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Human Security and the Politics of Protection. Avoiding or Enhancing Responsibility?

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Abstract

In the passages referring to the 'Responsibility to Protect' (R2P), the resolution of the 2005 UN reform summit confirms the responsibility of every government for the protection of its people from mass atrocities. The consensus on this issue was reconfirmed by various Security Council resolutions since 2005 and also through resolutions of the General Assembly and of the Human Rights Council. However, the role of the international community with regard to the responsibility of individual governments remains contested. The domestic conflicts in the Arab world underline the urgency of a consistent international engagement within the framework of the R2P. They also demonstrate the basic predicaments of any endeavor to protect people from domestic violence through outside interference. The present paper addresses these predicaments with regard to the tension between the responsibility to protect and the 'responsibility to peace', the interplay between humanitarian and non-humanitarian issues in the politics of protection and the difficulties to establish the appropriateness of protective measures in view of the complexities of any international protective measure. The paper argues that the politics of protection will continue to reflect these dilemmas. Nevertheless, theR2P provides a normative framework within which the shortcomings and inconsistencies of the politics of protection can be addressed in a constructive way.

1. Introduction[1]

In March 2012, Jonathan Tepperman, managing editor of *Foreign Affairs magazine*, wrote in the *New York Times*:

> "What we know is that Syria is a deeply divided country, with a minority-based government presiding over mutually hostile religions groups (Sunnis, Alawites, Christians, Druse) and ethnicities (Arabs, Kurds). Add more gunpowder to the mix and you have a recipe for an ugly inter-communal war. Such a conflict would dwarf the turmoil seen so far." (Tepperman 2012)

Gun powder *was* added in the form of outside support for the various rebel groups (and for the Assad regime!) and within a year's time, the number of casualties rose tenfold from 7.500 in the spring of 2012 to 100.000 in the summer of 2013. Tepperman argued that the crux of the matter was piecemeal intervention. Either you go in big in time or you stay out. In both cases you cannot be sure of the results but they would probably be less formidable, so Teppermann argued, than the results of piecemeal action. In the case of Syria, going in big would have meant acting without Security Council authorization because Russia and China were not and are not prepared to authorize another intervention like the one in Libya. After the massive use of chemical weapons in the Syrian civil war on August 21st, 2013, the Obama Administration together with France (and originally UK) *did* threaten to strike Syria militarily. But this military action was to be quite limited. The implementation of the threat, for the time being, was avoided through an agreement between the US, Russia and the Syrian governments on the abolition of all chemical weapons in Syria. This agreement testifies to the disinclination of the present US Administration to use military force in spite of the threat to do so. There are reasons for this cautiousness which relate specifically to the situation of Syria and the international context in which it unfolds. However, equally important are

1 Paper presented at the Third Conference of the International Humanitarian Studies Association on "Human Security: Humanitarian Perspectives and Responses", Istanbul, Turkey, from 24 to 27 October 2013; Panel on "Human Security and Humanitarian Practices".

the fundamental difficulties of any outside intervention which is to stop bloodshed without causing more of it (Gromes/Dembinski 2013;Peksen 2012). The present paper deals with these difficulties as a basic predicament of the Responsibility to Protect (R2P).

With regard to its general recognition the R2P has fared remarkably well. It did not take more than ten years from its invention in 2001 and its confirmation by the UN Summit in 2005 to the 2011 cases of Libya and Cote d'Ivoire (and indirectly Mali) in which the R2P was invoked as a normative reference for the legitimization of the use of force. That is a relatively short time span considering that the R2P was and is to answer a crucial question of international politics, i.e. what the international community can do in order to protect people from excessive domestic violence without undermining two central pillars of the UN-System: non-intervention and the prohibition of the unilateral use of force.

Up to the birth of the R2P the controversies around this issue proceeded under the heading of 'humanitarian intervention'. The latter is usually defined as the threat of, or the actual use of, military force by international actors against an individual state which claims to prevent or end gross violations of human rights (Welsh 2004: 3; Holzgrefe 2003: 18; ICISS 2001: 8). Thus, 'humanitarian intervention' is a formula which is to *enable* the international community and individual states to protect people, not to *restrict* those willing to act. It thus establishes a priority of protection over legal or procedural considerations. R2P, too, transforms domestic humanitarian crises into objects of international concern. It would even be in the logic of R2P to legitimate military enforcement action according to chapter VII of the UN Charter without reference to a threat to international peace (Bellamy/Williams 2011: 826). But in contrast to 'humanitarian intervention' R2P is geared towards balancing the protection of people on the one hand, and adherence to the rules of the UN system of collective peacemaking under chapter VI and VII of the UN-Charter on the other. This is to say that R2P takes both substantive (human rights) and procedural norms into account (rules governing the use of force). It stresses the need for external action in case a government is unwilling or unable to live up to its responsibility to protect. But legally speaking it does not offer exceptions from the norm of non-intervention and the prohibition of the use of force. It rather is geared towards keeping international action within the confines of the respective stipulations of the UN-Charter, especially chapter VI and VII. Yet, the R2P remains contested and it is not clear at all how it will fare in the future.

Proponents of R2P value it as an important if incomplete step to overcome or at least to curtail domestic mass atrocities (Bin Talal/Schwarz 2013; Bellamy 2009; Evans 2008), though they may diverge on the status of R2P as a mere principle (UN Secretary General 2012: 5, cif. 21), an emerging norm (cf. Reinold 2010) or even a customary norm (Bin Talal/Schwarz 2013: 1). Critics of R2P insist that historic experience militates against any attempt to legitimate the international use of force for the protection of people from domestic violence (Jahn 2012; Chomsky 2011). Others claim that the language of protection is apt to hide the interventionist aspects of humanitarian protection which is blatantly admitted by the term 'humanitarian intervention' (Cunliffe 2011). Still others are convinced that no matter how you handle it, R2P undermines the norms of non-intervention and the prohibition of the unilateral use of force (O'Connell 2011).

My own reading is the following: Through the respective wording of the Outcome Document of the 2005 UN Summit (paragraphs 138 and 139), the R2P has become a normative frame of reference for dealing with domestic mass atrocities at the international level. This new normative frame of reference replaces 'humanitarian intervention'. The approval of the R2P in 2005 by the UN Reform Summit and its successive confirmations through the Security Council can be regarded as a step forward in a struggle against mass atrocities that does not go against basic rules of the UN Charter on the use of force. To put it even more cautiously: R2P addresses the need to strike a balance between the enabling and the restricting functions of international law with regard to what the international community and individual states or groups of states are allowed to do when confronted with mass atrocities in third countries (Debiel et al. 2009: 53; von Arnauld 2009: 16; Bellamy 2008: 630; Saxer 2008: 450). In this context, the (legal) status of the R2P is of secondary importance. For the time being, it may suffice to regard it as a 'political principle' as Secretary General Ban Ki-moon prefers to see it (UN

Secretary General 2012: 5, cif. 21). All of this is not to say that R2P stands for a linear evolution of international law which, in the language of the International Commission on Intervention and State Sovereignty (ICISS), under the sway of 'new actors' and 'new challenges' would lead to 'new expectations' and 'new solutions' (ICISS 2001: 3-7). In spite of the various instances of its confirmation, the R2P is and is likely to remain contested. As a matter of fact, with regard to the Syrian crisis it is more difficult to appraise the future of the R2P than it was at the time when the Security Council decided on the use of force in the cases of Libya and Cote d'Ivoir. As seen from today's perspective, those decisions were less of a breakthrough for R2P as they appeared to be at that time. In the case of Syria, there is a rather 'thin' reference to R2P. The UN General Assembly in February 2012 in substance referred to the R2P by calling upon the Syrian Government 'to protect its population fully'. But it did not refer to the R2P as such (A/Res. 66/253, 16 February 2012). Also, the threat of the Obama Administration to use force against the Assad Regime was not legitimated as a move within R2P but rather as an attempt to enforce existing norms on chemical weapons (though the essence of these norms is to protect people).

R2P can be seen as part of a general normative change in the course of which the international protection of individuals and groups in humanitarian crises has been enhanced. However, the emergence of a new normative frame of reference in international politics is obviously an erratic process. Each innovation is liable to meet with resistance. This does not automatically weaken the underlying dynamic of the evolution of norms. The struggle over incipient norms can just as much serve as a driving force for their acceptance as for the decline of a norm (Wiener 2008; Deitelhoff 2009). Therefore, the fact that in contrast to Libya and the Côte d'Ivoire , reference to the R2P in the case of Syria is rather 'thin' does not imply that the R2P has passed its vertex (Brock/Deitelhoff 2012; Fröhlich 2011: 146). Whether the responsibility to protect will be enhanced over the next years or not, will depend very much on how the international community will handle the fundamental problems of protecting people from domestic mass atrocities.

