insist on the principled priority for equality of treatment of collectivities, as opposed to claims from the North with a stronger emphasis on functional efficiency on the one hand, and individuals as bearers of justice claims on the other. These findings underline the propositions derived above from the reasoning about intercultural differences.

Acute, violent-prone political conflicts between individual parties show a significant higher degree of "blaming" speech acts, where justice notions are used to discredit the opponent before a neutral audience which they try to win over for their own cause. It is also obvious that speakers use justice notions in order to enhance the pressure for their claim. Justice is thus apparently a reference that is believed to enhance the probability that one's claim might be accepted. That speaks for the substantial impact which the issue of justice has on international relations.

## Can universally recognized just orders be constructed that foster peace?

The divergences in understandings of justice and their manifestation in international fora raise the question whether it is possible to arrive at universal agreements on justice issues at all. In the Western theoretical discourse about just international order, the solution is usually seen in universalizing the principles of justice in which we believe as the inhabitants of our path-dependent, historically developed cultural space. As the above considerations document, this

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4 S/RES/1373 (2001) obliged UN member states to adopt a series of steps to combat terrorism and prevent its financing; S/RES/1540 (2004) obliged UN member states to install effective security and export control measures to prevent the access by non-state actors to weapons of mass destruction and related materials, equipment, and technology.

desire, or strategy, confronts different views of justice on the globe which oppose at least part of our ideational legacy. We tend to dismiss such opposition as the interest-guided attempts of ruling elites to defend their turf against our attempts to undermine their rule in the interest of justice. However, our suspicion has no more validity than the counterclaim that Western attempts at universalizing our value system is only the latest version of the attempt to prolong our centuries-old hegemony over “the rest” just as the material basis of this hegemony is eroding. We can quarrel into eternity about the validity of claim and counterclaim but we cannot construct universally recognized just orders out of this quarrel.

Universalism that serves, in an evolutionary perspective, both justice and peace, can thus only emerge as the result of practical consent by the greatest possible number of actors, not by whatsoever sophisticated deduction. In the real world of international politics, it must emerge from international negotiations with broad participation. Negotiations yield positive results by the consent of the negotiating parties. Given the significant role which justice appears to play in international relations, we must assume that consented solutions to practical problems do not only satisfy the interest of these parties. But they are successful as well through the perception of all, or at least a majority of, participants that the solution found is sufficiently just, or, at a minimum, not intolerably unjust, from their perspective.

In the globalizing world, the number of participants is growing because of the economic and moral empowerment which globalization entails. Therefore, emerging international legal and political agreements reflect, bit by bit, the ideas of justice by a growing number of participants. Rather than trusting in the possibility to create global justice by way of hegemonic imposition and/or some “big bang” (a temptation for cosmopolitan philosophers and neoconservative politicians (Smith 2007), it is much more likely to emerge incrementally from solutions to practical problems which humankind is facing and to which the political representatives, increasingly assisted by non-governmental actors, struggle to find appropriate answers.

The emerging set of global agreements which have attracted broad consent might be the best material to construct empirical universalism “from below”. It might be even worthwhile to institutionalize such a reconstructive attempt: The United Nations could appoint a multi-regional, multi-cultural “justice commission” – modeled after the “Council of Elders” installed by the Economic Cooperation Organization of East African Countries for dispute settlement. The brief of that commission would be to observe, analyze, and reflect upon, the international agreements embodying such practical solutions with a view to extract the principles of justice hidden beneath the pragmatic rules and norms which were satisfactory enough to make the agreement broadly acceptable.

