Moving beyond international norm emergence –
Diffusion, contestation and adaptation
of an international norm:
The case of the Responsibility to Protect (R2P)
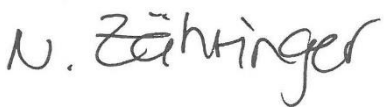

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A dissertation submitted to the Faculty of Humanities,

University of Witwatersrand, Johannesburg,

in fulfilment of the requirements for the degree:

Doctorate of Philosophy (International Relations)

Supervisor: Prof Malte Brosig

Declaration of Authorship

I declare that this dissertation is my own, unaided work. It is being submitted for the degree of Doctorate of Philosophy in International Relations at the University of the Witwatersrand, Johannesburg.

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Dedication

In loving memory of Georg (Georgie) Bernauer,

Who saw a child as an intellectual equal,

and inspired her with Philosophy, Science and the Arts.

1936 – 1991

Acknowledgements

Abstract

This study builds on the work done by leading constructivist theorists around norm evolution, from emergence, diffusion to contestation. It outlines a conceptual framework to guide research on norms and proposes a cyclical model in an effort to map the evolutionary process. The Responsibility to Protect (R2P) was chosen as the case study. The research aimed to identify the different meanings-in-use around the R2P norm, the causes of these divergences, as well as the consequences of various types of norm contestation on the norm evolution process. The levels of analysis focused on the global, regional and state level by conducting within-in case comparisons that include the United Nations, the African Union and South Africa. The focus was on contextualising the evolutionary process of norms, emphasising the relevance of the historical, institutional and cultural context in contrast to pursuing a solely rationalist approach. This study was pursued through a series of published articles across local and international journals.

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List of Abbreviations

ACIRC	African Capacity for Immediate Response to Crisis
AFS	African Standby Force
AMISOM	African Union Mission in Somalia
APSA	African Peace and Security Architecture
AU	African Union
BRICS	Brazil, Russia, India, China, South Africa
DRC	Democratic Republic of Congo
DV	Dependent variable
ECOMOG	ECOWAS Monitoring Group
ECOWAS	Economic Community of West African States
EU	European Union
GCC	Gulf Cooperation Council
HI	Historical institutionalism
ICC	International Criminal Court
ICISS	International Commission on Intervention and State Sovereignty
IGO	International governmental organisation
IO	International organisation
ISA	International Studies Association
IV	Independent variable
NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organisation
NTC	Libyan National Transitional Council
OAU	Organisation of African Unity
OH	Organised hypocrisy
OIC	Organisation of the Islamic Conference
P3	UNSC permanent three (US, UK, France)
P5	UNSC permanent five
PoC	Protection of civilians
PoW	AU Panel of the Wise
PSC	AU Peace and Security Council
R2P	Responsibility to Protect
RCI	Rational Choice Institutionalism
RWP	Responsibility while Protecting
SAAPS	South African Association for Political Studies
SADC	South African Development Community
SI	Sociological Institutionalism
UK	United Kingdom
UN	United Nations
UNGA	United Nations General Assembly
UNOAU	UN Office to the AU
UNSC	UN Security Council
US	United States
VAD	Vereinigung für Afrikawissenschaften in Deutschland

Introduction

A defining feature of the contemporary world is the diffusion of institutional models and the internationalisation of norms, which points to the role of international processes in shaping the identities and interests of actors around the world, the possibility of convergence … and the homogenisation of world politics.

Michael Barnett (2005, 252)

1. Research Aim

No one doubts the existence of international norms within the society of states and international organisations (IOs). These norms are instrumental in governing the processes of ongoing interactions and underpin efforts of maintaining global order. Yet it is only in the past couple of decades that scholars have begun to investigate the intricacies of how such norms arise, evolve and affect decision processes. Although our understanding of how norms function has progressed in leaps and bounds, existing models do not yet account for all outcomes and variations. Especially surprising is the fact that some contested norms, norms which fail to achieve consensus around their definition and application and which are continuously challenged, do not die a slow death, but seem to influence decision-making and policy. The research presented here aims to explore this phenomenon. In particular, the aim is to investigate the evolution of the Responsibility to Protect (R2P) norm, which is recognised as such a contested norm. R2P emerged almost two decades ago and has been cited and applied to numerous humanitarian crises ranging across Darfur, Libya and Syria, to name the obvious. Yet there is not a universally accepted meaning of this norm and its application to cases is inconsistent. The goal of this PhD study is an attempt to highlight the causes and consequences of R2P's contested nature in an effort to draw out the insights this case may offer in terms of understanding how contested international norms survive, diffuse and adapt.

This study builds on the work done by leading constructivist theorists around norm evolution and contestation, such as Wiener (2007; 2014), Krook and True (2012), Deitelhoff and Zimmermann (2013; 2019). It proposes a cyclical model in an effort to map the evolutionary process of norms, which examines the global, regional and state level. The focus is on contextualising the evolutionary process, emphasising the relevance of the historical, institutional and cultural context in contrast to pursuing a solely rationalist approach.

The research as a whole will address the following questions:
- What are the different meanings-in-use relating to R2P at different state and institutional levels?
- What causes these different understandings of R2P?
- Does norm contestation around R2P contribute to or constrain the norm's evolution, and if so, how?
- What are the different types of contestation and which one facilitates the evolution of the norm?

This study was pursued through a series of published articles across local and international journals:

Article 1
Zähringer, Natalie (2013) "Norm evolution within and across the African Union and the United Nations: The Responsibility to Protect (R2P) as a contested norm," *South African Journal of International Affairs*, 20 (2):187-206.

Article 2
Zähringer, Natalie (2019) "State Sovereignty and the Responsibility to Protect: Incompatible norms?" *Canadian Journal on the Responsibility to Protect*, 1:77-84.

Article 3
Brosig, Malte and Natalie Zähringer (2015) "Norm Evolution as a Matter of Conformity and Contestedness: South Africa and the Responsibility to Protect," *Global Responsibility to Protect*, 7:350-375.

Article 4
Zähringer, Natalie and Malte Brosig (2020) "Organised Hypocrisy in the African Union: The Responsibility to Protect as a Contested Norm," *South African Journal of International Affairs,* 27 (1): 1-22.

2.   Significance of Research

Since its emergence, there has been considerable interest and research on the topic of R2P. The norm will celebrate its 15-year anniversary in 2020. So far, it has seen the creation of a dedicated UN office and remains on the UN agenda through the UN Secretary General's annual reports. Yet it has also faced great controversy during its application to the Libyan crisis in 2011 and its failed application to the current Syrian crisis. Nevertheless, the debates are ongoing with various state and organisational actors attempting to specify and delineate its scope. This research taps into these debates with the aim of not only facilitating greater understanding of the R2P norm, but also to investigate the norm's evolutionary process and to identify what insights scholars may gain towards better conceptualising the evolution of international norms more generally.

This study embarks on a review of the existing literature around norm evolution. It finds that originally, research focused on the emergence of norms (Florini 1996; Finnemore and Sikkink 1998), as well as the socialisation and diffusion of norms (Checkel 2005; Risse, Roppe and Sikkink 1999), but these scholars assumed that there was an endpoint in norm evolution. Liberalists would view this point as the moment norms become hard law when, for example, it is enshrined in a treaty. In contrast, early constructivists focused on states' internalisation of the norm, where each state's individualistic approach to a new norm results in different interpretations of the norm emerging (Cali 2010, 32, 37). In the former case, there is a clear conceptualisation of the norm, while the latter acknowledges norm contestation. The greatest shortcoming of this early research was that it did not examine how norm contestation would affect norm evolution.

Therefore, this study builds on the seminal work by Finnemore and Sikkink (1998). It challenges any universal interpretation of norms and accepts the importance of the meaning-in-use of the norm. By focusing on the latter, it presupposes that norm evolution is ongoing.

As outlined in the literature review and conceptual framework, institutionalist and constructivist debates underpin the study. Although vast volumes of writings from leading liberal institutionalist and constructivist scholars emerged in the 1990s regarding institutions and international norms, the debates have started to slow down in recent years. This is partly due to theoretical fracturing and insufficient empirical testing of new theoretical claims. Those who have embarked on empirical testing have often chosen norms such as human rights (Risse et al 1999), which are less controversial as state action focuses on domestic implementation and hence leaves scope for individualistic and relativist interpretations. Therefore, norm contestation is not as apparent. However, many international norms, especially those that require collective international action, remain widely contested. As states are forced to coordinate their actions, variations in their understanding of the norm are brought to the fore. In an effort to avoid international gridlock and continuous anarchy, states have to reflect and re-examine the norm's meaning-in-use, which facilitates the norm's ongoing evolution. In these instances, it is yet unclear how theoretical assumptions might hold up when examined against such norms.

By pursuing an empirical study of a contested norm such as R2P, the intention is to test some of the theoretical claims by asking what the consequences of constantly changing norms are, especially in terms of how states engage with them. The research also seeks to identify the processes, which contribute to the evolution of contested norms. It therefore aligns itself with the literature on norm contestation as outlined by constructivist authors such as Wiener (2007; 2009), Zwingel (2012), Krook and True (2012), Deitelhoff and Zimmermann (2013, 2019), Acharya (2004, 2018), and provides a counterview in terms of the compliance literature as summarised by Treib (2008) which remains rationalistic in its approach. Hence, this study seeks a strong grounding within the historical and cultural context in an effort to broaden the scope of inquiry by considering the interplay of actors and processes rather than attempting to isolate these. By doing so, it sheds new light onto the process of norm evolution.

The findings of this study confirm that R2P is indeed a contested norm as questions remain in terms of how R2P fits in with other older conflicting norms such as state sovereignty. Furthermore, it is shown that the R2P norm itself is contested by raising questions, for example, whether the protection of civilians (PoC) is one version of R2P, one of many integral components of R2P, or a completely separate norm. The mentioned examples highlight internal and external contestation. The study then goes on to focus on whether new norms which challenge the existing normative order fail, or whether they align with older established norms, or whether they amend or replace the older norms. This is investigated by contrasting the impact of the two opposite forces: conformity and contestation. It finds that despite a greater pull towards conformity, contestation does provide a motor for change. Lastly, in an effort to explain the origin and impact of norm contestation, the study also investigates organised hypocrisy within an institutional setting and finds this to be a norm-generative condition.

Overall, this study attempts to provide a pathway for future research. To this end, the conceptual framework proposes a cyclical model of norm evolution and outlines a typology for both norms and norm contestation. In other words, contestation comes in many variations and each variation affects certain types of norms very differently. Hence, the realisation is that progressive norm evolution is dependent on a variety of factors and is a lot more complex than anticipated.

Although this research seems rather specialised, the approach and possibly the findings remain transferrable. Many other norms, like R2P, remain contested. As such, this research not only illuminates the evolution of R2P, but also provides some insights (and impetus for future study) into how norms evolve in more generalised terms.

3. Case Study: The Responsibility to Protect (R2P)

As mentioned, this research investigates R2P, a relatively new norm, which has undergone intense discussion by governmental, institutional and civil society actors across local and international levels, greatly amplified by the Libyan intervention, which took place in 2011. In selecting an emerging norm, the evolution of the norm will be traced across various levels of analysis in an effort to identify diverging interpretation, implementation and internalisation. R2P is a fascinating case study as it challenges the prevailing conceptualisation of international norms. Some may question whether R2P is even a norm, but given its current level of institutionalisation and affiliation with older norms, it undoubtedly meets the definition of a norm as used by Finnemore and Sikkink. It is rather its applicability to specific situations, which is questioned.

The evolution of R2P seems to be progressing rather rapidly as is evident by its quick institutionalisation. Furthermore, preliminary research indicated that evidence existed regarding diverging interpretations of R2P within and across international organisations, supporting the underlying assumption of this study regarding norm contestation. Consequently, this study attempts to determine what contributes to these mutations of the R2P norm.

The R2P norm did not come about in isolation. Many older norms have proven influential in its evolution, such as the advent of the international human rights regime post World War II (Deng 2009, 197). However, human rights on their own proved insufficient in preventing mass violence as since the end of the Cold War there has been a significant rise in internal conflict with large-scale human rights abuses, loss of human life and an inability of states involved to handle this on their own.

However, international responses proved as problematic. The UN Charter and its mechanisms under Chapter 7 were unable to address internal human rights abuses as these mechanisms were originally designed to combat interstate conflict; only minor extensions of this interpretation were made to include intrastate violence when a conflict was seen as threatening international peace and security. Mostly, the possibility of an international response was considered unlikely, especially if consent by the state in question was not obtained for such action. The reason was that any international responses were seen as challenging state sovereignty as enshrined in Articles 2(1) and 2(7) of the UN Charter and by

which all member states were ensured equality with other states and non-interference into their domestic affairs. In the absence of a uniform international approach, there are many examples of various unilateral and multilateral interventions during the Cold War and Post-Cold War era. However, these were often followed by accusation of aggressive behaviour by interveners and hence proved an insufficient means of response. On the other hand, the UN did attempt some action in the post-Cold War era that could be classified as humanitarian interventions. Yet ultimately such action often only exhibited minor success and, despite the principle behind humanitarian interventions, the UN's biggest failure was its inability to respond to the Rwandan Genocide in 1994.

R2P emerged in response to Rwanda and is associated to the concept of human security (Dembinski and Reinold 2011, 5). Although there seems to be some intra- and inter-institutional convergence around the R2P norm, its full scope and application remains questionable. While the UN and the AU made efforts to incorporate formal rules around R2P, these remain vague in parts and so far fail to consolidate the content. Ultimately, both organisations continue to shift the emphasis internally with various documents and mechanisms appearing, making it very difficult to interpret the norm as a whole. There is a lack of a clear and coherent institutional interpretation, which leaves the norm open for contestation, as became apparent during the Libya crisis of 2011. However, rather than this event stopping the evolution of R2P dead in its tracks, states like Brazil re-evaluated the norm and proposed a re-conceptualisation by introducing the concept of responsibility while protecting (RWP), surprisingly not dismissing the most controversial component of R2P, namely intervention as a last resort.

These developments have inspired this research as they provide evidence of on-going norm evolution in light of contestation. In a similar vain to scholars such as Jennifer Welsh, a former UN Special Advisor on R2P (Welsh 2019), this study's aim is to investigate the processes that underpin norm evolution and how the evolution of R2P fits into the bigger emerging conceptual framework around norm evolution. It does so by turning to constructivism with its emphasis on a social construction of reality (Barnett 2005, 259) and recognises that constructivist thinking proves useful, i.e. the research benefits from focusing on "how meaning is enacted" and what the distinct patterns and conditions of these processes are.

4. Research Plan

As the assumption is that different institutional processes overlap and influence each other, the presumed lack of institutional independence prevents a cross-institutional comparison. Nevertheless, the single case option does not exclude within case comparison. A comprehensive study would ideally examine the evolution of R2P across the following:
- Time: commencing with the appearance of the R2P concept in 2000 and tracing its evolution into the present day.
- Geographic space: On a horizontal level, all continents from South America, Africa, Europe and Asia are debating the R2P concept.
- Levels of analysis: Vertically, investigations would have to range from the state level (not to mention the sub-state level) to the sub-regional, regional and international

level. A multi-layered approach is essential to facilitate an examination of the interconnectedness and "nestedness" (Brosig 2011, 150-151) of these actors.

Clearly, such a comprehensive approach is not achievable within the constraints of a single author study. However, given that the aim of this research is not to provide comprehensive testing, but to identify possible conditions, which facilitate evolution, the data can be limited. There are multiple options available in terms of delineating the data. Although more restrictive, each could possibly provide important insights into the evolution of R2P. Some of the options are listed below, each highlighting their advantages and disadvantages.

The first option is to focus on various institutional levels and their interaction, for example on a regional organisation such as the AU and determining how other institutions above and below influence the evolution of R2P within it. At the global level the UN would be the most relevant actor, below there would be sub-regional organisations such as SADC and ECOWAS, with also select states playing an important role. Specific cases such as Darfur, Libya and the DRC would help to map the evolution progress of R2P. This option, although very original in its approach due to its Africa focus, would be problematic to complete due to difficulties in obtaining relevant documents from African actors, as these are often unavailable.