In the present paper I will deal with three such problems: (1) the tension between the protection of human rights and the duty of states to keep the peace, (2) the inevitable mix-up of humanitarian concerns with other motives, and (3) the issue of the appropriateness of action in view of the complexity of any international attempt to deal effectively with domestic violence. These three fundamental problems constitute dilemmas. That is to say they cannot be ignored, and they can neither be solved under the prevailing conditions. But they can be mitigated and R2P offers an approach for such mitigation. It does so in various ways. It specifies the scope of crimes that trigger the R2P and this way raises the threshold for international action in comparison to the respective claims under the concept of 'humanitarian intervention'. Furthermore, it identifies the individual governments as the subjects of protection. This way, the entitlement to sovereignty of every state, even the culprit state, is being recognized. This move plays down the confrontational aspects of international protection politics in favor of a more cooperative approach (Thakur 2005). Finally, R2P differentiates the spectrum of international responses to domestic atrocities so that military intervention is only one option under many others. This way the danger of unintended consequences of international protection politics is reduced.

2. International Humanitarian Law, Human Rights and the Responsibility to Protect: What are we talking about?

Since the end of the Second World War, one hundred and three instances of mass-killings (defined as a minimum of 5.000 civilians put to death intentionally) have been counted, of which almost two thirds took place in armed conflict (Bellamy 2011: 2). The proportion of those killed in armed conflict seems to be on the rise. So it is safe to say that mass atrocities are predominantly linked to armed conflict. To be sure, not all conflict involves mass killings and not all mass killings take place in armed conflict. The killings of the Khmer Rouge in Cambodia are an extreme example for the latter. But the issues of protecting people in armed conflict and of protecting them from mass atrocities tend to converge even though this does not imply a convergence of instruments to deal

with them.[2] The US and the EU are developing special policies under the keyword of protecting people from 'mass atrocities' (Taskforce on the EU Prevention of Mass Atrocities 2013; Brockmeier et al. 2013; Waxman 2009). This offers a somewhat wider focus than protecting people in conflict, but it includes, of course, protection in conflict. Still, there are legal implications which have to be addressed in order to clarify what we talk about when we talk about protection from mass atrocities.

The protection of people in conflict is not a new concept. All through history and through all cultures, there exist ideas about certain limits to what is allowed to governments or parties to a conflict and what is not allowed. The respective codes are often contained in rituals or customs. A new approach to this issue was developed in the mid-19th century when the first Geneva Convention was ratified in 1864. This was the beginning of International Humanitarian Law (IHL) which today is codified in the four Geneva Conventions of 1949 and the Additional Protocols of 1977. Beyond these conventions there exist special conventions (the conventions on Genocide and on Torture) and a large body of customary law which provide for protection of certain groups of people in 'armed conflict' at the international and the intra-state levels. The respective standards constitute *ius cogens*. They have to be adhered to by every state without further treaty obligations.

Beneficiaries of IHL are all those who are not or no longer involved in fighting (non-combatants, ex-soldiers, the wounded, prisoners of war, personnel attending to the physical or spiritual needs even of combatants). They have to be respected as neutrals and treated properly (Geneva tradition of IHL). At the same time, the states have to accept certain limitations of the weapons and munitions used in armed conflict, especially those which kill indiscriminately (Hague tradition of IHL). Grave breaches of the respective norms constitute war crimes. Even before the present Geneva Conventions came into existence, German and Japanese officials were prosecuted for such war crimes after the Second World War. After the end of the Cold War, special tribunals where set up by the UN-Security Council to deal with war crimes committed in ex-Yugoslavia and Rwanda. In 2002, the Rome Statute establishing the International Criminal Court entered into force which puts the prosecution of war crimes, genocide and crimes against humanity on a permanent footing.

As already mentioned, the R2P in contrast to IHL is not a legal concept. It is a political principle. Secretary General Ban Ki-moon stresses this point. In his 2012 Reports on the protection of civilians in armed conflict he states:

> "I am concerned about the continuing and inaccurate conflation of the concepts of the protection of civilians and the responsibility to protect. While the two concepts share some common elements, particularly with regard to prevention and support to national authorities in discharging their responsibilities towards civilians, there are fundamental differences." (UN Secretary General 2012: cif. 21)

The first and foremost difference is, of course, the different legal status of R2P and IHL. But there are other differences, too. (1) IHL applies in armed conflict, but it is not confined to mass atrocities. The R2P in contrast is confined to specified mass atrocities but it can deal with them even below the threshold of armed conflict. (2) IHL law protects people not or no longer involved in armed conflict, whereas R2P is directed towards protecting all people from mass atrocities. (3) The inclusion of protective tasks in UN Peace missions by the Security Council, which has become common practice since the late 1990s, is based either on IHL, international human rights law or refugee law but not on the R2P. So it picks up on legal provisions, but it does so in a framework of mutual agreement between the UN and the respective country, whereas the R2P offers the possibil-

2 Bellamy (2011) quite convincingly insists that a mass atrocity prevention lens differs from a conflict prevention lens. Conflict prevention may collide with the prevention of mass atrocities. However, if this is the case it is all the more important to work on the overlap between the two in order to achieve synergy effects and to keep the two objects in mind while working on one of them.

ity of enacting enforcement action against the will of a government that is unwilling or unable to live up to its responsibility to protect.

The Secretary General emphasizes such distinctions because he is afraid that the controversies around R2P may spill over into the by now well established practice of protecting people as part of UN peace missions. On the other hand, it can hardly be overlooked that the various activities and their normative points of reference converge around a growing international consensus that people should be protected from excessive violence and that this is also a matter for the international community to consider. So the historical correlation between the emergence of R2P and the practice of including protective aspects in UN peace missions can be interpreted as pointing to the substantive (not legal) overlap between action based on IHL and action referring to R2P. This also goes for the distinction between IHL and human-rights based activities. As Cordula Droege writes,

> "International human rights law and international humanitarian law are traditionally two distinct bodies of law. While the first deals with the inherent rights of the person to be protected at all times against abusive power, the other regulates the conduct of parties to an armed conflict. And yet, there are an infinite number of points of contact between the two bodies of law (…) These regimes overlap, but they were not necessarily meant to do so originally, it is necessary to apply them concurrently and to reconcile them." (Droege 2007: 310-311)

Since R2P is not a body of law it cannot be applied concurrently with IHL or international human rights law. But even if it was not meant to overlap with these two bodies of law, there still could develop some kind of normative synergy between them, especially in view of the fact that non-international armed conflict is more frequent today than international armed conflict and that IHL has to be applied against increasing difficulties to distinguish between those who have to be protected and those that do not. R2P in principle could help to fill this gap.

3. Basic Dilemmas of Protecting People from Mass Atrocities

3.1. The Responsibility to Protect and the 'Responsibility to Peace'

Art. 1 of the UN-Charter identifies three aims of the United Nations:

- to maintain and strengthen international peace and security,
- to develop friendly relations among all nations based on equal rights and self-determination, and
- to achieve international co-operation for the advancement of human well-being and human rights.

The UN is to serve as the centre for harmonizing the actions of nations in the attainment of these common ends.

Ideally, the various efforts to attain these goals would mutually enforce each other. In practice, however, tensions may arise between them. This goes especially for the interrelationship between preserving or securing peace and protecting basic human rights. In the case of the Kosovo intervention, NATO's proclaimed aim of protecting the people resulted in military action without Security Council authorization. That was in clear violation of the stipulations of Art. 2 (4) and chapter VII of the UN-Charter. Intervention in the case of Libya was authorized i.a. on humanitarian grounds (as they relate to keeping international peace), but the intervention itself was carried out in such a way that many non-Western states saw it as action taken in defiance of Security Council Resolution 1973 (UN Secretary General 2012: p. 5, cif. 19). In the case of Syria adherence to the Charter can be interpreted as keeping in line with the 'responsibility to peace' (O'Connell 2011). But adhering to this responsibility causes extreme frustration on the part of those who suffer from the war and expect the international community to protect them.