### **The state and the enduring value of sovereignty**

In this construction, states continue to be at the centre of the production of norms for the globe. This might look too many like an anachronism in the era of an academic fashion which has been seeing the state on its way out, both in terms of its moral legitimacy and its relevance for global matters. I disagree for four reasons. First, a stateless political space, as the people from Western Africa could testify from their experiences in the nineties, is an environment in which justice almost inevitably suffers, even though the state itself can also be the source of grave injustice. Second, functioning states are still both the most significant power yielders at the global scale and those in the best position (the one-eyed under the blind) to make, implement and enforce law. If we want to foster justice, then, we better see to it that states are behind this project. Third, young nations stick to their statehood they achieved through much hardship, and quite a few – from China through India to Brazil – experience the era of globalization as one of increasing strength of and achievement by the state. Fourth, the criticism that – depending on our measure of democracy – anything between 40% and 60% of states are not representative of their people is void because of the lack of alternatives. Replacing the non-democratic states by non-governmental organizations is not a good idea because they lack representativity as well and would only double the disadvantages

of the “South”, as Western NGOs are in the average much more resourceful. Replacing non-democratic participation in rule-making by an exclusive prerogative of democracies, as suggested by the believers in a “League of Democracies” or “Global NATO” (Daalder/Goldgeier 2006; Ikenberry/Slaughter 2006), makes us the self-appointed “representatives” of peoples who were never asked whether they agree with our representation of them. Thus, whether we like it or not, we have to work with the international actors as they are, unless they are found by the appropriate global authorities, such as the United Nations organs, to violate international law blatantly. As long as they do not, and as long as their peoples do not decide to dethrone their leaders and turn to a more representative form of government, non-democratic states are legitimate participants in international rule-making, with the subtext to establish unwittingly and indirectly a cobweb of agreed principles of international justice.

The inclusiveness and the room of contestation which global negotiations in the framework of global institutions and international law offer is the best we can get to implement the principle of inclusive representation in rule-making on which not only Western notions of justice are founded; claims of all governments around the globe to be included indicate that this inclusiveness corresponds to a real-existing universalist notion of justice. Rather than thinking up a universalist standard for procedural justice which must always sit under the Damocles sword of the cultural uncertainty principle, it is more advisable to stick to the ways of inclusion and contestation that are existing. By pursuing this real-existing road, we do not only our best to grant a peaceful order – as the chance for peace rises as the number of excluded perspectives decreases – but we open as well space in which actors can try to find ways to converge or compromise on their real-existing justice claims.

The debate on the “Responsibility to Protect” is an impressive example how compromises on justice matters can be achieved in the international community. The West obtained the recognition in principle that blatant violations of individual rights – a cardinal matter of justice under the perspective of the individual as bearer of justice claims – must meet an international response. The developing countries received reassurance that the response must be given in a way that pays due regard to their collective right of autonomous development, thereby recognizing the justice claim of collectivities in the perspective of historical justice. Due procedure, which protects the weak against the voluntarism and arbitrary pursuit of particularistic interests and values of the strong, prevailed. Thus, a compromise principle has been established joining two quite widely differing original principles. Of course, the proof of the universality of this compromise principle lies in its application to specific situations which will always be contested. But this is no peculiarity of intercultural justice disputes, but applies to every issue where one has to subsume real world situations under general principles by way of practical judgment: On practical judgment, reasonable and well-willed persons can always disagree, and it requires well-designed procedural and institutional prerequisites to deal with such disagreements.

As long as we deliberate among ourselves, deduce from our principles, and try to find first post-transcendental principles on which to build universal constitutions, the best we can produce are hypotheses about cherished value that may be good candidates to be universalized. This is a legitimate project as long as we understand what we are doing: Working on our particular contribution to an ongoing global discourse which aims at achieving greater justice while doing our best for keeping and enhancing peace. The test of these hypotheses, however, is not the logical consistency of our own deliberations: It is their success of attracting broad consent in the political world at the global level.