The second option would be to use a sequence of case studies to plot the evolution of the norm over time, such as Darfur, Libya, Syria and others. Although much more doable, it would be more a historical narrative and far less institutional in its approach. The outcome would be an accurate reflection of how R2P has evolved, with little insight into why it did so, and therefore not adding much to other existing narratives on R2P.

The third option would be to focus on different institutional levels (i.e. global, regional, and state) and their interaction in ONE case study (e.g. Libya). Although addressing the institutional shortcoming above, due to its limited timeframe it would lack the evolutionary aspect of norm evolution, which is a fundamental premise in this study.

The fourth option is a hybrid of the above and the one pursued in this study. It will occur along two lines: a temporal examination starting in 2000 which analyses the evolution of R2P over time, while also tracking this evolution across different levels of analysis (i.e. national, regional, global) by focusing on the various cultural contexts (Klotz 2009, 52-54). The temporal investigation will look at one decisive event per level of analysis (Libya is one which straddles all three). Meanwhile, three instititutions are selected, one at each level: South Africa, the African Union and the United Nations. The first two were chosen due to the fact that they have not featured extensively in the R2P debate and may provide fresh insights. The AU in particular has played an important role in envisioning and institutionalising the R2P norm. The UN is important as it highligths the ongoing attempt to (re)conceptualise R2P at the global level through input from a variety of players across all levels. This option avoids the shortcomings of the above by allowing an examination into both the evolutionary and institutional processes. However, it may be somewhat limited in both the number of cases and the depth of information available, but overall it is the best option in facilitating the identification of possible evolutionary conditions. Although the fourth option is more ambitious, through the outlined delineation of the data, the hope is that it provides valuable insights without becoming too superficial.

5. Literature Review and Conceptual Framework[1]

This literature review highlights the scholarly debates on the evolution of international norms since the constructivist turn in the early 1990s. In doing so, it tracks the different stages of norm evolution by outlining norm emergence, diffusion and contestation, as well as the actors involved in driving normative change. The reflections also highlight gaps in the literature and revisits the idea of a cyclical model of norm evolution that considers the role of norm contestation in the recommencement of the cycle.

5.1. Theoretical Foundations: Constructivism and New Institutionalism

Constructivism was first introduced by Onuf in his book *World without Making* in 1989. Wendt then popularised this approach with his article in 1992, 'Anarchy is what states make of it'. In a shift away from rationalist thinking, Wendt's focus was on identity rather than interest as the foundation of social reality, with structures given an equally important role in constituting any social interaction (Zehfuss 2004, 10-12). According to Wendt, "people act on the basis of meanings that objects and actors have for them … these meanings are not inherent in the world but develop in interaction" (Zehfuss 2004, 14). Subsequently, Kratochwil began to analyse the role of rules and norms in political life from this constructivist perspective, highlighting that interactions were based on shared (or contested) understandings which emerge through processes of deliberation and interpretation (Zehfuss 2004, 15-17). The emergence of constructivism gave rise to the "next great debate", portrayed by the division among the two main social theories, rationalism versus constructivism. Each of their main assumptions are summarised in the table below (Barnett 2005, 253-267).

Table 1: Comparison between Rationalism and Constructivism

Rationalism	Constructivism
Individualism Structures can be reduced to the aggregation of their individual parts and their interaction.	Holism Structures cannot be decomposed to the individual units because structures are more than the sum of their parts.
Agency Actors are constrained by structures which are made up of the aggregate of actor's properties.	Structure Structures not only constrain, but are constitutive as interests are constructed through interaction within a specific environment.
Materialism Actors are guided by fixed interests and constraints which are both material in nature.	Ideationalism In addition to the material, structures and actors' interests are made up of normative elements such as ideas, norms and rules.

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[1] The International Studies Association (ISA) conference in San Francisco in March 2018 had as its main theme the evolution of international norms. The conceptual framework of this study was presented as a paper at the conference.

Logic of consequence	Logic of appropriateness
Actors determine their interests by calculating the costs and benefits.	Actors are much more aware of what is considered appropriate.

Institutionalism originally predated constructivism. It was already at the heart of Political Science until the 1950s. However, it suffered severely under the challenges of the behavioural revolution. In the 1980s it started making its major comeback under "new institutionalism" (Lowndes and Roberts 2013, 1). While neo-realism and neo-liberalism, which dominated IR scholarship in the 1980s, gave little consideration to how norms and ideas influenced states' interests, Wendt and Kratochwil's emerging constructivist approach introduced ideas around history, culture and identity into the discourse. Wendt's contribution was that structures not only constrain actors, but can also generate patterns of behaviour by helping to construct identities and interests of agents. Furthermore, these structures can be normative in their essence by either reproducing habits, or enabling critical reflection which allows the structure to be transformed. In turn, Kratochwil went on to outline the first systematic treatment of rules and norms, recommending the use of interpretive approaches to help reconstruct how meaning is enacted (Barnett 2005, 254-256). The subsequent result was a differentiation within institutionalism into various rival theories. Today, the following three main strands are recognised: rational choice institutionalism (RCI), historical institutionalism (HI) and sociological institutionalism (SI). However, it is the latter strand of sociological institutionalism which influenced many of the scholars who embarked on a conceptualisation of norm evolution in the 1990s.

SI scholars point out that as a whole the cultural dimension remains underdeveloped. They acknowledge that occasionally actors follow rules "because they are seen as natural, rightful, expected and legitimate" (March and Olsen 2009, 478). As a result, SI views institutions "as norms and culture" (Rhodes et al 2006, xv) or "practices" (Duffield 2007, 4). They can exist in the minds of people without necessarily being formalised (Duffield 2007, 8). SI identifies institutions as "independent entities that over time shape a polity by influencing actors' preferences, perceptions and identities" (Rhodes et al 2006, xv-xvi). SI advocates a logic of appropriateness, in contrast to RCI's logic of consequence (Pollock 2009, 127). The logic of appropriateness is based on "socially constituted and culturally famed rules and norms" (Schmidt 2010, 2).

5.2. Norm Emergence

Early SI scholars who investigated the origins of norms, hoped to identify the processes, which led to their emergence. In their widely cited article from 1998, Finnemore and Sikkink define norms as: "a standard of appropriate behaviour for actors with a given identity" (891). In their norm evolution model, they emphasised the importance of looking at the different stages of norms, and how these are "characterised by different actors, motives, and mechanisms of influence" (Finnemore and Sikkink 1998, 895). Yet despite their model's reference to a *cycle,* Finnemore and Sikkink's 'Life Cycle of Norms' remains somewhat linear and portrays a clear start and endpoint to norm evolution, as illustrated below:
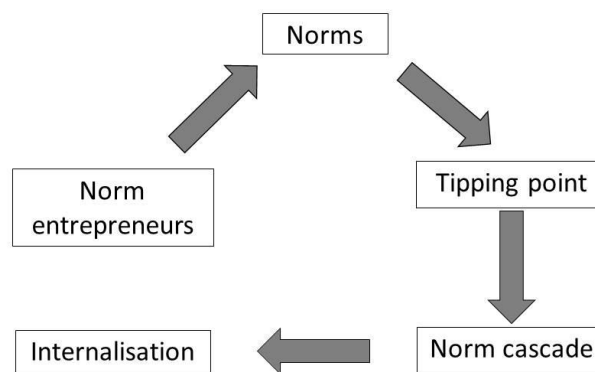
Figure 1: Lifecycle of norms by Finnemore and Sikkink

The model outlines how a norm emerges once norm entrepreneurs convince a *critical mass* of states to adopt it. The process starts at the state level where norm entrepreneurs, formulate and advocate a new norm that they then encourage states to adopt (Finnemore and Sikkink 1998, 896-898). The next step on the evolutionary path requires a *tipping point*, which generally is around the point where one third of all states embrace the norm. Consequently, a norm cascade follows as other states are socialised (by either censure or praise) into becoming norm followers by imitating those, which have already accepted the norm. The last stage is internalisation where "conformance to the norm becomes automatic" (Finnemore and Sikkink 1998, 895, 901-904). Finnemore and Sikkink are not the only authors to treat internalisation as the endpoint of norm evolution. Risse, Ropp and Sikkink (1999) in their book highlight variations of norm internalisation, Checkel outlines an entire special issue of *International Organizations* (2005) in which the mechanisms which lead to internalisation are examined, while Wiener and Puetter add "acceptance" to the concept (2009).

These works stand in contrast to later assumptions that internalisation should not be considered the endpoint. Subsequent recent research on international norms by Wiener (2007; 2014), Krook and True (2012), Acharya (2004; 2018), Deitelhoff and Zimmermann (2019) raises valid questions around how norms are consitituted and applied. By questioning the static nature of norms and the prevailing linear view of norm evolution, norms today are recognised as much more dynamic. Furthermore, recent scholarship has also elaborated on who the norm entrepreneurs are and what their role is. These criticisms are considered further below.

5.3. Norm Diffusion

As mentioned, after norm emergence Finnemore and Sikkink introduce the idea of a norm cascade. More recent research refers to this as norm diffusion. For diffusion to occur continuous interaction takes place between states at the national level, with their respective domestic interests and identities, and the international institutional processes which underpin and shape interaction and practice (Barnett 2005, 259).

Specifically, once new norms emerge, a process of socialisation is required, the focus of subsequent norm evolution research. In 1999 Risse, Ropp and Sikkink published an edited book entitled *The Power of Human Rights: International Norms and Domestic Change.* Their focus was on norm diffusion and how institutionalised human rights norms affects domestic politics across diverse settings. (Risse and Sikkink 1999, 2-5). Overall, the book touches on the impact of socialisation on domestic actors. In 2005 *International Organizations* published a special issue on "International Institutions and Socialisation", examining different mechanisms of international socialisation and how these lead to internalisation of norms within the European context. The convener, Checkel (2009, 116), defines socialisation as "the process of inducting new actors into norms, rules and ways of behaviour of a given community."[2] The mechanisms, which underpin this process, are summarised by Checkel as *strategic calculation*, *role-playing* and *suasion*. Many other authors such as Finnemore and Sikkink (1998), as well as Florini (1996), Risse and Sikkink (1999), and Acharya (2018) mirror these mechanisms.[3] Each has a very different impact on the outcome of internalisation. In the case of strategic calculation, state interest is influenced by the social and/or material rewards a state may gain in adopting a specific position. (Checkel 2009, 119). When considering role playing, the organisational or group environment provides cues on how a state should act. (Checkel 2005, 812). In contrast, when considering the final mechanism of suasion, arguments are presented and states engage and reflect before internalisation and are motivated chiefly by the perception of legitimacy. As such legitimacy focuses on the processes itself and does not necessarily correspond to "substantive efficiency" (Checkel 2005, 812). The importance of legitimacy over substance is also reflected in the works of Finnemore and Sikkink (1998, 906), Wiener and Puetter (2009, 5), and March and Olsen (2006, 10).

Finnemore and Sikkink's model furthermore recognises the need to have an organisational platform which legitimises norms (1998, 899). Hence, institutionalisation is outlined as an integral component. Institutions have an important role to play in the process of norm evolution as they provide a forum for debate, frame expectations and draft rules on norms. Recognising that there are numerous definitions for institutions,[4] the definition used here comes from March and Olsen (1998, 984) who define an institution as "a relatively stable *collection* of practices and rules defining appropriate behaviour for specific groups of actors in specific situations" (emphasis added). Unfortunately, norms often are equated with institutions. The difference, however, is in "aggregation: the norm definition isolates single standards of behaviour, whereas institutions emphasise the way in which behavioural rules

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[2] Risse and Sikkink use another definition of socialisation: a "process by which international norms are internalised and implemented domestically" (Risse and Sikkink 1999, 5). Personally I feel that this second definition is more accurate for 'internalisation'. A definition of socialisation by Barnett emphasises the role of norm entrepreneurs by defining socialisation as states taking on the identity of a dominant peer group (Barnett 268). Furthermore, Wiener uses different terminology for the stages of norm evolution. I would argue that my use of socialisation is similar to Wiener's idea of the referring stage in that it involves societal recognition and social validation at the institutional level (Wiener 2014, 19).

[3] Acharya uses the terminology: strategic interaction, hegemonic socialisation and social construction (Acharya 2018, 33-34).

[4] Mearsheimer (1994/1995, 8) defines institutions as "a set of rules that stipulate the ways in which states should cooperate and compete with each other." North's definition is "the rules of the game in a society, or more formally, the humanly devised constraints that shape human interaction", cited by Stein 2008, 204.

are structured together and interrelate" (Finnemore and Sikkink 1998, 891). It should be noted that the term institutions as used here is not synonymous with IOs.

Surprisingly, it has proven difficult to find definitions for the actual process of institutionalisation, even though numerous scholars make use of the term. One such definition is "the degree to which networks or patterns of social interaction are formally constituted as organisations with specific purposes" (Baylis and Smith 2005, 774). Noticeable and useful here is the classification of degrees. Yet another definition from a sociological viewpoint, however, seems more appropriate. Here institutionalisation is defined as "the process, as well as the outcome of the process, in which social activities become regularised and routinized as stable, social-structured features" (Jary and Jary 1991, 315).[5] Taken together, the proposition is that institutionalisation covers everything from formalising a norm (e.g. the AU's incorporation of the right to intervene in its Constitutive Act) to making it an integral part of the fibre of the organisation (which in the case of R2P is considered lacking in the AU's case). Hence, it may encompass varying degrees which range from the incorporation of certain rules as part of the overall institutional framework at the minimum, to the filtering down into subsidiary organs where these rules underpin accepted institutional practice. The degree of institutionalisation is largely dependent on a variety of factors. For one the institutional impact is influenced by the professionalization of staff (Finnemore and Sikkink 1998, 905) and the institution's ability towards autonomy of action (Jackson and Sørensen 2003, 118). The assumption is that the greater the availability of expertise and institutional independence, the more prevalent is norm convergence.

It is apparent that some form of socialisation is necessary to initiate institutionalisation. Nevertheless, it can be assumed that these two processes reinforce each other. For one, institutional frameworks themselves provide opportunities for socialisation (e.g. the UN's annual discussions around R2P). As such, a state's internalisation of a norm may not necessarily be a direct consequence of institutionalisation, but may require further socialisation to cement any institutional impact. Furthermore, individual states are confronted with multiple levels of socialisation and institutionalisation at the international, regional and sub-regional level. Organisations today admittedly share competencies, forcing them to coordinate their actions (Brosig 2011, 147). Therefore, institutional interplay should be accepted as a given. By examining institutionalisation within and across organisations, an interesting framework emerges to analyse the interplay between these institutions. The question is how this overlap affects norm evolution, especially as organisations have very different dynamics.

5.4. Norm Localisation and Internalisation[6]

The next step is a necessary shift in focus to the state level. Internalisation is defined as the level at which "norms acquire a taken-for-granted quality and are no longer a matter of broad public debate" (Finnemore and Sikkink 1998, 895). It reflects a state's full acceptance and implementation of a norm both legally and culturally at both the domestic and

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[5] Wiener does not use institutionalisation, but speaks of a constituting phase, which is conceptually linked as it involves formal validation at the international level (Wiener 2014, 19).
[6] Both localisation and internalisation, as outlined previously, share similarities with Wiener's idea of an implementing stage since her focus is also on individual states and the cultural validation (Wiener 2014, 19).

international level. In essence, a state's internalisation of a norm could signify the endpoint of a norm's evolution. Yet the main criticism of the above-mentioned authors is that they attach stable meanings to norms throughout the process of diffusion. However, given the existence of contested norms, this remains questionable and consequently this review attributes greater value to Acharya's concept of localisation in explaining the processes international norms undergo at the domestic level.