Coping with such conflicts of goals is further complicated by the fact that the principle of sovereign equally of all states is systematically challenged by blatant inequalities of material capabilities and political status. As a consequence, the appeal by the more powerful to universal standards tends to

come to bear or at least to be perceived as a hegemonic design which contradicts the right to self-determination on the part of the weak. The prohibition of intervention is to mitigate this effect of factual inequality. Art. 2 (7) prohibits all intervention in matters which are essentially within the domestic jurisdiction of any state. But non-intervention, too, is an elusive concept. The boundaries between what is essentially within the jurisdiction of states and what is not are fluid. The states concede each other a space of political autonomy. But this space can only be claimed under the conditions of material interdependence and multiple inequalities. Domestic and non-domestic issues are closely and inextricably linked. This is to say that the prohibition of intervention attempts to draw a borderline which is based on a fiction that the internal and the external are clearly distinguishable. On the other hand, non-intervention is a functional prerequisite of the international system as a legal order. Therefore, the issue of what belongs to the realm of the individual state and what belongs to that of the international community is essentially contested. Human rights politics offer an arena for the respective struggles. Thus the differentiation of human rights in the context of the East-West and the North-South divide[3] is a manifestation of the resistance of the non-western world against the desire of the liberal democracies, to turn their own understanding of human rights into a universal standard binding all non-western states.

At the end of the Cold War, the development of universal norms acquired a new dynamic which for instance came to bear at the World Conference on human rights in Vienna in 1993. At this conference the old tug of war between the West on the one side, the East and South on the other, over the different 'generations' of human rights was to be resolved through the simultaneous recognition of the universality and the indivisibility of human rights. But after the breakdown of *real socialism,* when Charles Krauthamer famously proclaimed a unipolar moment in world history, the East and the South had to be all the more on the alert lest they would become the object of liberal hegemonic designs.

Under the impact of the 'new wars' and especially the genocide in Rwanda in 1994 and the massacre of 'Srebrenica' in 1995 there was a growing consensus that sovereignty should not be an excuse for gross violations of human rights. However, the debate on redefining sovereignty which was launched by the UN General Secretariat (Deng et al. 1996) in this context as seen from the 'Global South' was lopsided. It meant that "state sovereignty and non-intervention began to be seen as privileges, conditional upon observance of international standards. A logical implication of the view that human rights rank higher than state rights to sovereignty is that intervention in support of human rights becomes legitimate and maybe even required" (Brown/Ainley 2005: 222). As seen from the non-Western states the redefinition of sovereignty threatened to turn the South into an object of Western deigns for a new world order[4] because the qualification of sovereignty as responsibility which for all practical purposes only would affect the South was met be a 'hyper sovereignty' of the liberal democracies (O'Connell 2011).

This hyper sovereignty was practiced by the NATO-states in a way which was to augment the space for the discretionary application of the use of force by the liberal democracies (Hehir 2011: 96). While the Global South was confronted with a conditioned sovereignty, the liberal democracies were shedding the strings attached to the use of force by the UN-Charter. This turn of events was enhanced by the renewal of just-war thinking which was pioneered by Michael Walzer and which gained a life of its own in the wake of '9/11'. Reference to just war was to provide criteria for assessing the legitimacy of the use of force (including the use of force authorized by the Security Council). But this meant that the positive norms of the UN-Charter on the use of force were replaced by, or at least modified through, considerations of legitimacy (Koskenniemi 2009). This was in line with ideas of a 'post-Charter self-help paradigm' which insinuated that the norm of the non-use of force had been violated so often that it had lost all legal meaning (Arend/Beck 1998: 339).

3 Cf. the two Human Rights Pacts of 1966 and the subsequent claim of collective rights.

4 Cf. the critical contributions in Cunliffe (2011).

The intervening governments, however, preferred to justify their use of force with an extended right to self-defense (Reinold 2011). The US-National Security Strategy of 2002 claimed that the US had a right to the use of force in order to pre-empt the possible emergence of a threat to national security (like the construction of a nuclear bomb by Iran) (Bush Doctrine). That was actually a claim that came close to the reconstruction of a *liberum ius ad bellum* which the European states claimed to have until the end of the 19th century (Brock 2005; Oeter 2008).
So the setting is quite complicated. Jürgen Habermas offered an interesting way out. With reference to the Kosovo war he argued that the intervention of the NATO-states could be interpreted as anticipation of an adequately institutionalized international order (Habermas 2000). This interpretation was linked to the condition that (1) the NATO states would actually do what would have been done under an adequately institutionalized international order and (2) that concrete steps would be taken in the aftermath of the intervention to bring this order about. In chapter 4 I will address the question to what extent the invention of the R2P can be considered as a step into this direction.

3.2 Humanitarian and non-humanitarian aspects of protection politics

The decision over enforcement action for the protection against mass atrocities rests with a body, the UN Security Council, which is supposed to function as a public authority while those deciding on the use of force tend to be interested parties to the conflict or situation they have to deal with. This is certainly not unique but at the international level it is especially troubling. This is where a second dilemma of the international protection against domestic mass atrocities comes into play: the fact that humanitarian action by necessity involves non-humanitarian motives. In their paper on the 'new politics of protection', Bellamy and Williams write:

> "Although many internet blogs and newspaper editorials have accused western states of pursuing their material interests in Libya, especially in relation to oil, we have found little evidence to support such an interpretation. Nevertheless, the *perception* of ulterior motives and agendas may make it more difficult in the future to forge a consensus on the use of force for protection purposes, within the context of either a peacekeeping operation or a potential humanitarian intervention." (Bellamy/Williams 2011)

That may be true. Nevertheless, in general it may also be true that humanitarian crises serve as a smokescreen or selling argument for intervention and regime change in the pursuit of geo-political goals of those intervening (Barnett 2005: 731). Along this line of critique the entire narrative of humanitarian protection could be regarded as a selling argument for those liberal policies of international law which, instead of really advancing collective action for the protection of human rights, help to widen the freedom of action of the liberal states in pursuit of their specific agendas (Jahn 2012; Cunliffe 2011).
However, the problem is more profound. Whenever human rights are to be protected through outside intervention it is not only the plight of the people that determines politics but a large array of other considerations which come into play. The more is at stake for the (potentially) intervening states the more selective or careful they will be in their engagement. No state is exempt from the respective calculations as the cases of Libya and Syria have demonstrated. One can call this opportunism. But it reflects the need for any government to consider not only the fate of those who suffer under mass atrocities but also the implications of any action abroad for the situation at home. Interventions are costly in many aspects: political, economic, cultural etc. No government can be expected to intervene without due consideration of these costs (ICISS 2001: 35-36). For this reason humanitarian action will rarely reflect purely humanitarian motives. This, in turn, implies that any decision to intervene or not to intervene will always be contested. The issue of self interest behind a certain policy will play an important role in this. For example, in the case of Syria the liberal democracies and most of the Arab countries criticized Russia and China for blocking even the mere condemnation of the excessive use of force by the Assad Regime. Especially the position of the Russians was attributed to their geopolitical interests in the region. But the liberal democracies and

the Arab countries have, of course, their own geopolitical agendas which concern i.a. the struggle with Iran.

So with humanitarian protection we are really moving in swampy terrain. But this should not lead us to shake off the entire debate on humanitarian protection as mere hypocrisy. Political action will always be determined by mixed motives. Self interest is one of them and it does not necessarily favor self-help. Self-interest also comprises the reduction of transaction costs through the establishment of routine cooperation. So cooperation is within the array of options for self-interested states who are confronted with a humanitarian crisis in other states. More importantly and beyond rationalist calculations it is not only self-interest that comes to bear but an interplay between self-interest and standards of adequacy. Both change constantly in the course of this interplay. They are never fixed once and for all. From a social constructivist viewpoint, interests only take shape in the context of different ideas and images of the world and the forces that shape it (Finnemore/Sikkink 1998; Finnemore 1996). This is to say that moral arguments do not only serve as a *façade* behind which true motives are hidden (like the quest for oil, military basis, geopolitical standing etc.). It certainly would be naïve to ignore such interests, but it would be equally naïve to regard them as the sole driving forces behind humanitarian action. It seems more realistic to proceed on the assumption that self-interest, ideas, and the belief in certain values are not only intertwined but actually constitute each other (Soerensen, 2008; Müller 2004; Katzenstein 1996).