This methodological consideration has informed the formation of my own minimal universalistic thinking on just procedure – optimum inclusiveness plus a priority of war avoidance: I start from thinking “ideal theory” to find out what, within the realm of our own value system, should be universalized. I found that a) the widest possible inclusion was desirable and b) that war with its inevitable side-effect of producing “collateral damage”, that is, taking innocent life, was involving by its nature a high degree of injustice and should be avoided except in a situation in extremis – the determination of which required, again, inclusive due procedure. I then turned to the present

international cobweb and found inclusiveness widely accepted (in the UN Charter and in the practice of the vast majority of international negotiations). I had to qualify that finding by noting that international practice still gives the state pride of place, even while the participation of non-state actors is on the rise. And finally, the prohibition of war and the recurrence to inclusive due procedure is also an established international norm, in the UN Charter and a couple of regional constitutions as well as in the Convention on the Right to Peace. This check of one's deduced moral preferences with universal practice is the safest way to avoid being trapped by the cultural uncertainty principle. The ideal universalism which is represented, *inter alia*, by liberal universalism must thus be regarded as a political program at the outset of intricate negotiations which, as party programs in coalition bargaining, will find itself in the end product only in parts and pieces. The real universalism is an empirical phenomena emerging out of global negotiations which have inevitable an intercultural character.

Real universalism does not spring from the wild constitutionalism we think up in the ivory towers of our Western universities, but from the busy, boring, controversial, inglorious and unsung work of the diplomatic ants which populate the closed rooms of global negotiations, and their friendly non-governmental assistants which impact most of the time from the sidelines.

The agreements resulting from these labors have their impact even though political leaders might sign and ratify them without the serious intention to comply. The mechanism of the "rhetorical entrapment" that has been studied in the context of rhetorical and communicative action (Schimmelfennig 1995, Risse 2000, Müller 2004) applies here as well: The documents underwritten by political leaders become references for others to demand implementation which build pressures to comply. Non-governmental actors, international organization, domestic opposition or other governments may take efforts to hold the signer faithful to the signed. The most impressive effect of this mechanism can be observed in the impact of the Helsinki Final Document (1975) on the developments in the Eastern bloc: The commitments to human rights ("Basket III" of the document) were used by domestic opposition to claim legitimacy for their activities, and created rifts in the party membership and the political elites. The "trap" contributed to the unfolding of events up to the profound changes of the late 1980s.

This is not to say that we move automatically towards the best of all worlds by leaving justice to the diplomats. International negotiations produce as much injustice – seen through my particularist lense – as they improve on justice. Whether negotiations take the first or the second direction depends, naturally, on the input negotiators give. It behooves us, as citizens of democratic countries, to try our best to pressure our politicians to instruct their negotiators with a view to move towards more just agreements (as seen from our side); even then, of course, we have to be aware that ours is only one of many diverse positions and that we have to pay due regard to the need for compromise. The injustice found in international agreements and regimes as they exist as of today is not so much due to the resistance of notoriously unjust non-democracies but to the vested interests of democracies to defend or even expand their privileges, if necessary at the cost of the poor of this world. Examples stretch from agricultural policy through climate policy to intellectual property issues. With more defensible "Western" positions in these negotiations, prospects would be better to foster global justice through the work of diplomats.

As indicators founding a cautious optimism that the world is slowly and not without setbacks moving glacier-like in the direction of greater peace and justice, war statistics show a secular decline not only of interstate, but also of intrastate war and war-related fatalities over the last twenty years; this lessened violence has not been neutralized by the increased number of terrorist incidents and the number of fatalities per incident. The number of democracies has risen again, pointing to the empowerment for more people to participate in their own polities (an increase in justice in "our" understanding). While the GINI-Index has deteriorated, pointing to greater inequality around the world between rich and poor, at the same time several hundreds of millions have lifted themselves out of poverty.

We are nevertheless right to be impatient with the snail-like speed of diplomatic proceedings in all these protracted nitty-gritty bargaining processes. We are wrong, however, if we jump their labor

and try the shortcut to universal justice according to our preferences. Such an attempt might make justice conflicts violent. Peace suffers, and with it the people that die of this violence and for whom we wanted justice in the first place. And with that, not only peace is suffering, but justice is not served either.

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