Localisation, according to Acharya, foresees a process by which international norms "which may not initially cohere" are aligned with "local beliefs and practices" until they become congruent with the "pre-existing local normative order" (2004, 241, 244). Specifically, the process may include *framing* the norm using familiar language, associating it to pre-existing norms (i.e. *grafting*) or only borrowing those aspects which are more in line with local ideas (i.e. *cultural selection*), hence the norm is re-presented, reinterpreted and/or reconstituted (Acharya 2004, 243-244). Although socialisation in this research is assigned to the international level and localisation intended as bridging the state and international level, their consequences seem similar. A clarification on the difference between Checkel's idea of socialisation and Acharya's use of localisation therefore seems appropriate. "In constructivist perspectives on socialisation, norm diffusion is viewed as the result of adaptive behaviour in which local practices are made consistent with an external idea. Localisation, by contrast, describes a process in which external ideas are simultaneously adapted to meet local practices" (Acharya 2004, 251). This is reinforced by the learning process that is individualistic amongst a variety of actors with different backgrounds (Florini 1994, 380). Although socialisation is recognised as an important process, the assumption in this study is that localisation has greater explanatory power when examining the emergence of diverse interpretations of international norms at the domestic level as localisation allows for local adaptation. Hence, by incorporating Acharya's idea of localisation, it is clear that the substance of each individual state's internalisation in terms of the meaning-in-use of the norm may vary considerably. Therefore, localisation as a concept is useful, as it becomes the mechanism, which links the international and national level in the norm evolution process, while also providing valuable insights into the internalisation process and, most importantly, highlighting the origin of norm contestation.

It is because of these diverging internalisations that a collective measuring of compliance becomes difficult (Brosig 2012, 402), as at no point is there likely to be an agreed upon understanding of the norm. This highlights the importance of investigating norm internalisation by individual actors, especially states, in order to determine the meaning-in-use of the norm. The assumption is that state acceptance of a norm is more important than the norm's *formal validity*. Therefore, norms are only as "good ... as what actors make them out to be" (Wiener and Puetter 2009, 4). However, evidence of internalisation itself may be difficult to come by, as internalisation is not easily visible. Internalisation can be identified by focusing on changes in a state's interests or collective identity as well as general state action (Risse and Sikkink 1999, 10).

5.5. Norm Entrepreneurs

Originally the concept of norm entrepreneurs was limited to actors who jump start norm evolution by actively engaging in socialisation processes. Despite the fact that norm

entrepreneurs are clearly essential because without them there would be no progress, academic scholarship has only recently given them more attention. Finnemore and Sikkink just viewed them as individual persons with an organisational platform (1998, 896-898). Checkel elaborated that they raise awareness around a cause and bring it onto the political agenda, having the skills and means to do so, but entirely dependent on the constraints of the setting in which they operate (2012, 1-2). Besides individuals, there is the question of whether a state can be considered a norm entrepreneur. Here Canada as the promoter and host of the ICISS clearly fulfils the criteria. However, what if they do not actively participate as advocates of the norm in global debates? Here research by Brosig and Zähringer (2015) on South Africa's response to R2P proves insightful. South Africa is identified as a norm taker who became a reluctant norm enactor in the aftermath of the Libyan crisis through vocal criticisms of the UN's response, which influenced the AU's reaction, and application of R2P. In doing so South Africa highlighted norm contestation around R2P and like Brazil could be seen as contributing to the norm's evolution.

Even when states move from reluctance to opposition, Acharya (2018, 14, 17) argues that global agency begins with challenging and resisting the existing order. This is particularly applicable to the South challenging the North. The extreme case scenario would be the impact of states on the fringes of global society. Checkel (2012, 3) argues that there is a danger in assuming that all norm entrepreneurs are driven by altruistic motives. This was followed-up with research on norm challengers (Heller and Kahl 2013) and antipreneurs (Bloomfield 2016). Even more recent, Wunderlich investigates this premise in her book *Rogue States as Norm Entrepreneurs* (2020). Her approach challenges the idea that norm diffusion can only be interpreted as a universal spread of Western liberal values (Wunderlich 2020, 2) and considers the role played by those in opposition towards normative change. The implication is that norm evolution viewed solely as a progressive development may be misguided and furthermore that contestation by antipreneurs may have a developmental influence on norm evolution.

Another question is whether IOs have enough agency to influence the norm evolution process or whether they are just facilitators of the socialisation process. Socialisation as discussed above is often applied solely to states. The question remains whether mechanisms of socialisation can be applied to international institutional actors, not just states. In other words, can institutions be socialised? Then there is the question of whether institutions can act as socialisers or even norm entrepreneurs. When considering R2P there seems to be evidence that institutions such as the UN are also promoters of the norm and not merely places of socialisation (Checkel 2005). By using the term actors in their definition of norms, Finnemore and Sikkink's do not restrict the idea of agency only to states, but allow for the possibility of other actors such as IOs. Checkel (2012, 1) too mentions institutional norm entrepreneurs, which would imply both state and international organisational actors can act as such, an idea which others seem to neglect. In this respect it is important to consider that IOs are not necessarily single unitary actors and that certain bodies outside the direct influence of member states may be influential in the framing of norms. In addition, institutions not only highlight possible conflicting interpretations around norms, but they also facilitate convergence by seeking consolidation and universalisation (Finnemore and Sikkink 1998, 905- 906). A focus on institutional agency undoubtedly could prove an important conceptual extension

One problem which remains in the literature is that the use of the term norm entrepreneur carries the connotation of actors who start the process. Yet how would one best classify actors who continue to be influential, both as promotors and opposers, throughout the evolutionary cycle? The literature fails to provide an effective term for actors who continue to drive the process. To overcome this shortcoming, one possibility might be to introduce a new term such as norm shapers. In the economic sense, however, the term entrepreneur is not restricted merely to actors only embarking on something new, so this study opts to extend the meaning of the term norm entrepreneur to actors influential during the norm emergence phase as well as beyond. Furthermore, the term is also used broadly to include both advocates and opponents whose actions facilitate ongoing conceptualisation of the norm.

5.6. Norm Contestation

Originally, internationally adopted norms were considered as uncontested with fixed definitions, while the existence of contestation was unrecognised (Deitelhoff and Zimmermann 2019, 5). However, quite extensive scholarship subsequently has challenged this approach and attempted to fill this conceptual gap. Examining internalisation provides evidence of the contestedness of a norm by highlighting how individual actors perceive a norm, but contributes little to the question as to what happens next. Subsequent research contends that this contestedness leaves the norm soft and much more pliable. It facilitates the evolutionary process as these divergent expressions of the norm necessitate a re-conceptualisation of the norm towards convergence as otherwise collective international understanding and action becomes untenable. Hence, a recommencement of the process becomes necessary, as illustrated by the cyclical model of norm evolution below.
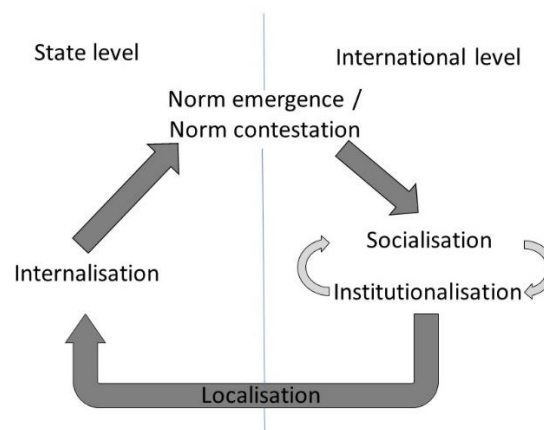
Figure 2: A cyclical model for the evolution of norms

Norm contestation may be viewed both externally and internally. In other words, the norm may be in competition with other norms, or there may exist different interpretations of the norm itself. Originally, emphasis was placed on the former, i.e. how the existence of other conflicting norms influenced a norm's evolution (e.g. state sovereignty versus R2P). Florini (1996, 367-368) highlighted that external contestation is important as the resulting competition facilitates the evolution of norms and the "survival of the fittest". However, this idea is being extended to internal contestation. It is this latter approach, which has long been neglected and hence is the focus here. Any investigation into norm contestation must

also consider the impact of different emerging meanings of the norm itself. As per Krook and True (2012, 104-105), each norm, once placed into a variety of different contexts and exposed to the interpretations of diverse actors, is likely to simultaneously follow diverging trajectories, the resulting competition leading to the contestedness of the norm itself. Hence, the initial meaning of a norm may change as the evolutionary process continues, especially as various overlapping levels of socialisation may result in different meanings of the norm emerging at multiple institutional and state levels. Krook and True emphasise "that norms diffuse precisely because – rather than despite the fact that – they may encompass different meanings, fit in with a variety of contexts, and be subject to framing by diverse actors" (2012, 105). This highlights the inadequacies of any linear analysis to the evolution of norms. Rather the evidence suggests that norms often remain fluid, interpreted as "works-in-progress", not "finished products" (2012, 105), thereby complicating how states interpret and apply them. Therefore, applying this to internal contestation, constructivist such as Wiener and Puetter (2009, 9-10) assume:

> Once norm interpretation and implementation occur in various different contexts, the meaning attached to a norm is likely to differ according to the respective experience with norm-use. ... It has therefore been argued that norm 'erosion' rather than the 'power' of norms will eventually prevail. However, if norms evolve interactively, ... then any process of contestation will reflect a specific (re-) enacting of the normative structure of meaning in use. It will therefore be constitutive towards norm change.

Furthermore, Zwingel (2012, 115) posits that international norms themselves have an evolutionary nature and acknowledges multidirectional processess. Therefore, for these theorists norm contestation is a requirement to facilitate the evolutionary process. It is only once contestation becomes apparent through norm usage that actors are faced with the necessity to reflect and reconstitute it. By highlighting the shortcomings of prevailing models on norm evolution, this renewed constructivist turn is inserting a much needed re-evaluation of how norms are perceived and conceptualised. Although these critiques raise valid concerns, it is as yet unclear how the constructivist input will translate into a viable research framework. Zwingel (2012, 119) points out that "studies show *that*, but not *how* international norms have unfolded meaning" (emphasis in original). Deitelhoff and Zimmerman (2013, 1) add their ideas by stating that conventional constructivists perceive contestation as weakening the norm, on the other hand critical theory constructivists acknowledge that contestation can stengthen a norm. Yet they too acknowledged that it was not yet clear what conditions lead to specific result. More recently, Acharya (2018, 55-57) has attempted a model of norm circulation where contestation is attributed with strengthening and enhancing "the prospects for its application and compliance."

5.7. Typology of Norms

In seeking an answer in terms of what factors may influence the outcome of contestation, one area of inquiry consists of investigating different categories of norms. Duffield (2007, 8) classifies the different functions of norms as constitutive, regulative and procedural. He also specifies that these functions are not mutually exclusive, but can overlap. *Constitutive* norms are those that "create the very possibility of engaging in conduct of a certain kind" (Duffield 2007, 12). In other words, such norms help shape the identities, interests and

preferences of agents (Duffield 2007, 7). Meanwhile, *regulative* norms provide order and constrain behaviour (Duffield 2007, 6). They come in two forms, prescriptive (requiring or prohibiting certain behaviour) or permissive (allowing optional action). Lastly, *procedural* norms apply specifically to the institutional context (Duffield 2007, 14). It is however not quite clear how the regulative and procedural norms are delineated.

In 2014, Wiener published her book on *A Theory of Contestation*. She too embarks on a typology of norms and identifies three types of norms: fundamental norms, organising principles and standardised procedures. On the one end of her spectrum are *fundamental norms*, the principles and rules of global governance, which are widely recognised and considered just and legitimate. An example would be human rights (Wiener 2014, 24-25). At the other end are *standardised procedures* that are stipulated in treaties and entail specific instructions. Here examples would be Articles 2(4) and 2(7) of the UN Charter, which specify the prohibition on the use of force and state sovereignty (Wiener 2014, 37-38). According to Wiener, fundamental norms are considered as having the lowest level of contestation as these norms have broad acceptance and applicability, while standardised procedures, which have a much narrower moral reach, lead to a high level of contestation. In between Wiener identifies a "legitimacy gap" and argues for the insertion of *organising principles*, which would facilitate regular contestation in order to avoid potential conflict.

Table 2 summarises the similarities and differences in conceptualisation between Duffield and Wiener's typology of norms. As per both of their definitions, Duffield's procedural function of norms seems to overlap with Wiener's standardised procedures as both emphasise the institutional aspect. However, equating constitutive norms with fundamental norms is less obvious, although it could be argued that both share the idea of greater legitimacy as well as a broader, less formal applicability. However, Duffield's insertion of regulative norms is very different to Wiener's idea of organising principles, where the latter provides a space for negotiations around the normativity attached to norms (Wiener 2014, 37). As such, Wiener uses a unique approach, which is not foreseen by other theorists. In contrasts, Duffield's division of regulative norms into prescriptive and permissive norms could represent an alignment between constitutive and procedural norms, with permissive norms on the spectrum closer to constitutive, and prescriptive associated more to the procedural end.

Table 2: Comparison of Wiener and Duffield's Typology for Norms

Wiener	Fundamental Norm (principles and rules of global governance)	Organising Principle (where normativity becomes negotiable)	Standardised Procedures (specific instructions in treaties)
Duffield	Constitutive (norms that shape identities, preferences and interests)	Regulative (provide order and constrain behaviour), ← permissive vs prescriptive →	Procedural (specific to institutional context)

5.8. Typology of Norm Contestation

This next section examines the most current research on norm evolution and as such delves a bit deeper into the different forms of contestation, and asks what ultimately their impact is on norm evolution.

The *Journal of International Law and International Relations* in their first issue published a series on norm contestation, for which Wiener and Puetter (2009) provided the introduction. As mentioned before, they found that the meaning attached to international norms within different cultural contexts results in diverging interpretations of the norm. Hence, norm enactment leads to subsequent norm contestation. In their view, the cultural context is an essential component when investigating norm evolution (Wiener and Puetter 2009, 13-15). Although explaining the occurrence of norm contestation, at the time they contributed little in terms of understanding the actual factors, which ultimately impact on-going norm evolution.

More recently, Wiener (2014) in her book attempts to outline a *Theory of Contestation*. She argues that we need to move away from the *practice* of contestation, which only highlights the legitimacy gap, to a *principle* of contestation which facilitates regular access to contestation to avoid this gap (2014, 2). Ultimately, Wiener highlights that norm contestation itself is a social activity. In practice, it can be displayed in different ways: implicitly or explicitly. In the absence of a principle of contestation, actors will resort to the existing practice, which includes neglect, negation or disregard. However, with the introduction of a principle of contestation, the mode of contestation would shift to arbitration, deliberation, justification and contention. *Arbitration* is the legal mode where the pros and cons are weighed as part of a judicial process. Given the weak judicial mechanisms at the international level, the assumption is that contestation is less frequently resolved through this mode. However, more likely is *deliberation*, identified as the political mode, where transnational regimes address the rules and regulations. This reflection would argue that this mode equates somewhat with institutionalisation. The next is *justification* as the moral mode where principles of right and wrong are questioned. Lastly, *contention* reflects the societal mode where rules are critically engaged with in non-formal environments. The latter two modes could be attributed to the socialisation process and the more informal level of international interaction.

It should be noted at this point that Wiener identifies as a critical constructivist, in comparison to other norm evolution scholars who fall more into the conventional constructivist range. The difference is mostly along epistemological and methodological lines (Hopf 1998, 182). For example, conventional constructivists view identity as an explanatory variable in norm evolution, while critical constructivists go further by deconstructing the concept of identity itself (Cho 2009, 75). In other words, "[t]he purpose of conventional constructivism is to produce knowledge …, [while] critical constructivists tend to regard theory as practice, … and facilitate the imagining of alternative life-worlds" (Cho 2009, 93). Subsequently to the release of Wiener's book, it has become clear that many scholars prefer the more conventional approach as offered by Deitelhoff and Zimmermann.[7] Similarly, this study opts to continue along the conventional constructivist route, but finds it useful to incorporate Wiener's categorisation around the mode of contestation into the proposed typology.