In this sense politics can involve a 'moral universalism' (Andrew Linklater) that cannot simply be discarded as an ideology. Moral arguments instead of serving merely as an instrument of politics also have to be regarded as factors influencing politics. The concept of 'good international citizenship' (Wheeler/Dunne 2001; Wheeler 2000) also belongs into this category of what may somewhat paradoxically be called autonomous instruments (as they come to bear in the principal-agent-constellation). So it is basically acceptable when political actors refer to moral arguments. The problem begins at the point at which moral engagement is said to turn politics into universal problem solving beyond particular interests. Firstly, the moral of those who refer to moral arguments does not render a counter position amoral. Instead we are dealing in this context with a discourse in which both parties are able to produce good reasons for what they have to say (and want to do) (Hehir 2011: 95-96). Secondly, it is of the utmost importance that moral arguments are also political arguments (Jahn 2012). They grow out of particular concepts of social order and represent these concepts which are to be distinguished from other concepts.

Beate Jahn shows how the historical process in which 'humanitarian intervention' took shape resulted in a separation or juxtaposition of politics and morality. The term 'humanitarian intervention' is being applied in order to turn politics into a moral practice and to hide the political dimension of this practice. An example for the separation of politics and morality is offered by a thesis that became quite popular in the late 1990s. It said that the moral evolution of the international community had outpaced the evolution of the legal framework. Thus there existed a gap between moral awareness and legal provisions for protecting people which had to be made up through decisive solidarist action (in the form of humanitarian intervention) (Hehir 2011: 96).

Politics and morality constitute each other (Jahn 2012: 43, 55). Under this perspective the second dilemma of the international protection of people from intrastate mass atrocities consists in the fact that claims to universality (protection of human rights) are inextricably linked to particular interests which in turn, however, are always under the pressure to refer to transcendental values (human rights). In other words, the protection of people from mass atrocities always involves politicking, but this is the precondition for any chance to get the international community engaged *vis-à-vis* humanitarian crises. Thus it is a waste of time to hunt for the hidden motives behind the politics of (non-) protection in the case of Syria. Morality is constantly being exploited by politics, and politics is constantly under pressure to conform to morality. This is why it makes sense to think in terms of humanitarian protection to begin with. So in this context the question is what the concept of the R2P has to contribute to a constructive handling of the tension between politics and morality.

3.3 The complexity of humanitarian protection

In the case of Libya the UN Human Rights Commission, the Secretary General, and the Security Council all invoked the responsibility to protect against the Gaddafi regime. In the case of Syria, the Security Council could not even agree on a condemnation of the Syrian government due to repeated vetoes by Russia and China. In its stead, the General Assembly on 16 February 2012 passed a resolution the language of which corresponded to a draft resolution of the Security Council vetoed by Russia and China two weeks earlier. The resolution was introduced by the *League of Arab States*. In it the General Assembly

> "(…) 2. *strongly condemns* the continued widespread and systematic violations of human rights and fundamental freedoms by the Syrian authorities, such as the use of force against civilians, arbitrary executions, the killing and persecution of protestors, human rights defenders and journalists, arbitrary detention, enforced disappearances, interference with access to medical treatment, torture, sexual violence, and ill-treatment, including against children; (…)
>
> 6. *Calls upon* the Government of the Syrian Arab Republic to immediately put an end to all human rights violations and attacks against civilians, protect its population fully (and, L.B.) comply with its obligations under applicable international law (…)".[5]

The resolution was passed with 137 states voting in favor, 12 against and 17 abstaining. The vote on the resolution was preceded by a special briefing by Navi Pillay, United Nations High Commissioner for Human Rights, 'who expressed outrage at the bloody 11-month crackdown on opposition protesters. She warned that the Council's failure to take action had emboldened the Syrian Government to launch an all-out assault to crush dissent.'[6]

The resolution was an impressive confirmation of the responsibility of the Syrian Government for the protection of the Syrian people in a time of political turmoil. It also condemned 'all violence irrespective of where it comes from, including terrorist acts'. But it insisted that the Assad Regime was to blame for starting and escalating the violence and that it therefore had to take the first step to stop the fighting. It goes without saying that the Syrian government rejected the resolution. It expressed 'deep concerns vis-à-vis the real intentions of the sponsors of the draft resolution', stressed the 'exclusive responsibility of the Syrian state to protect its citizens from these (terrorist, L.B.) attacks' and argued that the resolution amounted to an unprecedented assault on the principle of sovereignty (A/66/PV.97).

There is a general consensus that every government has the right to quell a rebellion. But no government has the right to use disproportionate means for this purpose. Still the question remains: Where does the borderline between maintaining public order and committing crimes against humanity run, and – as a consequence – where does admissible international engagement for the protection of people end and inadmissible intervention begin?

In the case of Libya the situation seemed fairly clear: The Gaddafi regime threatened the opposing groups with annihilation and its initial reaction to the uprising seemed to make this threat credible. Therefore, it was widely assumed that large parts of the population were under a clear and present danger of losing their lives. Still the international community acted under a high degree of uncertainty: First of all, under the spell of the perceived danger for the people in Libya, the international community did not take time to check the facts on which it acted. Secondly, it was not clear what protection called for and thus what kind of engagement qualified as proportional. The intervening NATO-states claimed later-on that protection called for regime change. Large parts of the global South felt that regime change was not covered by Resolution 1973 and infringed upon the right to self-determination. Finally, under the perceived time pressure, there was no due consideration of

5 A/Res.66/253 16 February 2012.

6 Press Release GA/11207/Rev. 1; 16 February 2012.

the wider repercussions and possible unintended consequences of the intervention which turned out to be quite serious (breakdown of public order in Libya and destabilization of the Sahel zone).
In the case of Syria, the situation is even more complicated. At the beginning, it was defined by a brutal disproportionate reaction of the government to the public protests. However, as parts of the opposition became violent themselves and the government reacted to this with militarizing the conflict which interacted with the direct and indirect foreign support of the regime or of the various opposing groups the picture became quite blurred. The public protest against repression has turned into an internationalized civil war. As a result, it is difficult to determine what kind of international action would effectively help to demilitarize the conflict, sustain the territorial integrity of the country, provide for some sort of reconciliation and political reform and help to avert threats to regional and international peace and security.
This observation points to the third dilemma of the international protection of people from mass atrocities: the complexity of the task (Bulley 2010: 443). Military intervention can be seen as an attempt to reduce this complexity by altering the framework of reference under which a conflict is being carried out. But the experience with military intervention has been mixed, to say the least. As already mentioned, the Security Council by now routinely attaches a protection element to peace missions. This involves the presence of armed outsiders who check spoilers of peace agreements and shield vulnerable groups from assault. This kind of international protection policy is based on humanitarian international law and international human rights law and proceeds with the consent of the respective parties (UN Secretary General 2012). Under these conditions, the military presence of the international community, in general, can be expected to contribute to local protection, especially in combination with assistance for political, economic and social reconstruction. Yet, in spite of the fact that the UN is putting more emphasis on the protection of people, in practice it still seems to be lacking a coherent strategy and adequate means to really make a difference. For a lack of workable alternatives, the UN still adhere to a 'trade-off' culture under which the critque of official wrongdoing is traded for access to humanitarian work. What is more, as Marc Duffield points out, the cooperation between international security personnel and aid workers can also take the shape of a 'fortified aid compound' which keeps the locals at a distance (Duffield 2010).
As to military engagement beyond peace missions, there are a few instances in which such engagement had a positive impact. A much cited example is East Timor (Wheeler/Dunne 2001). Perhaps the Australian intervention in the Salomon islands in 2003 can also be considered as a successful attempt to reduce ongoing violence. But in most of the cases (Somalia, Haiti, Afghanistan, Irak, Darfur, Democratic Republic of Congo, Côte d'Ivoire) the record is not very convincing (Gromes/Dembinski 2013; Brock et al. 2012; Peksen 2012).
The problem is not only mistakes and insufficient capacities. Experience shows that the more important enforcement actions become in the context of international engagement to protect people, the higher is the risk of unintended consequences. There is a simple reason for this. Every decision for a military engagement tends to overrate the capacity of the military to shape the local conditions because it is the strong countries which intervene in the weak ones. The resulting power asymmetry creates the illusion that things can be done according to external notions of how they should be done. The discrepancy between power and relative weakness stimulates the expectation to be able to cut through the Gordian knot of violence as a social practice and this way to open up the road for political and social change. Time and again this expectation was proven to be premature. Military interventions follow their own logic and this logic has nothing to do with the mode of operation of the 'intervened' society. The bigger the difference between the strong and the weak, the more widespread the idea will be that the 'intervened' societies are a *tabula rasa* which is open for modeling from the intervening forces (Stewart/Knaus 2011).
As a rule that is not the case. The hubris that usually goes along with the perceived power-discrepancy tends to turn military intervention into part of the problem which it is to solve . The use of military force, no matter how hard you try to the contrary, inevitably damages the existing infrastructure, contributes to the political polarizing of the population, undermines endogenous forms of conflict resolution and ignores or expropriates local agendas (Autesserre 2009).