When investigating the impact of different forms of contestation, Deitelhoff and Zimmerman (2013) argued that norm contestation could lead to both the strengthening and

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[7] This became very apparent at multiple panels at the 2018 ISA conference in San Francisco which had the power of norms as its main theme.

weakening of norms and attempt to identify the conditions under which either happens. Ultimately, they postulate that contestation around the application of a norm leads to the strengthening of the norm, specifically in terms of specification, while contestation around the validity of the norm may lead to non-compliance which causes weakening of the norm and subsequent norm decay. They label the former as "applicatory discourse" and the latter as "justificatory discourse" (Deitelhoff and Zimmermann 2013, 2). Deitelhoff (2019, 149) elaborates on this, arguing that applicatory discourse is necessary to "establish … appropriateness for given situations." However, when norm contestation radicalises and becomes norm justification, then the validity of the norm is at risk. Deitelhoff and Zimmermann (2019) further elaborated the idea of validity in an article on norm robustness. In it, they redefine the practical and discursive dimensions of contestation in terms of norm robustness. A norm is considered robust if it has both validity (acceptance) and facticity (compliance) (Deitelhoff and Zimmermann 2019, 3). The four indicators of robustness are concordance, third-party reactions to norm violations, compliance and implementation (Deitelhoff and Zimmermann 2019, 6). The first two are indicators of elements of justificatory discourse around the norm, while the last two illustrate applicatory dimensions (Deitelhoff and Zimmermann 2019, 8). In the special issue, to which the 2019 article provided the introduction, it was found that many norms remain surprisingly robust, even if challenged by powerful states, reinforcing the idea that the type of contestation was a more important deciding factor (Deitelhoff and Zimmermann 2019, 13).

Table 3: Typology of Contestation

Location	Internal vs external
Discourse	Applicatory (using the norm) vs justificatory (explaining the norm)
Mode	Implicit: Neglect, negation or disregard Explicit: Arbitration, deliberation, justification and contention
Robustness	Validity: Concordance, third-party reactions to violations Facticity: Compliance and implementation

Table 3 summarises a typology of contestation. It illustrates that when investigating any form of contestation, it is necessary to identify the type, discourse, mode and level of robustness. Contestation is more likely to facilitate norm evolution when the contestation is internal rather than external, when the discourse is applicatory rather than justificatory, when the mode is explicit rather than implicit and when robustness leans towards facticity. Furthermore, when adding the discussion around the type of norm and the evolutionary stage, both are also expected to play a role. It is the categories of norms, which are found in-between the extreme poles on the spectrum of organising on the one end and regulative on the other, which allow contestation to exist and provide a progressive momentum. Meanwhile at the referring stage, when socialisation and institutionalisation is most prevalent, contestation should be encouraged or as Wiener puts it, regulated. Undoubtedly, there is scope for contestation to play a constructive role in the norm evolutionary process.

It is apparent from the preceding literature that both norms and contestation come in differing shapes and sizes and recent research indicates that only by delineating these may it be possible to identify when and how norm contestation leads to norm evolution. In order to identify and measure any impact of contestation there is first a clear need to identify the

type of norms, which helps to unpack norms in terms of content, history and effectiveness. It is also apparent that the same applies to the process of norm contestation itself, as different variations of contestation exist. Only with the cross-tabulation of different categories across both the norm itself and the evolutionary process can the specific conditions which lead to norm evolution be identified and hopefully provide future researchers with the necessary tools to measure the impact of norm contestation. However, which of the factors ranging from location, discourse, mode and robustness will prove the most deterministic, will need to be investigated in a lot more depth.

6. Methodology

With the above conceptual framework in mind, the focus now shifts to the selection and justification of research methods, which will help identify and assess the factors involved in the norm evolution process.

Since norms were considered too difficult to measure, the behavioural revolution led to a neglect of the study of norms. Post-positivist subsequently took on this challenge, while recent trends in research on norms openly adopt a constructivist approach (Finnemore and Sikkink 1998, 890). Constructivists generally believe that social scientists may offer some causal explanations, but generally this does not necessarily entail a clear and enduring sequenced connection between the IV and DV as identifying laws is virtually impossible. Instead, constructivists search for "contingent generalisations" rather than "laws" (Barnett 2005, 261-262).[8]

6.1. Outline of Methods

With this in mind, this study opts for a theory testing approach using a case study method. The aim of theory testing is "to strengthen or reduce support for a theory, narrow or extend the scope conditions of a theory, or determine which of two or more theories best explains a case" (George and Bennet 2005, 109). R2P was identified as a key case of international norm contestation, since the majority of scholars investigating norm evolution make reference to it. It should, however, be noted that the R2P norm consists of three pillars, with only the last pillar being the source of major contestation. Even though the study will outline and refer to the full scope of R2P, the main analysis will focus on pillar 3, the responsibility of the international community to act in the event of atrocity crimes if the state itself is unwilling or unable to do so.

The choice of case study was also influenced by the author's background knowledge in international law, which focuses especially on human rights, state sovereignty and humanitarian intervention. Although this presents a degree of selection bias, it does not negate the importance of this case study. R2P is a norm that finds application solely at the international level and as such falls into a category of norms, which requires collective international application, providing scope for norm contestation to emerge. As to the within case selection, it is the African continent which exhibits the majority of R2P relevant cases

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[8] George and Bennett (2004, 112) elaborate: "Each case study thus contributes to the cumulative refinement of contingent generalisations on the conditions under which particular causal paths occur, and fills out the cells or types of a more comprehensive theory."

and as such it is important to investigate the mechanisms in place at the international, regional and state level to respond to these cases. Here Libya was a defining moment, and although this already occurred some time ago, the subsequent papers will show that it is still considered the most defining moment by international and regional actors. The temporal distance to the events in Libya also provides greater access to data as well facilitates a more objective analysis.

Since the aim of this research is to identify what leads to norm contestation and how this ultimately affects the norm's evolution, in investigating R2P this research adopts a within-case method. This method allows for a detailed investigation of a causal chain by closely examining the intervening processes, which connect the independent variables to the dependent variable (Tansey 2007, 765). Specifically, the dependent variable is *the meaning-in-use of R2P*, while the independent variables are *the institutional processes in the United Nations, the African Union and South Africa*, with the intervening variable under investigation being *norm contestation around R2P*.

Checkel highlights the need for the researcher to avoid reading history backwards, i.e. identifying a successful case of where norm contestation led to the consolidation and validation of a norm and then analysing the processes involved (Checkel 2012, 4, 6). In this instance the case selection was based on a case of norm contestation, where the final impact at the commencement of the study was (and to this day still is) undecided. The results identified prove insightful, but need to be verified by alternative cases.

Methods generally applicable to small n-analysis or case studies are often qualitative in nature. This study adopts the method of process tracing, as first envisioned by George (Hay 2016, 501), as its main tool. In essence, it addresses all of the issues raised above. It is a method recognised by both positivists (Checkel 2009, 116) and constructivists (Parsons 2018, 87) and often used for within case studies. Checkel highlights that process tracing "trace[s] the operation of the causal mechanism(s) at work in a given situation (Checkel 2009, 116). Collier defines it as "the systematic examination of diagnostic evidence selected and analysed in light of research questions and hypotheses posed by the investigator ... [by] drawing descriptive and causal inferences from diagnostic pieces of evidence – often understood as part of a temporal sequence of events … The descriptive component of process tracing begins not with observing change or sequence, but rather with taking good snapshots at a series of specific moments" (Collier 2011, 823-824). Process tracing is similar to historical studies, yet distinct in certain aspects. For one, its contribution to theory development and testing is greater (George and Bennet 2004, 208-209). The method acknowledges causal complexity, such as the possibility that certain conditions may need to converge or even interact (George and Bennet 2004, 212). It also accepts equifinality in that multiple pathways may lead to the same outcome (George and Bennet 2005, 215). In short, the researcher first outlines what she expects to find and then looks for the chain of empirical evidence that links the expectation with the outcome (Checkel 2012, 4). It would be amiss to not mention the criticisms of process tracing. Hay goes so far as to question its status as a methodology. He views it rather as an "ambition", since its ability to credibly identify, track and trace causal processes depends on identifying causal mechanisms in already very complex processes, not to mention the subsequent data collection required to

conclusively prove any links, resulting rather in a mere historical narrative (Hay 2016, 500-501).

The data for process tracing can consist of memoirs, expert surveys, interviews, press accounts, and documents (Checkel 2009, 116). Already Finnemore and Sikkink (1998, 892) argued that to prove the existence of a norm would require following the trail of communications by actors. Hence, essential to process tracing is careful description and a detailed narrative. A good starting point is the construction of a timeline, which then opens up an exploration of the causal mechanisms, which underpins the sequence of events. The narrative also should provide the evidence necessary for evaluating and testing the intervening links (Collier 2011, 823, 828-829). Nevertheless, the main disadvantage of using process tracing is that it is time consuming and requires a large amount of data, which may not always be easily accessible (Checkel 2009, 116), and if available, not necessarily easily unpacked within a series of short academic articles.

As a result, the research focus was not only on outcome documents such as resolutions and declarations, but it also examined the actual negotiation processes leading up to these outcomes. Though resolutions and declarations are easily available online, the latter required onsite research at the UN and AU headquarters in an effort to gauge state and IO interactions in an effort to trace the evolutionary stages of R2P and what facilitates the level of institutionalisation and subsequent state internalisation of the norm. Semi-structured interviews were conducted with representatives of the African Union to fill in the gaps in documentation. To summarise, the study relied heavily on primary sources such as the IOs' constitutive instruments, meeting declarations, but also transcripts of meetings, press statements by each organisation and relevant member states. It also relied on secondary sources such as UN/AU publications, and publications from think tanks and NGOs. As to the conceptual framework underpinning this study, academic books and journals provided the basis for the literature review by outlining the current theoretical approaches, and identifying existing knowledge and the knowledge gap.

6.2. Research Funding and Travels

- Ramesh Thakur, Australian National University, and member of the ICISS;
- Tom Weiss, Ralph Bunche Institute for International Studies and previous ICISS research director, New York;
- Advocate Doc Mashabane – then South Africa's Deputy representative to the UN, New York;
- Sapna Chhatpar Considine, Programme Director at the International Coalition for R2P, New York.

Numerous international and one local conference on related topics were attended with drafts of each article here included presented at a number of them: VAD - Cologne (2012), ISA - Glasgow (2012), Workshop on 'Responsible Protection' - Beijing (2013), ISA - Toronto (2014), SAAPS - Cape Town (2016), ISA - Baltimore 'in abstentia' (2017), and ISA - San Francisco (2018).

6.3. Ethics

Semi-structured interviews were conducted as part of the research trip to Addis Ababa in April 2012. The findings were published in Article 1. Retrospective ethics clearance was sought from the University of the Witwatersrand Human Research Ethics Committee (HREC Non-Medical) and was approved on 13 August 2018. The *certificate of retrospective acknowledgement* protocol number is H18/06/40 (see Appendix A).

7. Article Summaries

This PhD study comprises four articles of which Article 1, 3 and 4 were published in accredited, peer-reviewed journals, Article 2 was published in a newly created online journal specialising on R2P. Appendix B provides some information on each journal such as the goals, editorial board and impact factor.[9]

For the purpose of the overall study, the articles are placed in the order as they were written, and not necessarily in the sequence in which they were published. Not only does this reflect the progression of the research, it also presents a logical flow from conceptualisation in the introduction to background info in article 1 and 2. Even though some analysis occurs in each article, articles 3 and 4 apply and test assumptions about the conceptual framework around norm evolution, especially in analysing norm contestation as a causal mechanism. Given that each article is a standalone piece of research, some repetition in terms of the history of R2P, institutional background as well as the outlining of historical events was unavoidable. Repetitive information is not duplicated in the summaries below. The conceptual framework also varies somewhat from article to article because of the comments and direction provided by the reviewers as well as new avenues of inquiry pursued at a later stage. Nevertheless, an effort was made to try to draw everything effectively together. References in the following sections, unless otherwise indicated, refer to the page numbers in the respective article.

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[9] All this information comes directly from the journals' websites or researchgate.com.

7.1. Article 1

Zähringer, Natalie (2013) "Norm evolution within and across the African Union and the United Nations: The Responsibility to Protect (R2P) as a contested norm," *South African Journal of International Affairs*, 20 (2):187-206.[10]

This article's main aim was to investigate whether different interpretations of the R2P norm exist within two institutional contexts. As socialisation is outlined in the conceptual framework as happening within IOs, the assumption was that it is here that applicatory and justificatory discourse takes place and the existence of contestation is revealed. With R2P identified as the DV, an outcome of contestation is essential before an investigation can be launched into the causes and consequences of norm contestation. Hence, this article tracks in detail the historical evolution of the R2P norm, tracing its history from its inception to just after the Libyan crisis. Furthermore, within the R2P case study there is a comparison between two IOs, one at the international level (the UN) and one at the regional level (the AU). It traced the underlying processes leading to, as well as the institutional outcomes of constitutive instruments and treaties within both IOs. Thereafter the study goes beyond a mere analysis of relevant institutional documents by digging into the respective context in aid of providing a more in-depth explanation of the outcome. As such, it outlines a detailed description of the sequence of events leading up to the Libyan crisis. Secondary information was complemented with a field trip to the AU in Addis Ababa in 2012. With R2P mapped within both of these organisations, commonalities and differentiation in the norm's meaning-in-use are highlighted.

The main part of the article examines the institutionalisation of the R2P norm in the two respective organisations. The AU's Constitutive Act in Article 4(h) allows the AU to intervene in member states in instances of atrocity crimes being committed. With the establishment of the AU's Peace and Security Council (PSC) in 2003, the AU's R2P mandate is extended by including conflict prevention, peace-making, peace-support and post conflict reconstructing. On recommendation by the PSC, military action can be authorised by the AU's Assembly with a two-thirds majority, an event that has not taken place to date. Overall, the AU's legal framework covers the full scope of R2P as envisioned by the ICISS and the AU is the only IO which has given full legal effect to R2P (190). However, onsite investigations found that the AU's interpretation and application of R2P differs somewhat to that of the ICISS. Primarily, AU practitioners use the terms R2P and the protection of civilians (PoC) interchangeably, despite these being two distinct concepts. (191). With the emphasis on the PoC the AU is in fact limiting the implementation of R2P to its least contested component as the PoC was already enshrined in international law post World War II. Furthermore, the AU seems to place greater emphasis on a state's primary responsibility, while neglecting the collective responsibility. With some focus on prevention mechanisms, the rebuilding aspect also is somewhat ignored (191-192).

At the UN, R2P was institutionalised through the 2005 World Summit Outcome document after discussion around a UN High-Level Panel as well as a UN Secretary General report on R2P. With the adoption of the Outcome document, R2P was included in paragraphs 138 and

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[10] This article was supplemented through interviews which were conducted in Addis Ababa in April 2012 and a draft of this article was presented at the VAD conference in Cologne, June 2012.

139, severely condensing previous discussions. Of interest is that the Outcome document attaches the atrocity crimes to R2P as a whole and not to military intervention specifically. This dramatically restricts the scope of R2P, meaning that a state's and the international community's responsibility in terms of prevention and rebuilding also only applies to atrocity crimes, rather than limiting military force to the presence of such. In the event of military intervention being required, it was deemed that existing mechanisms under the UN Charter's Chapter 7 already enable this (193). Overall, the UN fails to give legal effect to R2P, but through the appointment of a Special Advisor on R2P by the Secretary General in 2007 and the annual tabling of the Secretary General's Report on R2P since 2009, the UN maintains an ongoing productive dialogue around R2P. However, similar to the AU, the UN has failed to clearly differentiate R2P from the PoC, with some arguing it is a completely separate norm (194-195).

The emerging contestation between these two organisations around the R2P norm came to the fore during the Libyan crisis in 2011. As the conflict progressed, the AU emphasised Libya as a clear case of the PoC, with the UN accused of violating the rights of civilians with their military action (197). In the comparative analysis of these two organisations, the findings highlight that it is also important to acknowledge the independent role of IOs with decision-making not solely driven by power member states.

The article as a whole highlights the existence of norm contestation around R2P at a regional and international level of analysis. As such, it identifies diverging interpretations through the meaning-in-use of the R2P norm in both the AU and the UN. Specifically, the place of the PoC in the wider conceptualisation around R2P is demonstrated as an area of contention. It remains unclear whether the PoC is the full interpretation of R2P (severely limiting the latter's conceptualisation), is one of many integral parts of R2P (broadening the latter's conceptualisation), or whether it is a completely separate norm (which would beg the question of what remains of R2P) (197-198).

7.2. Article 2

Zähringer, Natalie (2019) "State Sovereignty and the Responsibility to Protect: Incompatible norms?" *Canadian Journal on the Responsibility to Protect*, 1: 77-84.[11]

Where Article 1 focuses on internal contestation around R2P, this article examines external contestation by analysing the evolution of the R2P norm within the context of the evolution of state sovereignty, an older existing norm, which is generally considered to be in conflict with R2P. The article embarks on a temporal analysis of the older norm, to provide context to the evolution of the newer norm. The findings highlight that there is a possibility that the emerging R2P norm can be considered as compatible with the older norm, if state sovereignty were reinterpreted through the lens of popular sovereignty. However, a shift in how states currently view and internalise state sovereignty is necessary to ensure the full realisation of R2P.

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[11] A draft of article 2 was presented at the SAAPS conference in Cape Town, August 2016. The final version of the article was shortened to fit the Journal's requirements.

This article finds that when examining the history of state sovereignty, it becomes apparent that Westphalian sovereignty was never intended to include the inalienability of non-interference. Furthermore, the 18th Century saw the emergence of popular sovereignty, an idea that goes back to Rousseau and Locke. Rousseau's contribution focused on self-government and the collective will. Meanwhile, Locke wrote about individual protection from tyranny with a social contract in place, which was intended for monarchs to protect their subjects, and if they failed to do so, other states had the right to intervene (78). However, these principles, especially the latter, were generally not applied in practice with leaders relying on reciprocity (79). Centuries of state practice has led to state sovereignty being enshrined as an absolute in Article 2 of the UN Charter in the post World War II international system. It consists of two dimensions, internal and external. The internal dimension includes the prohibition on the use of force between states and non-interference into domestic affairs while external sovereignty prescribes equality with other states.

The article argues that by reflecting back on the history of state sovereignty and the fact that it was never intended as absolute, it would be possible to redirect a conceptualisation of state sovereignty towards popular sovereignty. This would make state sovereignty conditional on the existence of a government based on the will of the people and the absence of oppression. Without either, sovereignty would not exist and international responses could be justified (83). One damper on this optimism remains though. It is what hampered the progressive evolution of state sovereignty in the past as well as today. International norms are created through state consent and practice. No matter what scholars deem the best solution, unless state behaviour changes, no concrete change to the conceptualisation of state sovereignty will take place (83).

The following article combines the above findings of internal and external contestation and attempts to conceptualise the evolution of R2P further.

7.3. Article 3

Brosig, Malte and Natalie Zähringer (2015) "Norm Evolution as a Matter of Conformity and Contestedness: South Africa and the Responsibility to Protect," *Global Responsibility to Protect*, 7: 350-375.[12]

In this article, the focus is on identifying possible conditions and processes of norm evolution by examining both the global evolution as well as a country specific interpretation of R2P. The country selected was South Africa as it represents a regional power which has an active interest in R2P given the prevalence of conflict on the African continent.

In terms of methods, the article assumes two opposing forces at work, norm conformity and norm contestation, and analyses their respective impact on norm evolution. It compares the meaning-in-use of R2P at two levels of analysis, the global level and state level. It does so by cross-tabulating conformity and contestation against a five-point taxonomy of norms, which includes substance, specificity, regulative and constitutive qualities and enforceability. Conformity provides the force of inertia. However, since normative change is identified in

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[12] A draft of article 3 was presented at a pre-conference workshop of the ISA in Toronto, March 2014

the case of R2P, another competing force towards change must be present. Contestedness is tested as this momentum towards change. Both of these processes, conformity and contestation, are split into an 'external' aspect versus an 'internal' aspect.

The investigation found that at the global level R2P is substantially rich, but remains rather vague. It lacks regulative authority, but contributes towards constituting a post-Westphalian world order (362). Enforceability is restricted by limiting decision-making only to the UNSC, (364). It is clear that R2P largely conforms to pre-existing norms, with some areas of contestedness apparent. South Africa in turn exhibits mixed messages about R2P, both aligning on some aspects while challenging others. This is the case across all indicators of substance, specificity, enforceability as well as the regulative and constitutive qualities of the norm.

The article highlights that norm evolution is largely influenced by conformity with some contestedness present as a motor for change. It finds that most additions to R2P generally do not change what is already there, but are aimed at elaboration. Hence, the evidence suggests that change is more gradual, driven by both exogenous and endogenous factors that are mirrored in the external/internal approach (374-375).

7.4. Article 4

Zähringer, Natalie and Malte Brosig (2020) "Organised Hypocrisy in the African Union: The Responsibility to Protect as a Contested Norm," *South African Journal of International Affairs*, 27 (1): 1-22.[13]

This article starts with the assumption that the causal mechanisms, which play out during norm contestation, remain underdeveloped. It identifies organised hypocrisy (OH), as expanded on by Nils Brunsson (1989), as a driver of norm contestation and subsequent norm evolution. OH presupposes that in organisations where conflicting member state interests persists, a gap emerges between rhetoric and action, allowing these complex organisations to survive by making normative headway in light of ongoing institutional incapacitation (3). The assumption is that over time applicatory contestation, as outlined by Deitelhoff and Zimmermann, is likely to facilitate the strengthening of the norm with OH as a norm generative condition (4).

The authors apply OH to the AU's response to the Libyan crisis and find that in the case of the AU's meaning-in-use of R2P, there is clearly a gap between a strong legal basis and sparse use of the R2P language as part of its crises response framework (2). Despite the choice of an older case, we feel the selection is justified because existing literature on the AU remains largely policy orientated and concerned with operationalisation. Furthermore, the AU's response to Libya has not been dealt with comprehensively and from a theoretical perspective.

Four different levels of analysis are pursued by examining internal and external contestation across both the agency and normative level. In the case of Libya, norm contestation

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[13] A draft of Article 4 was presented by the co-author at the ISA conference in Baltimore, 2017. The page numbers refer to the online version of the article, published 28 February 2020.

becomes apparent across all levels of analysis. The paper first examines the external context to the crisis, focusing on events at the UN and the positions of UNSC members with respect to Resolution 1973. Even at the UN, the voting outcome made it clear that there was no universal acceptance of international military action (7-8).

Internally the AU strongly condemned the violence but could not agree on any unified response. This was due to member states exhibiting a wide range of reactions, ranging from calls for Gaddafi to step down to supplying mercenaries and arms to the regime (8-9). Once the bombing campaign commenced, there was some agreement by member states that mediation efforts were disregarded and the UN's response adversely affected the PoC (9). AU action consisted of two PSC communiqués, a road map and the creation of a High Level ad hoc Committee to implement it. However, the AU's strategy lost traction when it was completely sidelined by external powers (10-11).

The article found that the Libyan case is an instance of OH. While the AU's legal framework allows for intervention in the event of atrocity crimes, the AU solely pursued a mediation agenda, despite identifying the presence of such crimes. Rather than pushing for an AU intervention as more legitimate, they called for an immediate cessation of hostilities, and even though the majority of African states recognised that Gaddafi's time to step down had come, the AU sought to establish a transitional unity government, which contradicted its support for democratic processes (13).

The Libyan crisis is found to have had an impact on the conceptualisation of R2P both at the AU and beyond. One consequence was that R2P was limited to less controversial aspects such as the PoC. Subsequent to Libya, the AU finalised its PoC guidelines with the PoC deemed of much greater importance to interveners than at the level of a state's responsibility (12). Furthermore, there was a complete rejection of regime change as an outcome, and African solutions to African problems were deemed more legitimate (14). These crticisms tied in with the subsequent global debates around R2P such as the Brazilian call for a responsibility while protecting (RwP) (14).

Hence the article proves that OH can be identified as a catalyst for norm contestation and evolution.

In the following pages, each of the above articles is reproduced in its entirety as per the final version printed or accepted by each journal. They appear in the same order as listed above.

Norm evolution within and across the African Union and the United Nations: The Responsibility to Protect (R2P) as a contested norm

Natalie Zähringer

Norm evolution within and across the African Union and the United Nations: The Responsibility to Protect (R2P) as a contested norm

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This article examines the evolution of the responsibility to protect (R2P) norm through the institutional frameworks of the African Union and the United Nations. The investigation aligns itself with recent constructivist thinking around norm evolution and contestation which holds that diverging interpretations around norms facilitate not only norm contestation, but ultimately norm acceptance. In this case different 'meanings-in-use' of R2P within and across both organisations reinforce the contested nature of R2P. This becomes most apparent in the prevailing confusion around the affiliated concept of the protection of civilians, which is not effectively delineated from R2P. Nevertheless R2P is found to be widely acknowledged within both organisations.

Keywords: responsibility to protect (R2P); protection of civilians (PoC); international norm contestation; norm evolution; United Nations; African Union; Libya

Introduction

International Relations scholars and legal practitioners alike have battled with the nature of norms and the role they play within the international system. Although their importance is seldom denied, recent constructivist research raises valid questions as to how norms are constituted and applied.[1] By questioning the static nature of norms and the prevailing linear view of norm evolution, norms today are recognised as much more dynamic. Each norm, once placed into a variety of different contexts and exposed to the interpretations of diverse actors, is likely to simultaneously follow diverging trajectories, the resulting competition leading to the contestedness of the norm itself. Contestation is important as it facilitates the evolution of norms through the 'survival of the fittest'.[2] Mona Krook and Jacqui True capture this sentiment quite well: 'Our contention is that norms diffuse precisely because — rather than despite the fact that — they may encompass different meanings, fit in with a variety of contexts, and be subject to framing by diverse actors'.[3] Therefore, for these theorists and others such as Antje Wiener and Uwe Puetter, norm contestation becomes a requirement to facilitate the acceptance of a norm.[4]

In this context consideration must be given to the role played by institutional actors. This is necessary as various overlapping levels of socialisation may result in different meanings of a norm emerging at different institutional levels. This paper examines the case of the responsibility to protect (R2P) norm from its initial conceptualisation by the International Commission on Intervention and State

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Sovereignty (ICISS) in 2001 through to the Libyan crisis in 2011 and compares the emerging institutionalisation of this norm across the African Union (AU) and the United Nations (UN). The research especially highlights the confusion that reigns in both organisations around the affiliated concept of the protection of civilians (PoC), which is not effectively delineated from R2P. Consultations at the AU headquarters in April 2012 provided insights and triggered this analysis. The focus is on the AU and the UN as both organisations have given some effect to R2P and both operate within a context where R2P is very relevant. Therefore, this paper analyses how each organisation's legal, cultural and institutional framework has contributed to the contestedness of R2P. For simplification the emphasis is on the two respective security councils, which should not be interpreted as attributing less importance to the two assemblies or other bodies. Neither should this selection be seen as portraying these organisations as unitary actors with one coherent voice.

Conceptual framework

Martha Finnemore and Kathryn Sikkink define a norm as 'a standard of appropriate behaviour for actors with a given identity'.[5] Their development of the *Life Cycle of Norms* in 1998 has been widely acknowledged. They outline how a new norm emerges when norm entrepreneurs convince a 'critical mass' of states to adopt it.[6] This is achieved through a process of socialisation.[7] Once a 'tipping point' is reached, a norm cascade commences as additional actors are socialised (either by censure or praise) into becoming norm followers. Finnemore and Sikkink's original model recognises the need to have an organisational platform that legitimises the norm.[8] To this end institutionalisation becomes important.

The term 'institution' is not synonymous with the term 'international governmental organisation' (IGO). Rather IGOs fall within the broader category of institutions.[9] IGOs are distinguished from other institutions by the fact that they have legal standing according to their respective constitutive treaties, they centralise processes through formal administrative procedures, and they have greater independence through managerial autonomy.[10] Owing to this distinction, it is apparent that IGOs have a greater independent role to play in the evolution of norms. Therefore attention is given in this study to the impact of IGOs in particular over institutions in general.

IGOs are important in the process of norm evolution as they provide a forum for debate, frame expectations and draft rules on norms. Not only do they highlight possible conflicting interpretations around norms, but they also attempt to facilitate convergence. Nevertheless, a failure to do so may contribute to a norm's contestedness. What complicates matters is that norm contestation is further facilitated by different competing levels of institutionalisation as no institution operates in a political or normative vacuum. States are confronted with multiple levels of socialisation and institutionalisation at the international, regional and sub-regional level which may result in different 'meanings-in-use'[11] of the norm emerging. Furthermore, organisations today admittedly share competencies, forcing them to coordinate their actions.[12] Therefore institutional interplay needs to be acknowledged. Although such interaction may well lead to norm convergence, the fact that organisations generally have very different dynamics could alternatively result in cementing contestation. By investigating institutionalisation within and across

organisations, an interesting framework is provided to analyse the cumulative institutional effect on international norms.

This paper asks whether there is institutional convergence between the UN and the AU around the R2P norm or whether there are diverging interpretations. It does so not just by tracing institutional outcomes in the form of constitutive instruments and treaties which make up the negotiated rules around R2P, but also by briefly analysing some of the underlying processes which indicate how these two institutional actors identify the norm's meaning-in-use. Here ingrained institutional culture and the response exhibited in a crisis such as Libya prove telling. As such this paper commences an investigation into institutionalisation within these two organisations, but cannot claim any sufficient conclusion thereof.

Emergence of R2P

R2P is an attractive case study as it challenges the prevailing conceptualisation of international norms. On the one hand its evolution seems to be progressing rather rapidly, as is evident by quick institutional action. Surprisingly this is happening despite the fact that its existence challenges one of the fundamental tenets of the state system, namely state sovereignty. This may indicate that the norm's emergence is less dependent on state actors than on existing institutional and global culture. On the other hand there is evidence of norm contestation, which suggests that different state and institutional actors attach varying meanings to the norm as suits their own purposes.