The experience of the past two decades has led to some sobering up with regard to what intervention can do (Brock et al. 2012). As Bulley states, we learned during these years that 'we cannot know for sure whether we are doing the right thing by intervening, regardless of the extent of our knowledge or the normative rules which we adhere to' (Bulley 2010: 443). This is to say that it is almost hopeless, to determine the proportionality of what we are doing with the certainty that this criteria for the legitimate use of force demands (ICISS 2001: 37). Whether the military engagement of the NATO-states in Libya was proportionate is difficult to determine even *ex ante* because the unintended consequences of the intervention are still difficult to assess (Dembinski/Reinold 2011; Fröhlich 2011: 142-144).

Non-military action designed to protect people from excessive violence is also affected by these structural uncertainties. However, it is less risky with regard to unintended consequences. Yet it is even more complicated than military intervention. It has to deal with all those things which military intervention tends to push aside. Among these are endogenous traditions of conflict and conflict resolution which are difficult to grasp from the outside, forms of negotiated governance that do not fit Weberian ideas of statehood, local agendas which seem to be counterproductive for peacebuilding and yet have to be taken into account, the extreme difficulties of allowing for ownership in a constellation that is defined by gaps in competence and resources from the outside in (Hagmann/Péclard 2011; Autesserre 2009; Schlichte 2008; Paffenholz/Reychler 2005).

So to what extent can the R2P contribute to coping with these dilemmas?

4. What has the R2P to offer?

Specifiying the issue:

The 2005 version of the R2P identifies genocide, ethnic cleansing, war crimes and crimes against humanity as the crimes covered by R2P. This list of crimes is wider than that mentioned by the ICISS (2001), but it is more precise and blocks any attempt to include other crimes below the threshold of these mass atrocities. So the 2005 version of the R2P offers an authoritative answer to the question, which crimes are to be covered by protection politics beyond the cases covered by international humanitarian law and human rights law.

Unfortunately, the authoritative delineation of pertinent crimes in practice is not as helpful as it might seem at first sight. This is so because consensus on the identification of ongoing violence as constituting one of the four crimes mentioned above is not always easy to achieve. To the contrary, this is usually where the problem begins as the case of Darfur dramatically demonstrated with regard to the issue of genocide. The reason is, of course, that there is no 'cheap talk' in dealing with mass atrocities. Naming violence has consequences. Nevertheless, R2P affirms that the discretionary power of the states in dealing with mass atrocities is limited. This may have contributed to the general acceptance of an international involvement in domestic violence. But the actual practice of protection will always remain embattled – not only between the international Community and the affected state but also *within* the international community which reflects all the cracks and contradictions of national societies.

Modifying and 'Stretching' decision-making on protection:

The heterogeneity and the internal quarrels of the international community come to bear in the decision-making of the Security Council. The trigger for formulating the R2P was the unauthorized action of NATO in Kosovo which was justified with the argument that the Security Council, while agreeing on the existence of a threat to international peace, was unable to reach agreement on accordant measures. Thus one of the major issues of the ICISS was to address the decision-making in protection politics. The ICISS tried to deal with this problem by modifying and 'stretching' the decision-making process. It suggested a code of conduct according to which 'a permanent member, in matters where its vital national interests were not claimed to be involved, would not use the veto to obstruct the passage of what would otherwise be a majority resolution' (ICISS 2001: 51). This idea was stopped in the run-up to the UN summit of 2005 by the Bush Administration

(before Russia and China could vote against it). The reason is obvious. As already mentioned, the US was (and is) interested in general standards which provide leverage for putting other states under pressure without attaching any strings to the US's own freedom of action (O'Connell 2005).
As to the 'stretching' of the decision-making process, the ICISS suggested that if the Security Council failed to act the General Assembly should take over according to the 'Uniting for Peace'-Resolution developed in response to a stalemate in the Security Council in the context of the Korean War (ICISS 2001: 53). If that did not work regional organizations were to act in the UN's stead. The ICISS warned that if all of that still did not work, 'then the pressures for interventions by ad hoc coalitions or individual states will surely intensify'. The resulting interventions would not only cause a problem for the states which acted unilaterally, it also would 'have enduringly serious consequences for the stature and credibility of the UN itself' (ICISS 2001: 55). This was to say that the Council members were indeed under heavy pressure to come to an agreement.
On the other hand, the argument of the ICISS also seemed to leave a loophole for justifying unilateral action. The Global South wanted to close this loophole. Therefore, the Outcome Document of 2005 in its passages on the R2P mentions only the Security Council as the appropriate decision-making organ. However, in his 2009 report on the R2P the Secretary General states that the inclusion of the General Assembly or of regional organization into the decision-making on R2P measures is consonant with the 2005 Outcome Document.[7] The observation of the Secretary General must be read as an attempt to keep open the debate on who is called upon to do what in the context of the R2P. This issue is especially pertinent with regard to the engagement of regional organizations in protection politics. The African Union which at the time of its foundation acted as a vanguard in the issue area of international protection has become a bit weary of the possibility of outside interference (Dembinski/Reinold 2011). Thus it calls for African solutions for African problems. This may signal a more important role of regional organizations in protection politics but it may also stand for a further loss in the multilateral capacity to act which is quite weak anyhow.

Sorting out responsibilities:

Both versions of the R2P (ICISS 2001)[8] assign the individual governments with the primary responsibility to protect. This responsibility stays with it even when the international community comes into play, because the primary task of the latter is to enable the affected government to meet its responsibility. This implies that the perspective on the protection from mass atrocities is turned around. The debate on a 'right' to intervene is replaced by a debate on national and international responsibilities to cooperate for protection. This can be interpreted as a move from a more confrontational to a more cooperative concept of protection. Instead of juxtaposing a culprit state and the international community, the gap between the two is bridged by common responsibilities (Thakur 2005: 123). This, too, is not necessarily 'cheap talk'. It signals a change of attitude on how the roles of the various actors in protection politics are being seen. This can help to spread the idea that people *should* be protected from mass atrocities, as it indeed seems to have done since the UN Resolution on the R2P was passed.
However, the language of responsibility is deceptive (Rodin 2006). The term 'responsibility' is suspended between obligation and virtue. It permits a problematic differentiation between what the individual countries on the one hand, the international community on the other, are expected to do (von Arnauld 2009: 27-29). Within the framework of the R2P the responsibility of the individual government amounts to a legal duty. The responsibility of the international community, however, connotes an option. It should respond but if it does not, there is little that can be done. Up to now the Security Council cannot be sued for inaction just as the UN member states cannot be sued for not taking part in collective action under chapter VII. In the run-up to the 2005 UN

7 UN Secretary General, *Implementing the responsibility to protect*, A/63/677 (12 Jan. 2009).

8 UN General Assembly 2005.

Summit, the Bush Administration made it quite clear that it accepted the over-all concept of the responsibility to protect but it would not agree to any legal duties (Hehir 2011: 91). This is very much in line with the general interest of hegemonic states just mentioned to subject all other states to legal standards which provide leverage for putting the latter under pressure without limiting in any way the freedom of action of the former (Brock 2005). In this context the ICISS argued that meeting their responsibility would be in the self-interest of *all* states (ICISS 2001: 36). That may be true but is not much to build on in making the R2P operative. Nevertheless, potentially intervening states do have a legal duty too. That is the duty to adhere to international law. So whatever they do, R2P does not offer any states a pretext to deviate from the rules laid down in the Charter for collective action. This is a point which was heavily emphasized by the 2005 Outcome document (O'Connell 2011).