The R2P norm did not come about in isolation. It is affiliated to many older norms, especially ideas around human rights and human security. In 1987 Mario Bettati and Bernard Kouchner introduced a modern debate around intervention for humanitarian reasons.[13] The current R2P norm emerged in response to the UN's inability to address intrastate human rights abuses in the post-Cold War era. Therefore, R2P is a relatively new and still emerging norm and originally found expression in the work of Francis Deng in the 1990s.[14] A group of experts subsequently conceptualised it as part of the final report entitled *The Responsibility to Protect* published by the ICISS in 2001. The emerging R2P norm recasts humanitarian intervention[15] with its negative connotation as something positive. Unlike humanitarian interventions, which are seen as a challenge to state sovereignty, R2P can be interpreted as reinforcing state sovereignty by attaching the notion of sovereignty to the people, rather than to the government. This is seen through the rise in democratic values and institutions which reinforce this idea of popular sovereignty. In other words, to avoid interference, the new notion stresses the need for the state to protect its people. By emphasising this primary responsibility of the state, only a failure to do so would transfer this responsibility to the international community,[16] thereby highlighting the complementary nature of the responsibility. Specifically, the ICISS report outlines that, when a state is unwilling or unable to act, the international community needs to step in.[17]

R2P is also a much broader norm as it extends the very narrow definition of humanitarian intervention and its emphasis on peace-enforcement. Rather the ICISS report includes in the concept of responsibility three components—the responsibility to prevent, the responsibility to react and the responsibility to rebuild—outlining each in extensive detail. In terms of the responsibility to react, the report stipulates that it applies to 'large scale loss of life ... with genocidal intent' and 'large scale

ethnic cleansing'. The report also sets out clear guidelines for international military action, known as the 'precautionary principles'. They include the following criteria: right intention, last resort, proportional means and reasonable prospects. The emphasis is on the use of force as a last resort which limits, as much as possible, the impact on civilian lives and property.[18]

R2P within the AU

Surprisingly, the AU as a regional organisation was the first organisation to incorporate elements of R2P into its Constitutive Act, which was adopted in November 2000,[19] just a couple of months after the ICISS commenced. As such the endorsement of R2P by the AU predates that by the UN. This is largely due to the fact that African leaders wanted to cast off the mantle of non-interference associated with the former Organisation of African Unity, which had contributed extensively to the perpetuation of violent conflict on the continent.[20]

Despite the fact that the Constitutive Act reinforces principles of state sovereignty and non-intervention,[21] the act also allows for the organisation's express right to intervene in member states in certain instances and thereby provides a legal basis for the international (in this case regional) community's responsibility to react under the R2P norm. Specifically, Article 4(h) stipulates 'the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity'.[22] Ultimately the decision to intervene lies with the AU Assembly's heads of state or government by consensus or alternatively a two-thirds majority.[23] However, to date the AU has not incorporated the criteria necessary to legitimise forceful action under R2P as outlined by the ICISS report's precautionary principles.[24]

The Union's right to intervention was furthermore boosted by a decision to establish the AU's Peace and Security Council (PSC) at the end of 2003. Consisting of representatives of 15 member states at the ambassadorial, ministerial or head of state level, the PSC remains in continuous session. It has the power to recommend intervention to the AU Assembly and would be responsible for finalising the modalities of such an intervention. Unlike the Constitutive Act, the scope of the PSC Protocol in terms of R2P is much broader than mere discussions around interventions. The PSC is tasked to act in all of the following additional areas: conflict prevention, peace-making, peace-support, peace-building and post-conflict reconstruction, thereby reflecting the full range and beyond outlined by the ICISS report. To fulfil this mandate it is envisioned that the PSC receives support from the AU Commission, the Panel of the Wise, a continental early warning system and an African Standby Force,[25] the latter two of which are in the process of being operationalised.[26] Meanwhile the AU seems heavily reliant on sub-regional mechanisms such as the Economic Community of West African States (ECOWAS), which in some instances are seen as more efficient than the AU itself. Ultimately the establishment of the African Peace and Security Architecture will depend to some extent on the capabilities of these sub-regional structures.[27]

So far PSC decisions have generally been reached by consensus while information on the meetings does not become public knowledge.[28] This has prevented members from 'grandstanding' and furthermore has imposed a 'collective responsibility' on the PSC. Furthermore, regular formalised meetings allow the PSC to respond quickly and all output by the PSC goes through a process of close scrutiny by both

the PSC Secretariat and the AU Commission, resulting in a coherent message.[29] Paul Williams furthermore identifies the PSC as an important tool of socialisation, especially in terms of how new members on the Council accept new norms. As a whole the AU, especially through the PSC and the Commission, has the potential to become a significant autonomous actor owing to the technical expertise it provides and its control of information.[30] Yet current lack of resources, in terms of both human and financial capital, has left the Commission and the PSC in an 'emaciated condition'. Nevertheless, if this is addressed, then the AU may ultimately 'create a well-resourced cadre of bureaucrats'.[31] However, the Constitutive Act clearly illustrates that power in the AU remains in the hands of the member states and not with institutional structures.[32]

Observations at the AU headquarters raised some interesting questions as to whether the protection of civilians forms an integral part of R2P or whether this should be treated as a separately emerging international norm. Officials there treated the two as the same, even using the terms interchangeably, although there is some recognition that the PoC applies specifically to military operations.[33] Currently, work is being done to conceptually develop the PoC further. After publishing *Draft Guidelines* on the PoC in March 2010, the Commission established a working group in February 2011 for further consideration thereof.[34] As per the guidelines, '[t]he concept of "Protection of Civilians" includes activities undertaken to improve the security of the population and people at risk and to ensure the full respect for the rights of groups and the individual',[35] wording that closely mirrors R2P. The PoC guidelines recommend that the PoC is incorporated into the pillars of the African Peace and Security Architecture and should be taken into account when creating peace-support operations.[36] As such the PoC is attached specifically to the deployment of military forces. Although currently no formal documents exist which provide clear provisions on how to implement the PoC, the understanding is that it is underpinned by existing international humanitarian law, human rights law and conventions regarding refugees, and as such should always be taken into account. Existing rules of engagement already include the right to use deadly force when people are attacked, and there are further efforts to formally clarify this principle.[37] By mid 2012, efforts had been made to incorporate specific PoC principles into the AMISOM mission.[38] This raises the question of whether the PoC should be inherent in all missions or whether it should be specifically mentioned. The latter case would imply that, if it is not mentioned, then there is no responsibility in terms of the PoC.[39] Interestingly, at present the AU is undertaking no efforts to similarly elaborate on its conception of R2P.

In summarising the AU's conceptualisation of R2P, the main concern which remains is that AU member states seem to place greater emphasis on the primary state responsibility rather than the collective aspect.[40] Nevertheless, one would have to agree that AU treaties and mechanisms are sufficient to give effect to R2P.[41] Although the AU Constitutive Act only outlines the responsibility to react, the PSC Protocol extends the Union's responsibility to prevention and rebuilding. Yet despite being imbedded, there are concerns as to how it is being implemented.[42] To date the AU has not exercised its right to intervention as the PSC has not found any African conflict to qualify as a grave circumstance.[43] The PSC, however, does seem to fulfil some of its reactive duty, with many decisions (and some operations) so far addressing existing conflict,[44] albeit by resorting to less confrontational means. The unwillingness to act forcefully may be a consequence of the AU's lack of military

capabilities owing to financial constraints. Alternatively, it may point to a more fundamental hesitancy exhibited by a lack of consensus within the PSC and the AU Assembly which may be preventing the AU from taking a more proactive stance on R2P. Furthermore, owing to its emphasis on reaction, the AU seems to be failing in its responsibility to prevent and rebuild with supporting structures in this regard so far envisioned, but not yet operational.

Notwithstanding the AU's initial attention to R2P through the inclusion of the right to intervene, it more recently has redirected its focus entirely from R2P onto the PoC. It is notable that one independent researcher classified both R2P and the PoC as conceptually distinct and separate norms within the AU,[45] and one AU official referred to R2P as 'institutionally dead'.[46] At this point it is unclear whether the AU pursuit to conceptualise the PoC is an intention to separate the two norms or to give expression to R2P in a much more restrictive sense.

The discussion now shifts to the UN, which has been debating the R2P norm in a parallel discourse to that of the AU. As such AU institutional influence on the evolution of R2P cannot be considered in isolation.

R2P within the UN

The debate around R2P was taken up by the UN at different levels in discussions around the ICISS report before formalising the norm under the General Assembly's 2005 World Summit Outcome document. Preliminary discussion included reports from a UN High-level Panel[47] and from the UN secretary-general.[48] All three of these documents exhibit some diverging perspectives around the conceptualisation of R2P.

The High-level Panel endorsed the emerging R2P norm. Despite using slightly different terminology, it remains conceptually close to the ICISS report. In the panel's report, paragraph 29 clearly states that sovereignty and responsibility go together, and that failure of a state to meet this obligation shifts the responsibility to the international level. Highlighting the shortcomings of the UN Charter, which merely reaffirms but does not protect human rights, the panel report is in line with the ICISS report when it outlines the need to prevent, respond and rebuild. Instances requiring responsive action are outlined as 'genocide and other large scale killing, ethnic cleansing or serious violations of international humanitarian law'.[49] This formulation introduces the scenario of war crimes which is absent in the ICISS report, but which had already been incorporated by the AU. Under this report there is some uncertainty on whether a state's responsibility extends only to its own territory or whether each state has a responsibility to act when abuses occur elsewhere.[50] The role of the UN Security Council (UNSC), and its use of Chapter VII in instances of abuses, is emphasised, especially as the entire discussion around R2P in the report is listed under the section which deals with the UNSC and Chapter VII.[51] Like the ICISS report,[52] the High-level Panel report asks permanent members to refrain from the use of the veto in cases of atrocity crimes. The panel outlines five criteria, formulated in a slightly different manner from the ICISS' precautionary principles, which the UNSC should consider to legitimise any use of force: the seriousness of the threat; proper purpose; last resort; proportional means; and the balance of consequences.[53]

The 2005 report by then UN secretary-general Kofi Annan endorsed R2P as laid out by both the ICISS report and the High-level Panel report, yet it highlighted the

'sensitivities' around the norm and the disagreements of member states around the use of force.[54] By focusing entire sections on mediation, sanctions, peace-keeping and peace-building, the secretary-general's report seems to place greater emphasis on the use of peaceful means.[55] By attaching the precautionary principles directly to the UNSC,[56] it implies primary UNSC authority on matters of military intervention.[57] Yet the report does remain somewhat vague as it fails to conceptualise R2P in any detail, neither outlining any criteria for the use of force beyond the relevant sections of the charter nor calling for the restrictive use of vetoes.[58]

The World Summit Outcome document was very much a compromise solution as several states had expressed reservations about including R2P at all.[59] The debates around R2P brought to the fore the continuing North–South divide. Little was done to alleviate the fears of developing countries around the inconsistent application of principles of justice, which seems to grant powerful states immunity. With the outbreak of the 2003 Gulf War still fresh in their minds, the South justifiably asked what mechanisms were in place to prevent a selective approach to R2P and how to avoid any abuse of the norm.[60]

Consequently, the World Summit Outcome document passed by the UN General Assembly in 2005 contains only two paragraphs (138 and 139) that refer to R2P. Paragraph 138 lists the four scenarios in which R2P would be invoked, once again in somewhat different wording to the High-level Panel report. Also, the placing of this list is unusual in that it is the only time the four scenarios are attached to R2P in general and a state's responsibility in particular. All preceding documents (including the AU Constitutive Act) attached these scenarios specifically to the international community's right to intervene forcefully. The World Summit Outcome document version leads to a much more restrictive reading of the applicability of R2P. Furthermore, this outlining of genocide, war crimes, ethnic cleansing and crimes against humanity as cases in which each state has a responsibility towards its own people, exhibits a close affiliation with the Statute of the International Criminal Court (ICC), hence reinforcing the latter.[61] Paragraph 138 furthermore outlines the international community's responsibility as merely entailing support to states facing such situations while offering a call for an early warning system, thereby including something of the prevention component. In addition, paragraph 139 calls on the UN to use 'appropriate diplomatic, humanitarian and other peaceful means' under Chapters VI and VIII with a minor reference to possible collective action under Chapter VII on a case-by-case basis.[62] As such the UN General Assembly pursued a more cautious approach as only the responsibility to react is given some specific content, while avoiding attaching details to the responsibility to prevent and rebuild. In sum, the General Assembly acknowledged the extensive range of mediation, peace-keeping and peace-building, thereby including sentiments which enjoyed more wide-ranging support. Despite recognising the additional option of more forceful action by the UNSC under Chapter VII, such action could be interpreted as 'voluntary rather than mandatory' while leaving the door open to selectivity.[63]

The World Summit Outcome document as adopted by the UN General Assembly technically fails to provide an effective legal basis for R2P, as such resolutions are non-binding. Yet, given the existing powers of the UNSC under Chapter VII, the UN has the ability to implement R2P by authorising necessary action, even the use of force, in the instances outlined above. Despite the High-level Panel's reference to R2P as an 'emerging norm', negotiations around the Outcome document rejected this

wording,[64] leaving the impression that R2P is merely a reinforcement of existing norms.

During an initial period of 'buyer's remorse', the first few years after 2005 saw little movement on R2P with only UNSC Resolution 1674 in 2006 reaffirming R2P, while in the same year another minor reference by the UNSC to R2P was made in Resolution 1706 during the on-going crisis in Darfur.[65] This inertia changed with the eruption of post-election violence in Kenya in 2008 and its successful mediation with R2P in mind.[66] The new momentum led to further clarification by Ban Ki-moon on how the UN perceives R2P in his secretary-general's report on *Implementing the Responsibility to Protect* in 2009. The intention of the report was 'not to reinterpret or renegotiate the conclusions of the World Summit but to find ways of implementing its decisions in a fully faithful and consistent manner' and 'contributing to a continuing dialogue among Member States'. The report confirms that R2P applies only to the four scenarios stipulated by the Outcome document. Furthermore, it outlines a three pillar strategy:

- Pillar one — The protection responsibilities of the state.
- Pillar two — International assistance and capacity-building.
- Pillar three — Timely and decisive response.

All three pillars are considered equally important and rely on each other. Secretary-general Ban Ki-moon outlines his preference for early action as this enables flexibility of options and may ultimately avoid tough choices between using force and inaction.[67]

To ensure independent institutional influence, Kofi Annan in his term of office appointed a special advisor on genocide in 2004. In 2007 Ban Ki-moon awarded this post to Francis Deng while simultaneously appointing Edward Luck as his special advisor on R2P. The combined work of these advisors under the Joint Office for the Prevention of Genocide and the Responsibility to Protect proved instrumental in conceptualising R2P within the UN framework. In July 2012 the terms of both advisors came to an end and a new special advisor on genocide, Adama Dieng, was appointed, while the post of special advisor on R2P was left open.[68] It seems that, owing to the complementary nature of their work, the two posts were combined, although it is surprising that the post which was maintained was that on genocide and not the wider option of R2P.

Despite all of the above developments, an investigation into the UN perception of the PoC shows that, similar to the AU, the UN fails to address how the organisation intends to differentiate between the PoC and R2P. There have been a series of UNSC resolutions over the last 14 years concerned with the PoC.[69] The first was Resolution 1265 of 1999, which predated the ICISS. It highlights the UNSC's rising concern with the impact of armed conflict on civilians owing to an erosion of humanitarian, human rights and refugee law, and calls on all parties to abide by international legal obligations while encouraging the international community to do more in terms of conflict prevention and responding to situations where civilians are targeted. Specific mention is made of the inclusion of a PoC mandate in all UN operations, whether peace-keeping, peace-making or peace-building. Some of the terminology used nevertheless illustrates the close affiliation with the R2P norm, for instance, 'the primary responsibility of States to ensure their protection'. The resolution also makes implied references to the full scope of R2P, namely prevention, responding and rebuilding.[70] Meanwhile, the ICISS document refers to the PoC only in its

chapter on 'The Operational Dimension', which deals with the guidelines around military interventions in the event that the international community decides to react forcefully.[71] These very brief references do nothing to clarify whether the narrower conceptualisation of the PoC should form part of the larger R2P norm. In contrast, the High-level Panel report makes express reference to the PoC in what is its own dedicated chapter. In paragraphs 232 and 233 the PoC is associated with combatants and the adherence to international humanitarian law such as the Geneva Convention, while the following paragraph brings in the idea of humanitarian aid.[72] The World Summit Outcome document also mentions the PoC in paragraphs 58(f) and 134(c).[73] Both of these documents once again reinforce the much more restrictive perspective of the PoC. Also, as the PoC is listed entirely independently from the R2P sections in both instances, some commentators such as Louise Arbour have argued that the PoC is an additional obligation and a separately emerging norm.[74] This is surprising given the normative affiliation between the two concepts, but could be explained by the fact that the PoC seems to predate R2P. On the other hand, UNSC Resolutions 1674 in 2006 and 1894 in 2009 are generally accepted as clear reaffirmations by the UNSC of R2P after the 2005 World Summit,[75] as both make specific reference to paragraphs 138 and 139,[76] yet neither is expressly titled and both resolutions are thematically labelled as resolutions on the PoC.[77] This illustrates the prevailing confusion which continues to exist.

When sending military forces, the UN often has concentrated on post-conflict peace-keeping and peace-building operations, preferring to come in when a peace process has been concluded.[78] The notable exception is the 2011 Libyan crisis. Being the first time that the UNSC invoked R2P to justify military action, this case is considered pivotal in the evolution of R2P. Although the decisive action by the UN in this case would seem to contribute to the strengthening of R2P as a norm, the AU's very vocal objections to the UN's handling of the crisis seem to indicate that Libya only succeeded in contributing to further norm contestation, with some commentators even declaring Libya as the final death knell for R2P.[79] Any analysis of the evolution of R2P as a norm must thus include an examination of this event.