Differentiating responsibilities:

One of the most discussed features of the R2P as championed by the ICISS is the differentiation of the responsibility to protect into three subcategories: the responsibility to prevent, the responsibility to react and the responsibility to rebuild (ICISS 2001: 19-46). There is no need to go into details here. Suffice it to say that the 2005 Outcome Document does not take up this distinction in a direct way. But it emphasizes the idea that protection does not simply mean enforcement. As just mentioned, the focus is on 'enabling' the failing government to live up to its responsibility. And even if the international community should intervene against the will of an individual government it has to do so by making use of the entire spectrum of possible reactions provided by Chapter VII UN-Charter and not just of the possibility to react militarily.[9] 'Enabling' the respective state includes support for the build-up of capacities to prevent future mass atrocities.[10] Picking up on these statements of the Outcome Document and on the ICISS concept, the General Secretary in his 2009 Report on the R2P constructs three pillars on which the R2P is based: 'the protection responsibilities of the state', 'international assistance and capacity building' and a 'timely and decisive response' to emergencies.[11] Ban Ki-moon emphasizes that it is not only the states that are called upon to act but also civil society and private business and that the possibilities for a timely and decisive response comprises the entire range of actions not only of chapter VII, but also of Chapters VI on the pacific settlement of disputes and chapter VIII which opens up a wide spectrum of possibilities for cooperation with regional organizations. So even the responsibility to react does not first and foremost refer to military enforcement but – in the eyes of the Secretary General – has to be conceived in much broader terms.

This is very much in line with the idea of the ICISS to move away from the focus on military enforcement which is at the center of humanitarian intervention and this way to demilitarize the protection of people from mass atrocities. As was discussed above, there are good reasons for this. However, Ban Ki-moon does not exclude military intervention. This became clear in the Libya crisis. Even before the Security Council passed Res. 1973, Ban Ki-moon pleaded for a strong reaction to the events in Libya which – together with the resolution of the Human Rights Council – prepared the way for the decision to respond militarily.

What does all of this mean with regard to the dilemmas addressed in the preceding chapter?

(1) As far as the tension between securing peace and protecting people is concerned, the R2P affirms the legal competence of the Security Council for decisions on protective measures. But the R2P cannot solve the problem of what is to be done if no agreement can be reached by the Security Council. Thus the tension between the responsibility to peace and the responsibility to protect persists. The 2005 Outcome Document refers exclusively to the Security Council as appropriate decision-making body and underlines this statement by reminding the member states of their

9 UN-General Assembly, *World summit outcome document*, A/60/L.1 (15 Sept. 2005), §139.

10 UN-General Assembly, *World summit outcome document*, §138.

11 UN Secretary General, *Implementing the responsibility to protect*, A/63/677(12 Jan. 2009).

duties under international law and specifically under the Charter. This would be in line with the responsibility to peace. But at the same time, the Outcome Document acknowledges the need to act at the international level in cases in which governments are unable or unwilling to end mass atrocities. This has been interpreted as relegating the mention of the Security Council in the Outcome Document to a mere statement of preferences: Preferably the Security Council should act. But if it does not, other actors have to take over because mass atrocities are now recognized as central objects of international concern (Bannon 2006). This would challenge the responsibility to peace. The most important step to ease this dilemma would have been the acceptance of the code of conduct for the Permanent Five suggested by the ICISS. But this suggestion did not come through. So what the R2P has to offer for coping with the tension between protecting people and keeping the peace is rather modest. By stressing the prime responsibility of individual governments for protection from mass atrocities the R2P put a lid on the debate on redefining sovereignty (Bothe et al. 2005). By specifying the issue it helped to overcome the vagueness of purpose which goes along with the concept of 'humanitarian intervention'. By 'stretching' the decision-making (as seen by Ban Ki-moon) it cautiously opens up possibilities to reduce the dependence on the Security Council. More importantly, by differentiating the responsibilities it overcomes the focus of 'humanitarian intervention' on military enforcement. There is a wide array of non- military action to be taken in order to protect people outside. Prevention of mass atrocities and assistance to rebuilding war-torn societies contributes to the protection of people in a non-military way. That would definitely be in line with the responsibility to peace which Mary Ellen O'Connell talks about (O'Connell 2011: 71-83). And it would also mean that the R2P would be alive and function even if in specific cases like Syria it is not working.

(2) The mixture of humanitarian and non-humanitarian motives, which can be expected to rule protection politics throughout, has been discussed in the R2P context especially with a view to regime change. The ICISS stated in a straight forward way that 'the primary purpose of the intervention must be to halt or avert human suffering'. If the purpose of an intervention 'from the outset' was to change boundaries or to support one combat group's claims, this could not be justified as action under R2P. The ICISS was more hesitant in addressing regime change. On the one hand it stated that regime change, as such, 'is not a legitimate objective' of the R2P. On the other hand it conceded that protection may require the destruction of a government's ability to harm its people (ICISS 2001: 35). This, in turn, may require regime change.

The NATO countries intervening in Libya argued along this line that effective protection called for regime change. So that is what the intervention was heading for at a fairly early stage. Countries like Russia, China and South Africa saw this as an abuse of Resolution 1973. As a consequence, in the case of Syria the two Veto Powers took this as an argument for blocking any decisive action. This behavior can be rebutted as pure opportunism. Yet, there is a deeper problem involved.

The R2P tries to reconcile the sovereignty of states with international action to overcome mass atrocities. As Dembinski and Reinold state: "(…) this demands a responsibility on behalf of intervening actors to work actively for a compromise between governments and suppressed/rebelling parts of society" (Dembinski/Reinold 2011: 25). Under a R2P perspective this throws up the question whether, in the case of Syria, the international community has really done everything from the very beginning of the demonstrations to work for such a compromise. There is a lot of evidence that external actors very quickly began t support rebel groups thus marginalizing the civil society groups which worked for change within Syria. The Obama Administration already in August 2011 proclaimed that Assad had to go.[12]

The R2P can help to upgrade the weight of moral challenges in the definition and calculation of interests underlying decision making on protection. But it cannot, and should not aim at, depoliticizing the politics of protection (Jahn 2012: 36-58; Bulley 2010). The R2P does not confront external actors with a choice between moral and self-interested action but rather with a choice

12 The Editorial Board, 'Saving Egypt from Syria's fate', *The Washington Post*, 20 Aug. 2013.

between different policies. It can help to formulate such policies since it calls for a change of perspective from asking 'What is in our interest?' to asking 'What would work best in order to stop the violence?' The answer to the second question should form the basis for defining the interests of external actors ('Do we want to do and are we able to do what seems to be the best way for ending the violence?'). To this effect the R2P can serve as a framework of reference for the critique of the politics of protection.

(3) As stated above, international engagement for the protection of people from domestic mass atrocities is an extremely complex task. This goes for both immediate protection and the elimination of the root causes of violence and especially for the interaction between the two. In comparison to 'humanitarian intervention' which is focused on immediate protection, the R2P stresses both coping with the root causes of mass atrocities and direct protection. This comes to bear in the differentiation of responsibilities. The 'responsibility to prevent' and the 'responsibility to rebuild' or (in the terms of the Outcome Document and of the Secretary General in his 2009 report) 'capacity building' for the prevention of mass atrocities[13] address the need to look into the root causes of such crimes. The complexity of any intervention entails high risks of unintended consequences including moral hazards which Kuperman (2008) stresses and Bellamy and Williams (Bellamy/Williams 2012) question.

Dealing with root causes is less risky than military engagement. But there are two caveats: (a) dealing with root causes is just as complicated as military intervention; and it can lead to watering down the R2P to just another aspect of development assistance; (b) trying to deal with root causes can come in the way of immediate protection. *As to the first point*: Prevention and rebuilding leave more room for the incorporation of local agendas and local capacities for dealing with conflict and violence. That is certainly useful. But this depends on how prevention and rebuilding are being handled by the external actors, be they state or civil society. As the experience of fifty years of development cooperation shows, learning processes are slow and they keep running into unintended consequences of what is being done even with the best of intentions (Richmond 2013). In addition, the causal effects which are implied by speaking in terms of root causes may not come to bear in the way the language suggests. The dynamic of events and circumstances that leads to mass atrocities is difficult to grasp, let alone to control from the outside. Furthermore, the differentiation of responsibilities makes it more difficult to distinguish protection efforts from conflict sensitive development cooperation. To the extent that the responsibility to *react* is being played down, the responsibility to protect as such could melt into new forms of development cooperation in the post-2015 agenda and that way lose its identity as a distinct issue area. Broadening the agenda for protecting people may also lead to a watering down of the concept with the result that it would do no harm but neither would it do much good. In this case interest in the concept would soon peter out.

As to the second point: Work on root causes and immediate protection does not always go together smoothly. As Alex de Waal wrote in a polemical piece for the *New York Times* on 'How to End Mass Atrocities': The vision people like Gareth Evans, Samantha Power "and fellow idealists share is to send the cavalry over the hill not only to stop any massacres but also to herald justice and democracy" (de Waal 2012). De Waal argues that these high aims, praiseworthy as they are, can come in the way of effective action for ending mass atrocities. Therefore, protection policies should not be determined by such wide reaching ideas but should focus solely on the task to end mass atrocities which, depending on the case, may call for aggressive regime change or for a consistent commitment to a patient and tireless mediation effort. In this respect, the differentiation of responsibilities, while reducing the risks that result from the complexity of the task of protecting people from mass atrocities, has to be checked for the unintended consequences it may have for direct protection.