R2P in practice — the case of Libya

The Libyan crisis erupted in February 2011 after initial public demonstrations calling for the downfall of the government of Colonel Muammar Gaddafi were met with clear threats of violence,[80] which were subsequently realised. In mere days, international and regional bodies were coming out strongly against the incumbent government. The Arab League suspended Libya's membership,[81] followed by a PSC communiqué condemning the excessive use of force against peaceful protesters.[82] Statements were released by Jean Ping, the Chair of the AU Commission, condemning the disproportionate use of force[83] and by UN secretary-general Ban Ki-moon, reminding Libya of its responsibility to protect civilians.[84] Even the UN General Assembly acted on a call from the UN Human Rights Council and suspended Libya's membership from the latter.[85] On 26 February the UNSC passed Resolution 1970, which labelled events in Libya as possible crimes against humanity, imposing sanctions and referring the situation to the ICC.[86]

Yet Resolution 1970 did not seem to stem the violence and soon calls were being heard for more decisive action. By mid-March the Organisation of the Islamic Conference, the Gulf Cooperation Council and the Arab League all called for a no-fly

zone to be imposed,[87] a call headed by the UNSC on 17 March when it passed Resolution 1973. In establishing this no-fly zone, it instructed member states to take 'all necessary measures ... to protect civilians and civilian-populated areas under attack'.[88] As mentioned, this was not the first time that the UNSC had invoked R2P, but it was the first time it had acted on it without the relevant state's consent. Not all states were in favour of such action. Of the 15 members on the UNSC, five abstained from the decision. This included four of the BRICS countries (Brazil, Russia, India and China), as well as Germany. However, all three African states on the UNSC — South Africa, Nigeria and Gabon — voted in favour of the resolution.[89] This was surprising given that the PSC just a week previously had rejected any idea of foreign military intervention in this case.[90] Had any two African states followed the PSC recommendation, Resolution 1973 would have failed to achieve the necessary majority. Almost immediately after passing, differences became apparent on how to interpret Resolution 1973. On the one hand, some NATO members saw the no-fly zone as necessarily including steps to suppress Libya's air defences and the air force's capability to sustain field forces, thereby justifying a bombing campaign against military targets. On the other hand some Arab countries as well as Russia felt that protecting civilians should not entail exposing them to bombs.[91] In the event, two days later a bombing campaign commenced, led by the United States, the UK and France. By 24 March NATO took over command responsibilities in terms of the enforcement measures.[92]

Meanwhile the AU was not inactive. After its first meeting on Libya in February, the PSC met at the head of state level on 10 March and created a high-level ad hoc committee consisting of African leaders mandated to negotiate the immediate cessation of hostilities between the warring parties.[93] The committee subsequently met on 19 March after being denied permission to travel to Libya.[94] It expressed grave concerns as to the UN's recourse to military action and called for restraint while requesting all parties to support the African roadmap put forward by the PSC, which included a clear call for the PoC on all sides.[95] A week later it convened a consultative meeting with the AU, UNSC, EU, other regional bodies and neighbouring countries to Libya. The parties reached consensus on the following:

  i. the protection of civilians and the cessation of hostilities;
 ii. humanitarian assistance to affected populations ...;
iii. initiation of a political dialogue between the Libyan parties in order to arrive at an agreement on the modalities for ending the crisis;
 iv. establishment and management of an inclusive transitional period; and
  v. adoption and implementation of political reforms necessary to meet the aspirations of the Libyan people.[96]

In April a high-level AU delegation led by the South African president Jacob Zuma arrived in Libya to negotiate with the warring parties, resulting in Colonel Gaddafi's acceptance and the rebels' rejection of the AU's terms. Despite having lost ground in battle, the National Transitional Council representing the rebels was gaining international support and hence was calling for the removal of Colonel Gaddafi from power. Shortly afterwards the Libya Contact Group, consisting of 21 countries and representatives of the UN, Arab League and NATO, decided to supply the rebels with material and financial support,[97] and leaders of the United States, the UK and France issued a combined statement indicating that, although the goal of military

action was 'not to remove Qaddafi by force . . . it is impossible to imagine a future for Libya with Qaddafi in power'.[98] Not only was this the point at which the AU seems to have been side-lined[99] as its on-going calls for a 'political solution'[100] remained unheeded, but it arguably became the turning point in the war, with NATO now openly pursuing regime change. Ultimately, the result was the recognition of the National Transitional Council by all major players as the new Libyan government and the death of Gaddafi.[101]

The case clearly illustrates the AU's preference for mediation and a possible deployment in case of a signed ceasefire.[102] Yet its handling of the situation leaves much to be desired. AU mechanisms were not robust enough to respond effectively and to facilitate a diplomatic solution.[103] Furthermore, the Libyan crisis managed to 'reinforce existing cleavages'[104] between the UN and the AU. Despite all three AU members on the UNSC having voted in favour of the no-fly zone, they subsequently felt that NATO had overextended its mandate by pursuing regime change.[105] To some the motivations of the UNSC remained doubtful and the AU's fears that interventions may be pursued by powerful states out of self-interest were not alleviated. This raises the issue of legitimacy and accountability as NATO was practically given a blank cheque. Furthermore, it begs the question as to whether the UN should have the primary authority, especially as it does not seem to have implemented the principle of right intention or to have had control over subsequent NATO action.[106]

So where does this leave the R2P norm after the Libyan crisis? When examining the question of implementation of R2P within and across both organisations, much confusion reigns as to whether Libya is a case of R2P or of the PoC. In terms of the AU there is some clarity, with a rejection that Libya fell into any of the categories listed under its Constitutive Act, namely genocide, war crimes and crimes against humanity,[107] hence eliminating any responsibility for forceful action by the international community. While objecting to the UN's acceptance and pursuit of such a responsibility, the AU furthermore criticised the UN for failing to protect civilians, as NATO action under the UN no-fly zone seemed to worsen rather than lessen their plight.[108] Meanwhile the AU roadmap emphasised the PoC in its call for warring parties to cease hostilities, a call that could be interpreted as endorsing a state's primary responsibility towards protecting its own people. Overall, the AU associates the PoC specifically with conflict situations and sees in Libya the failure of both the government and the UN to protect civilians.

On the other hand, through the passing of Resolution 1970 and its referral of the Libyan situation to the ICC, the UNSC indicated its grasp of the situation as qualifying under the R2P criteria as set out by the World Summit Outcome document. Furthermore, the UN secretary-general subsequently called on the UNSC to remember its responsibility under R2P a day before Resolution 1970.[109] Whereas Resolution 1970 has a clear link to the atrocity crimes attached to R2P, the text of Resolution 1973 only briefly mentions Libya's primary responsibility before authorising its members to act in the interest of the protection of civilians.[110] This contributes to the on-going vagueness around the UN's implementation of R2P as it seems to be awarding preference to the PoC.

Scope for norm convergence and consolidation

With the above in mind, it is very difficult to argue whether the PoC is part of or separate to R2P. Conceptually there is a close affiliation as both refer to 'protection'

and the civilian component could be implied in the broader scope of R2P. The PoC applies to all military operations no matter whether conducted by a state, rebel forces or the international community, irrelevant of whether such a force is designed to maintain, enforce or build peace. Therefore the PoC arguably provides specific content through operational guidelines to the broader R2P concept. Failure by a state to implement the PoC in military operations would translate into war crimes and opens the door for international action. On the other hand, the international community must give consideration to the PoC in all its enforcement operations. The only point of caution is that, when seen in practice, so far R2P is only invoked within the UN context in circumstances of genocide, war crimes, ethnic cleansing and crimes against humanity, thanks to a conceptual move away from the original ICISS report resulting in a much narrower application of R2P. In this case it would be best to avoid the applicability of the PoC within this restrictive interpretation, but rather to extend the PoC to the much broader context of any military operation. However, if the broader conceptualisation of R2P as intended by the ICISS were applied, as is the case in the AU, there would be no reason why the PoC should not be seen as imbedded in R2P. Here an alternative danger lies in the possibility that the PoC is interpreted as the full expression of R2P, as seems evident in the AU. This in turn would have a very limiting effect on the latter by being more restrictive and less proactive when responding, and by side-lining any focus on prevention and rebuilding.

The question arises as to why this awkward arrangement between R2P and the PoC is applied. Undoubtedly the emphasis on the PoC is less controversial as it poses less of a threat to state sovereignty and falls within existing and more widely accepted principles of international law. In contrast, R2P emerged in recognition that the PoC is just too restrictive in its application within the scope of traditional conflict situations. In the event of atrocity crimes being commissioned by state institutions, rebel groups or any other actor, R2P provides a more comprehensive normative framework which meets the challenge of addressing crimes of such severity, yet its scope for selectivity and abuse of power leaves many states uneasy. Ultimately it is clear that ongoing socialisation is necessary before a more comprehensive and far-ranging interpretation of R2P becomes acceptable.

Inter-institutional interaction

The Libyan crisis also highlighted the need for greater UN–AU cooperation. Here a major debate over the last few years in terms of the right to intervene under R2P has been whether the AU has the right to independence of action from the UN, given that the UN Charter requires referral to and authorisation from the UNSC.[111] Meanwhile the PSC protocol clearly recognises both the AU's and the UN's *primary* responsibility on such matters, a contradiction which has led to some confusion on the matter.[112] In terms of this institutional overlap, the AU seems to prefer regional ownership and independence of action from the UN as it does not want to be reliant on the latter. Furthermore, it would prefer a quick AU response over a complex UN process. For this reason it seeks a more dynamic view of Chapter VIII of the UN Charter which deals with regional cooperation.[113] Ben Kioko indicates that in the past the UNSC has not complained when other organisations have taken the lead in cases where the UN was constrained.[114] Nevertheless, the Ezulwini Consensus attempted to clarify the matter by stating that UNSC approval should be sought,

even if after the fact.[115] This is an approach for which ECOWAS set a precedent with its ECOMOG mission in Liberia in 1990, which was only subsequently followed up on by UN action.[116]

Despite the inauguration of the UN Office to the AU (UNOAU) around the same time as the outbreak of the Libyan conflict, diverging perspectives are since emerging around the effectiveness of the UN–AU partnership. In particular, the UN acknowledges significant increase in cooperation, but also the challenges which accompany their diverging positions. It hopes to facilitate a greater sense of shared values, principles and objectives.[117] Meanwhile, the AU continues to question the legitimacy of the UNSC as the primary actor while lamenting the inadequacy of Chapter VIII.[118] Various inter-institutional meetings and task forces across various levels over the past years, which most notably include annual joint sessions of the PSC with the UNSC, are clear signs of inter-institutional cooperation. Nevertheless, current efforts are considered insufficient by both organisations as these meetings are makeshift and without clear direction.[119] Therefore, focusing on the PoC may be an attractive alternative to the AU as in doing so regional ownership is being maintained in some regard. Meanwhile it is clear that UN–AU cooperation has a long way to go, not just in deciding the scope of R2P. The dependence on the UNSC for authorisation as well as the lack of financial and logistical support does leave the AU in a position of weakness. This begs questions concerning effective inter-institutional interplay.

Conclusion

Although research on R2P as an evolving norm is not entirely new, in light of events around Libya a re-evaluation of the current status of R2P was necessary. This paper started out by outlining a conceptual framework with the underlying assumption that many norms remain fluid and contested. It then went on to examine in this light the implementation of the R2P norm within both the AU and the UN.

There is little doubt that R2P has been accepted and formally institutionalised by both the AU and the UN. Although there seems to be some intra- and inter-institutional convergence around the R2P norm in terms of its meaning-in-use, its full scope and application remain questionable. While efforts have been made by both the AU and the UN to formally incorporate rules around R2P, these remain vague in parts and have so far failed to consolidate the content. Within both organisations, different documents and mechanisms shift the emphasis, making it very difficult to interpret the norm as a whole.

Nevertheless, the evidence gathered shows that different interpretations and applications of the norm are emerging. So far the UN has failed to provide an effective legal basis for R2P, as no binding treaty has been accepted. Yet given the existing powers of the UNSC under Chapter VII, the UN has an existing ability to implement R2P by authorising necessary action. However, the UN has chosen a very restrictive interpretation of the norm. In contrast, the AU was one of the first organisations to give R2P legal effect in its most comprehensive format, yet in practice the AU is generally very hesitant to implement the norm with the current focus on operationalising the preventative and reactive component. Also, where the opinions diverge within and between the two organisations is in deciding when a particular course of action should be selected.[120]

Contestation is furthermore highlighted by the confusion which reigns in both organisations around the affiliated concept of the PoC, which is not effectively delineated from R2P. Where they differ is that the UN is focusing on the PoC as its justification for implementing the reactive component of R2P, while the AU is seeking implementation of the PoC in existing military missions. As a whole this research identifies a lack of any clear institutional consensus on the relationship between the PoC and R2P, both within and across the two organisations under discussion.

The investigation into the Libyan crisis in particular illustrates that both organisations engaged in strong, yet diverging positions in the name of R2P. The UN pursued a military solution which did not shy away from the use of force and gave less consideration to other mechanisms under R2P, while the AU refused to consider any forceful reaction, which it perceived only as increasing the threat to civilians, and alternatively advocated mediation. As such, the events surrounding Libya demonstrate the absence of a coherent overarching inter-institutional interpretation of the norm. The paper finds that, at the very least, the underlying premise of norm contestation is supported.

In terms of independent institutional influence, there definitely seems to be some professionalisation of staff within both organisations, although at the AU this remains severely constrained owing to lack of resources. Also, while both organisations have some autonomy of action in terms of setting the agenda, institutional action still very much depends on the willingness of member states. Both organisations seem to have some ability to respond to an exogenous crisis, as was the case in Libya; however, their adaptability within such a crisis remains constrained. As such the greatest institutional influence observed is in terms of each institution's ability to provide a mechanism for socialisation.

Ultimately one cannot deny that both organisations have contributed to the evolution of the norm by providing direction aimed at norm consolidation and opportunities for continued socialisation; nevertheless the impact on norm convergence remains limited. Rather it is apparent that norm contestation is being reinforced. Yet surprisingly Libya has not resulted in the death of R2P; rather, the UN has invoked R2P more often in the short time since Libya than before, leading Alex Bellamy to declare that 'R2P is not about to die. Indeed it is not even on life-support.'[121] This outcome is surprising and does support the assumption made at the outset that norm evolution is continuous. What precisely facilitates this on-going process is the subject of a larger doctoral research project.

Notes on contibutor

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Notes

1. See Wiener A, 'Contested meanings of norms: A research framework', *Comparative European Politics*, 5, 2007, pp. 6–7; Wiener A & U Puetter, 'The quality of norms is what actors make of it: Critical constructivist research on norms', *Journal of International Law and International Relations*, 5.1, 2009, p. 2; Krook ML & J True, 'Rethinking the life cycles of international norms: The United Nations and the global promotion of gender equality', *European Journal of International Relations*, 18.1, 2012, pp. 104–6; Zwingel S, 'How do norms travel? Theorizing international women's rights in transnational perspective', *International Studies Quarterly*, 56, 2012, p. 115.

2. Florini A, 'The evolution of international norms', *International Studies Quarterly*, 40.3, 1996, pp. 367–8.

3. Krook ML & J True, 'Rethinking the life cycles of international norms: The United Nations and the global promotion of gender equality', *European Journal of International Relations*, 18.1, 2012, p. 105.

4. Wiener A & U Puetter, 'The quality of norms is what actors make of it: Critical constructivist research on norms', *Journal of International Law and International Relations*, 5.1, 2009, p. 7.

5. Unfortunately, norms are often equated with institutions; the difference, however, is in 'aggregation: the norm definition isolates single standards of behaviour, whereas institutions emphasize the way in which behavioural rules are structured together and interrelate'. See Finnemore M & K Sikkink, 'International norm dynamics and political change', *International Organisations*, 52.4, 1998, p. 891. An alternative interpretation is provided by Shepsle, who views norms as *unstructured* institutions, see Shepsle KA, 'Rational choice institutionalism', in Rhodes RAW et al. (eds) *The Oxford Handbook of Political Institutions*. New York: Oxford University Press, 2006, p. 27.

6. Finnemore M & K Sikkink, 'International norm dynamics and political change', *International Organisations*, 52.4, 1998, p. 895.