13 UN-General Assembly, *World summit outcome document*, §138; UN Secretary General, *Implementing the responsibility to protect*, A/63/677 (12 January 2009).

As far as direct protection is concerned, the ICISS presented precautionary principles to be considered in any decisions on how to react to domestic mass atrocities (ICISS 2001: 32-37). These precautionary principles are inspired by the much discussed just-war criteria. They can help to reduce unintended consequences. But they share the shortcomings of these criteria. As the reaction of the international community to the civil war in Syria has shown, it is extremely difficult to determine what 'proportional' means are and how 'reasonable prospects' can be ascertained. So the precautionary criteria do more to reflect the problem than to solve it.

5. Conclusion

The present paper addresses three dilemmas of international protection from intra-state mass atrocities. It argues that the R2P offers a normative frame of reference for dealing with these dilemmas. But after 'Libya' and the critique that the intervening countries had abused UN Security Council Resolution 1973, reference to the R2P (for instance in the case of Syria) has been rather 'thin'. On the other hand, the recent developments in the Arab world underline the urgency of a consistent engagement of the international community *vis-à-vi*s domestic mass atrocities whether this runs under the name R2P or some other concept.

The R2P as it stands calls for a shift of thinking from a 'right to intervention' to the responsibility of states and the international community. The international community is not to focus on the enforcement of universal standards against recalcitrant governments; its foremost duty is to assist or even enable governments to live up to their responsibilities. Thus, the R2P can be interpreted as easing the confrontational aspects of the international protection of people in favor of a more cooperative approach. There are indications that such a shift is actually taking place.[14]

But there is a basic issue involved here which reflects the continuing tension between the responsibility to peace and the responsibility to protect. The R2P does not offer an even-handed reading of responsibilities. For national governments 'responsibility' alludes to a *(quasi-)legal duty*, for the international community it offers a *policy option*: While each government under the ICC regime can be held legally responsible for committing war crimes, genocide and crimes against humanity, the member states of the United Nations are free to get involved in combating such crimes or not. While this freedom of action was a precondition for getting a consensus on the R2P, it also points to the limits of such responsibilities at the international level. The flipside of this is that individual states or 'alliances of the willing' may feel forced to intervene even without Security Council authorization. Thus, in the case of Syria, the entire debate almost moved back to square one – i.e. the situation in Kosovo in 1999. Liberal democracies defined the use of gas in Syria as a red-line the crossing of which would call for international intervention. Since such a response was blocked in the Security Council, Western and Arab states claimed that unauthorized intervention would be legitimate. However, the dilemmas of intervention by force came to bear in the way this claim was handled. The potential interveners were quite hesitant to move into Syria by way of outright intervention. In a much cited letter of June 2013, General Dempsey made it quite clear that all military options for changing the situation on the ground were costly and highly risky (Martinez 2013). Therefore, the response to the use of chemical weapons was to be limited with regard to its intensity and reach. The aim was not regime change but punishment and deterrence. In this regard, the reservations of the global South concerning military intervention to a certain degree converged with increasing inhibitions in the liberal West to use military force as a means of protecting people from mass atrocities.

However, exercising more restraint with regard to military action in cases of mass atrocities is not identical with a genuine de-militarization of the politics of protection. What is needed is the active strengthening of non-military possibilities of action. Here another basic dilemma comes into play. Playing down the confrontational, repressive aspects of the R2P and playing up its cooperative,

14 Task Force on the EU Prevention of Mass Atrocities, 'The EU and the Prevention of Mass Atrocities. An Assessment of Strengths and Weaknesses', *Budapest Centre for the International Prevention of Genocide and Mass Atrocities*, 2013.

enabling aspects certainly may help to ease the tensions between the responsibility to peace and the responsibility to protect. It may also ease the problem of mixed motives to a degree that is comparable with the issue of mixed motives in development cooperation, especially of the conflict-sensitive type. Finally the emphasis on enabling action certainly seems to be more in line with the complexity of protection because it also addresses root causes. However, there is a back-side to all this. Firstly, shifting emphasis from direct protection to prevention and rebuilding in connection with addressing root causes of violence may amount to just another attempt to "redo" a country with the help of an externally imposed agenda. Secondly, the convergence of the issue of mixed motives in protection politics and in development cooperation on the one hand may help to overcome unwarranted fears connected with the politics of protection, on the other hand the issue of mixed motives is one of the factors that leads to persistent doubts about the usefulness of development cooperation as an enabling strategy. Thirdly, trying to make protection more responsive to the complexities of coping with domestic violence by broadening the concept may lead to a watering down of the concept with the result that it would perhaps do no harm but neither much good. In this case interest in the concept would soon peter out.

So what is to do? With regard to the basic dilemmas of international protection from domestic mass atrocities nothing grandiose can be suggested. If nobody refers to it anymore, the R2P is dead. But even then the problem of protecting people against domestic mass atrocities would remain. Thus there is a need for a follow-on debate. "Syria" makes this quite clear. With regard to the differentiation of the responsibility to protect, one crucial point of such a follow-on would be to link the protection debate more closely to the peace building debate which has produced a lot of food for thought during the past years concerning the politics of enabling others to take care of themselves. Furthermore, a follow-on to the R2P approach would call for a renewed effort to deal with the decision-making process in the issue area of protecting basic human rights. This concerns the use of the veto in the Security Council, the role of the General Assembly and the interplay between the UN and regional organizations. While the respective recommendations of the ICISS and of Kofi Annan's High Level Panel on Threats Challenges and Change failed, there should be a second run. The international community has to rethink what it meant when it accepted the R2P. Thirdly, the relationship between protection according to international humanitarian law and human rights law on the one hand, protection from mass atrocities on the other, should be clarified. Fourthly, the fact finding capacities of the UN and regional organizations should be enhanced. This includes the creation of sufficient space for carrying out fact finding missions possibly with the help of internationally guaranteed military or police protection for such missions.

References

Arend, Anthony Clark/Beck, Robert J. 1998: International Law and the Recourse to Force: A Shift in Paradigms, in: International Law, ed. by Charlotte Ku, Paul F. Diehl, Boulder, 327-354.

Autesserre, Séverine 2009: Hobbes and the Congo: Frames, Local Violence, and International Intervention, in: Internantional Organization 63: 2, 249-280.

Bannon, Alicia L. 2006: Comment: The Responsibility to Protect. The U.N. World Summit and the Question of Unilateralism, in: The Yale Law Journal, 115: 5, 1157-1164.

Barnett, Michael 2005: Humanitarianism Transformed, in: American Political Science Review 3/4, 723-740.

Bellamy, Alex J. 2008: The Responsibility to Protect and the Problem of Military Intervention, in: International Affairs, 84: 4, 615-639.

Bellamy, Alex J. 2009: Realizing the Responsibility to Protect, in: International Studies Perspectives 10: 2, 111–128.

Bellamy, Alex J. 2011: Mass Atrocities and Armed Conflict: Links, Distinctions and Implications for the Responsibility to Protect, The Stanley Foundation: Policy Analysis Brief.

Bellamy, Alex J./Williams Paul D. 2011: The New Politics of Protection?, in: International Affairs 87: 4.

Bellamy, Alex J./Williams, Paul D. 2012: On the Limits of Moral Hazard: The Responsibility to Protect, Armed Conflict, and Mass Atrocities, in: European Journal of International Relations 18: 3, 539-571.

Bothe, Michael/O'Connell, Mary Ellen/Ronzitti, Natalino, eds. 2005: Redefining Sovereignty. The Use of Force after the Cold War, Ardsley Park.

Brock, Lothar 2005: The Use of Force by Democracies in the Post-Cold War Era. From Collective Action back to Pre-Charter Self Defense?, in: Michael Bothe/Mary Ellen O'Connell/Natalino Ronzitti, eds., Redefining Sovereignty. The Use of Force after the Cold War, Ardsley Park, 21-52.

Brock, Lothar/Deitelhoff, Nicole 2012: Schutzverantwortung und Friedenspflicht, in: Blätter für deutsche und internationale Politik, 7, 79-88.

Brock, Lothar/Holm, Hans-Henrik/Soerensen, Georg/Stohl, Michael 2012: Fragile States. Violence and the Failure of Intervention, London, 97-137.

Brockmeier, Sarah/Kurtz, Gerrit/Rotmann, Philipp 2013: Protection and Responsibility. An analysis of US Foreign Policy to Prevent Mass Atrocities, Berlin.

Brown, Chris/Ainley, Kirsten 2005:Understanding International Relations, Houndmills.

Bulley, Dan 2010: The Politics of Ethical Foreign Policy. A Responsibility to Protect Whom?, in: European Journal of International Relations, 16: 3, 441-461.

Chomsky, Noam 2011: The Skeleton in the Closet: The Responsibility to Protect in History, in: Philip Cunliffe, ed., Critical Perspectives on the Responsibility to Protect, New York, 11-18.

Cunliffe, Philip 2011: A Dangerous Duty: Power, Paternalism and the "Global Duty of Care", in: Philip Cunliffe, ed., Critical Perspectives on the Responsibility to Protect, New York, 51-70.

de Waal, Alex 2012: How to End Mass Atrocities, in: New York Times Reprints, 9 March.

Debiel, Tobias/Goede, Nils/Niemann, Holger 2009: Vom "neuen Interventionismus" zur R2P, in: Die Friedens-Warte, 84: 1, 53-88.

Deitelhoff, Nicole 2009: The Discursive Process of Legalization. Charting Islands of Pursuasion in the ICC Case, in: International Organization, 63: 1, 33-65.

Dembinski, Matthias/Reinold, Theresa 2011: Libya and the Future of the Responsibility to Protect, PRIF-Report 107, Frankfurt.

Deng, Francis/Rothchild Donald/Zartmann, I. William 1996: Sovereignty as Responsibility: Conflict Management in Africa, Washington DC.

Droege, Cordula 2007: The Interplay between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict, Research Paper 14.07, International Law Forum, The Hebrew University Jerusalem.

Duffield, Marc 2010: Risk Management and the Fortified Aid Compound, in: Journal of Intervention and Statebuilding, 4: 4, 453-475.

Evans, Gareth 2008: The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for all, Washington DC.

Finnemore, Martha 1996: Norms, Culture, and World Politics, in: International Organization, 50: 2, 325-347.

Finnemore, Martha/Sikkink, Kathryn 1998: International Norms Dynamics and Political Change, in: International Organization, 52: 4, 887-918.

Fröhlich, Manuel 2011: Der Fall Libyen und die Norm der Schutzverantwortung, in: Zeitschrift für Politikwissenschaft, 21: 1, 135-151.

Gromes Thorsten/Dembinski Matthias 2013: Bestandsaufnahme der humanitären militärischen Interventionen zwischen 1947 und 2005, HSFK-Report 2.

Habermas, Jürgen 2000: Humanität und Bestialität. Ein Krieg an der Grenze zwischen Macht und Moral, in: Reinhard Merkel (ed.), Der Kosovo-Krieg und das Völkerrecht, Frankfurt, 66-98.

Hagmann, Tobias/Péclard, Didier, ed. 2011: Negotiating Statehood. Dynamics of Power and Domination in Africa, Oxford.

Hehir, Aidan 2011: The Responsibility to Protect and International Law, in: Philip Cunliffe, ed., Critical Perspectives on the Responsibility to Protect, New York.

Holzgrefe, J. L. 2003: The Humanitarian Intervention Debate. in J.L. Holzgrefe/Robert Keohane, ed., Humanitarian Intervention. Ethical, Legal and Political Dilemmas, Cambridge

HRH Prince El Hassan bin Talal/Schwarz, Rolf 2013: The Responsibility to Protect and the Arab World: An Emerging International Norm?, in: Contemporary Security Policy, 34: 1, 1-15.

ICISS (International Commission on Intervention and State Sovereignty) 2001, The Responsibility to Protect, Ottawa.

Jahn, Beate 2012: Humanitarian Intervention. What's in a Name?, International Politics 49: 1, 36-58.

Katzenstein, Peter, ed. 1996: The Culture of National Security: Norms and identity in world politics, (New York 1996

Koskenniemi, Martti 2009: Miserable Comforters: International Relations as New Natural Law, in: European Journal of International Relations, 15: 3, 395-422.

Kuperman, A.J. 2008: The Moral Hazard of Humanitarian Intervention: Lessons from the Balkans, in: International Studies Quarterly, 52: 1, 49-80.

Martinez, Luis 2013: Gen. Dempseay lays out US military options for Syria, Luis Martinez@LMartinez ABC, 22 July 2013, http://abcn.ws/17ztK9z (accessed 9 September 2013).

Müller Harald 2004: Arguing, Bargaining and all that. Communicative Action, Rationalist Theory and the Logic of Appropriateness in International Relations, in: European Journal of International Relations, 10: 3, 395-435.

O'Connell, Mary Ellen 2005: American Hyper-Sovereignty from Kosovo to the "Global War on Terror", in: Michael Bothe/Mary Ellen O'Connell/Natalino Ronzitti, eds., Redefining Sovereignty. The Use of Force after the Cold War, Ardsley Park, 123-145.

O'Connell, Mary Ellen 2011: The Responsibility to Peace: A Critique of R2P, in: Philip Cunliffe, ed., Critical Perspectives on the Responsibility to Protect, New York, 71-83.

Oeter, Stefan 2008: Humanitäre Intervention und die Grenzen des völkerrechtlichen Gewaltverbots', in: Herfried Münkler/Karsten Malowitz (eds.), Humanitäre Intervention, Wiesbaden.

Paffenholz, Thania/Reychler Luc 2005: Towards Better Working in Conflict Zones: Introducing the Aid for Peace Approach, in: Journal of Peacebuilding and Development 2: 2, 4-22.

Peksen Dursun, 2012: Does Foreign Military Intervention Help Human Rights?, Political Research Quarterly, 65: 3, 558-571.

Reinold, Theresa 2010: The Responsibility to Protect. Much Ado about Nothing', Review of International Studies 36: Supplement S 1, 55-78.

Reinold, Theresa 2011: State Weakness, Irregular Warfare, and the Right to Self-Defense Post 9-11, in: American Journal of International Law, 105: 2, 244-286.

Richmond, Oliver 2013: From Peacebuilding as Resistance to Peacebuilding as Liberation, in: Karin Aggestam/Annika Björkdahl, eds., Rethinking Peacebuilding, New York, 64-77.

Rodin, David 2006: The Responsibility to Protect and the Logic of Rights, in: Oliver Jütersonke/Keith Krause, ed., From Rights to Responsibilities, Genf, 45-60.

Saxer, Marc 2008: Die Schutzverantwortung und die Weltordnung im 21. Jahrhundert, in: Zeitschrift für Politik 55: 4, 444-461.

Schlichte, Klaus 2008: Uganda, or: The Internationalisation of Rule, in: Civil Wars, 10: 4, 369-383.

Soerensen, Georg 2008: The Case for Combining Material Forces and Ideas in the Study of International Relations', in: European Journal of International Relations, 14: 5, 5-32.

Stewart, Rory/Knaus, Gerald 2011: Can Intervention Work?, New York.

Taskforce on the EU Prevention of Mass Atrocities 2013: The EU and the Prevention of Mass Atrocities. An Assessment of Strength and Weaknesses, Budapest.

Tepperman, Jonathan 2012: The Perils of Peacemeal Intervention, The New York Times, 8 March.

Thakur, Ramesh 2005: Freedom from Fear, in: Paul Heinbecker and Patricia Goff (eds.), Irrelevant or Indispensible? The United Nations in the 21st Century, Waterloo, 115–130.

UN Secretary General 2012: Report of the Secretary General on the Protection of Civilians in Armed Conflict, S/2012/376, 22 May.

von Arnauld, Andreas 2009: Souveränität und Responsibility to Protect, in: Die Friedens-Warte 84: 1, 11-52.

Waxman, Matthew C. 2009: Intervention to Top Genocide and Mass Atrocities, Washington DC.

Welsh, Jennifer 2004: Introduction, in: Jennifer Welsh, ed., Humanitarian Intervention and International Relations, Oxford

Wheeler, Nicholas J. 2000: Saving Strangers: Humanitarian Intervention in International Society, Oxford.

Wheeler Nicholas J./Dunne, Tim 2001: East Timor and the New Humanitarian Interventionism, in: International Affairs, 77: 4, 805-827.

Wiener, Antje 2008: The Invisible Constitution of Politics: Contested Norms and International Encounters, Cambridge.

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