7. Defined as 'inducting new actors into norms, rules and ways of behaviour of a given community'. See Checkel JT, 'Process tracing', in Klotz A & D Prakash (eds) *Qualitative Methods in International Relations: A Pluralist Guide*. Basingstoke: Palgrave Macmillan, 2009, p. 116.

8. Finnemore M & K Sikkink, 'International norm dynamics and political change', *International Organisations*, 52.4, 1998, pp. 902–3.

9. Defined as the creation of 'a relatively stable *collection* of practices and rules defining appropriate behaviour for specific groups of actors in specific situations' (emphasis added). March JG & JP Olsen, 'The institutional dynamics of international political orders', *International Organisations*, 52.4, 1998, p. 948.

10. Higgott, R. 'International political institutionalism', in Rhodes RAW et al. (eds) *The Oxford Handbook of Political Institutions*. New York: Oxford University Press, 2006, pp. 611, 615.

11. Wiener A, 'Enacting meaning-in-use: Qualitative research on norms in International Relations', *Review of International Studies*, 35, 2009, p. 176.

12. Brosig M, 'Overlap and interplay between international organisations: Theories and approaches', *South African Journal of International Affairs*, 18.2, 2011, p. 147.

13. Kioko B, 'The right of intervention under the African Union's Constitutive Act: From non-interference to non-intervention', *International Review of the Red Cross*, 85.852, 2003, p. 808.

14. See summary in Deng FM, 'The evolution of the idea of "sovereignty as responsibility"', in Adebajo A (ed.) *From Global Apartheid to Global Village: Africa and the UN*. Scottsville: UKZN Press, 2009.

15. Humanitarian intervention can be defined as 'the protection by a state or a group of states of fundamental human rights, in particular the right of life, of nationals of, and residing in, the territory of other states, involving the use or threat of force'. Kritsiotis D as quoted by Sarkin J, 'The Role of the United Nations, the African Union and Africa's sub-regional organisations in dealing with Africa's human rights problems: Connecting humanitarian intervention and the responsibility to protect', *Journal of African Law*, 53.1, 2009, p. 5.

16. Deng FM, 'The evolution of the idea of "sovereignty as responsibility"', in Adebajo A (ed.) *From Global Apartheid to Global Village: Africa and the UN*. Scottsville: UKZN Press, 2009, pp. 191, 198.

17. Stahn C, 'Responsibility to protect: Political rhetoric or emerging legal norm?', *American Journal of International Law*, 101.99, 2007, p. 104.

18. International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*. Ottawa: International Developmental Research Centre, 2001, pp. 32–7, 57.

19. *Constitutive Act of the African Union*, adopted 7 November 2000, entered into force 26 May 2001.

20. Kioko B, 'The right of intervention under the African Union's Constitutive Act: From non-interference to non-intervention', *International Review of the Red Cross*, 85.852, 2003, p. 812.

21. *Constitutive Act of the African Union*, adopted 7 November 2000, entered into force 26 May 2001, Articles 3 and 4.

22. *Constitutive Act of the African Union*, adopted 7 November 2000, entered into force 26 May 2001, Article 4(h). Noticeable here is the exclusion of ethnic cleansing, which is an additional scenario mentioned by subsequent UN documents. Also, a later amendment to the Act adds the following: 'as well as a serious threat to the legitimate order to restore peace and stability.' See *Protocol on the Amendments to the Constitutive Act of the African Union*, adopted 11 July 2003. This protocol still has to enter into force. This last part allows for a wider interpretation, but it is as yet unclear what such serious threats might entail. See Kioko B, 'The right of intervention under the African Union's Constitutive Act: From non-interference to non-intervention', *International Review of the Red Cross*, 85.852, 2003, p. 815. It could include unconstitutional changes of government, something the AU takes very seriously, but which so far has been dealt with through less forceful means.

23. *Constitutive Act of the African Union*, adopted 7 November 2000, entered into force 26 May 2001, Articles 6 and 7.

24. Kioko B, 'The right of intervention under the African Union's Constitutive Act: From non-interference to non-intervention', *International Review of the Red Cross*, 85.852, 2003, p. 818.

25. *Protocol Relating to the Establishment of the Peace and Security Council of the African Union*, adopted 9 July 2002, entered into force 26 December 2003, Articles 2–8.

26. AU PSC, *Report of the Chairperson of the Commission on the Partnership between the African Union and the United Nations on Peace and Security: Towards Greater Strategic and Political Coherence*, PSC/PR/2.(CCCVII), 9 January 2012, pp. 7–9.

27. Personal interview, Senior official, United Nations Office to the African Union, Addis Ababa, 26 April 2012.

28. Williams PD, 'The Peace and Security Council of the African Union: Evaluating an embryonic international institution', *Journal of Modern African Studies*, 47.4, 2009, p. 612.

29. *Ibid.*, pp. 615–6.

30. Williams PD, 'The Peace and Security Council of the African Union: Evaluating an embryonic international institution', *Journal of Modern African Studies*, 47.4, 2009, pp. 612–17.

31. *Ibid.*, pp. 617–8.

32. Personal interview, Senior AU Commission official, Addis Ababa, 27 April 2012.

33. Based on interviews conducted in April 2012 with four AU officials, three of whom are senior and one senior state representative who referred to talk about PoC as 'academic'.

34. AU PSC, *Progress Report by the Chairperson of the Commission on the Development on the Guidelines for the Protection of Civilians in African Union Peace Support Operations*, PSC/PR/2(CCLXXIX), May 2011, pp. 2–3.

35. AU Commission, *Proposed Guidelines for the Protection of Civilians in the African Union Peace Support Operations for Consideration by the African Union*, March 2010, p. 2.

36. *Ibid.*, p. 3.

37. Personal interview, Senior AU Commission official, Addis Ababa, 26 April 2012.

38. AU Commission, *Mainstreaming the Protection of Civilians Considerations into the Operations of the African Union Mission in Somalia (AMISOM)*, Concept note, May 2012.
39. Personal interview, Senior AU Commission official, Addis Ababa, 26 April 2012.
40. Personal interview, Senior researcher, Institute for Security Studies, Addis Ababa, 16 April 2012.
41. Personal interview, Dr Admore Kambudzi, Head of Secretariat, AU PSC, Addis Ababa, 20 April 2012.
42. Personal interview, Senior AU Commission official, Addis Ababa, 26 April 2012.
43. Personal interview, Dr Admore Kambudzi, Head of Secretariat, AU PSC, Addis Ababa, 20 April 2012.
44. Williams PD, 'The Peace and Security Council of the African Union: Evaluating an embryonic international institution', *Journal of Modern African Studies*, 47.4, 2009, p. 609.
45. Personal interview, Senior researcher, Institute for Security Studies, Addis Ababa, 16 April 2012.
46. Personal interview, AU Commission official, Addis Ababa, 21 April 2012.
47. United Nations High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, 2004.
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State Sovereignty and the Responsibility to Protect: Incompatible Norms?

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Introduction

This paper investigates how state sovereignty as an established norm impacts the evolution of an emerging norm such as the responsibility to protect (R2P). International action to ensure human rights protection, especially the use of force, is seen as conflicting with traditional notions of state sovereignty. At first glance the recasting of international humanitarian intervention in the guise of R2P seems to reaffirm this tension as interference into the domestic affairs of a state continues to be advocated by the latter. Supporting this argument is the traditional assumption that the *sovereign* of a state is embodied in the highest authority, i.e. the government, hence regime change is considered the most fundamental breach of sovereignty. However, an alternative argument could be made that R2P reconceptualizes state sovereignty as popular sovereignty, with its focus on the people, and as such R2P does not pose a challenge to state sovereignty at all, but rather reinforces it.

Theoretical considerations

This paper is interested in the interplay between two international norms, and as such hopes to contribute to the emerging literature around norm evolution. The most widely acknowledged academic paper in this regard is Finnemore and Sikkink's *A Life Cycle of Norms*.[1] This model explains much, yet the model's major shortfall is the assumption that norms remain static once they are established, hence there is an inability to explain normative change once a norm has become widely accepted. Constructivist writers such as Wiener and Puetter (2009), Krook and True (2010), Zwingel

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[1] Martha Finnemore, and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organizations* 53, no.9 (1998).

(2012), and Deitelhoff and Zimmerman (2013) and Wiener (2014) introduce and investigate the idea of norm contestation, a mechanism which facilitates the evolutionary process. They argue that divergent expressions of the norm necessitate a re-conceptualization of the norm towards convergence as otherwise collective international understanding and action becomes untenable.[2] With the inclusion of norm contestation as an important conceptual addition to the norm evolutionary cycle, an investigation into the interplay between conflicting norms such as R2P and state sovereignty becomes more insightful.

State Sovereignty

Today defined in terms of Article 2 of the United Nations (UN) Charter, state sovereignty outlines the prohibition of the use of force between states, non-interference into domestic affairs, and stipulates equality with other states.[3] Albeit widely accepted, this legal interpretation often becomes untenable given the many challenges states face today, whether it is the existence of weak or failed states, or the emergence of supranational integration as seen in the European Union.[4] Nevertheless, the perception of a static interpretation of state sovereignty persists, despite the fact that the more recent idea of sovereignty as *responsibility* is not as new as some believe. Such thinking has been around since state sovereignty was first conceptualized. Today Westphalian sovereignty is often misinterpreted as it was never intended by its proponents as an absolute *right*. Early theorists such as Bodin, Grotius and Hobbes outlined how leaders, in return for their position of authority, had to adhere to natural law and endeavour to protect their people. This formed part of what Hobbes and Rousseau termed the social contract, originally between the monarch and his subjects. This sees the people willingly hand over authority over their lives to a sovereign in return for liberty and security.[5] If that sovereign failed to do so, other states *theoretically* had the right to intervene. Yet history shows

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[2] Antje Wiener, and Uwe Puetter, "The Quality of Norms is What Actors Make of It – Critical Constructivist Research on Norms," *Journal of International Law and International Relations* 5, no. 1 (2009); Mona Lena Krook, and Jacqui True, "Rethinking the Life Cycles of International Norms: The United Nations and the Global Promotion of Gender Equality," *European Journal of International Relations* 18, no. 1 (2012); Susanne Zwingel, "How Do Norms Travel? Theorizing International Women's Rights in Transnational Perspective," *International Studies Quarterly* 56, (2012); Nicole Deitelhoff,, and Lisbeth Zimmerman, "Things We Lost in the Fire: How Different Types of Contestation Affect the Validity of International Norms," *Working Papers No 18*, Peace Research Institute Frankfurt, 2013; Antje Wiener, *A Theory of Contestation* (Heidelberg: Springer, 2014).

[3] Article 2(4), 2(7) and 2(1) respectively.

[4] Tanja E. Aalberts, *Constructing Sovereignty Between Politics and Law* (New York: Routledge, 2012), 21.

[5] Luke Glanville, "The Antecedents of Sovereignty as Responsibility," *European Journal of International Relations* (May 2010): 3-9.

that such interventions were not common and, if they did occur, they generally provided the pretence for expansive or aggressive behaviour by states.[6] Yet in practice, sovereign leaders favoured non-intervention for reciprocal reasons and tended not to challenge each other on the abuse of their subjects. This may well have contributed to the notion of the inalienability of non-interference as often interpreted today.

Popular Sovereignty

> There necessarily exists, in every government, a power from which there is no appeal, and which … may be termed supreme, absolute, and uncontrollable … Perhaps some politicians … would answer that …the supreme power was vested in the constitution …The truth is, that in our governments, [this] power remains in the people. (James Wilson)[7]

A closer examination of the history of sovereignty as responsibility links back to the emergence of the principle of *popular* sovereignty. This emerged through the American and French Revolutions. The French were influenced by Rousseau's idea of a collective will, while Locke influenced the Americans with his ideas around individualism.[8] Hence, these two revolutions highlighted two distinct aspects: the right of a *people* to self-government and the right of an *individual* to be protected from tyranny. However, it was the former aspect, now termed self-determination, that was originally embraced. Nationalist ambitions became the guiding principle for most of the 19th and 20th Centuries, culminating in an endorsement by the Versailles treaty as well as Article 1 of the UN Charter which proclaims the "equal rights and self-determination of peoples." This ultimately facilitated the decolonization process in the second half of the 20th Century.

Yet until World War II, the second aspect of popular sovereignty, which stipulated the existence of individual rights, was sidelined. Only with the atrocities perpetrated against civilian populations in World War II did these rights shift back into the spotlight, and the world saw the emergence of an international human rights regime with its wide-ranging protection of individual rights. Yet the Cold

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[6] For example, Great Britain, France and Russia intervening in present-day Greece in 1827 to support them in their uprising against the Ottoman Empire.

[7] As quoted by Andreas Kalyvas, "Popular Sovereignty, Democracy, and the Constituent Power," *Constellations* 12, no. 2 (June 2005): 223.

[8] Glanville, "Antecedents," 9

War and decolonisation era still saw individual rights neglected, and consequently pitted against the non-intervention dimension. Only with the mass atrocities committed in Yugoslavia and Rwanda during the 1990s did a renewed impetus emerge to protect people from their own state.

While most democratic states today place both self-determination and human rights at the heart of political legitimacy, different interpretations persist. Some place greater importance on the will of the collective (e.g. the majority), while others emphasise human rights (e.g. the protection of minorities). Often seen in conflict with each other, Habermas argues that these two interpretations are not mutually exclusive, but can indeed be compatible.[9] In today's context of democracy, the question which remains is: Who is the sovereign in the modern state? With Article 21 (3) of the UN Charter stipulating that "[t]he will of the people shall be the basis of the authority of government", it seems reasonable to interpret this as the collective government being the embodiment of the sovereign, but only if it is representative of the will of the people.[10] Similarly, Kofi Annan stated: "States are now widely understood to be instruments at the service of their people, and not vice versa."[11]

After centuries of failed starts, it seems that the time has finally arrived to re-evaluate the relationship between human rights and non-intervention by reconceptualizing the state sovereignty norm and reconsidering some of the original limitations placed thereon. This line of thinking was embraced by the Canada-based International Commission on Intervention and State Sovereignty (ICISS) in 2000, which introduced the Responsibility to Protect (R2P).

The rise and evolution of R2P

The term R2P was coined through the title of the ICISS final report. This 100 page document is a detailed analysis of the challenges surrounding the state sovereignty norm when it comes to the protection of human rights, and has laid the foundation for the emerging R2P norm. It clearly lays out three dimensions to R2P: the responsibility to prevent, react and rebuild. The primary responsibility lies with the state itself, and only if the state fails to meet this responsibility does this

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[9] Jürgen Habermas, "Human Rights and Popular Sovereignty: The Liberal and Republican Versions," *Ratio Juris* 7, no. 1 (March 1994): 1-2.

[10] W. Michael Reisman, "Sovereignty and Human Rights in Contemporary International Law," *The American Journal of International Law* 84, no. 4 (1990): 870.

[11] Kofi A. Annan, "Two concepts of sovereignty," *The Economist*, September 18, 1999.

shift to the international level. The report also addresses the question of international authority, stipulating that in the first instance approval should be sought from the United Nations Security Council (UNSC), where the five permanent (P5) members are encouraged to refrain from using their veto in cases of atrocity crimes. Should no consensus be reached, the report does suggest the use of the General Assembly's "Uniting for Peace" procedure, or even making use of regional or sub-regional organisations. Finally, the report also anticipated debates around the when and how, clearly stipulating that those intervening should do so with right intentions (i.e. not for the purposes of regime change), as a last resort, using proportional means and with reasonable prospects.[12]

Since the ICISS consisted of expert opinion rather than treaty negotiations by official state representatives, the next challenge was to incorporate R2P into the existing international legal framework. This was achieved in a surprisingly short period of time. As part of the UN General Assembly's World Summit Outcome Document in 2005, R2P was included in paragraphs 138 and 139. These two paragraphs provide the foundation of the R2P norm today, albeit reduced to the lowest common denominator, and have guided subsequent international action. Paragraph 138 emphasizes the state's responsibility to protect its population from atrocity crimes, namely genocide, war crimes, ethnic cleansing and crimes against humanity. It is paragraph 139 which outlines the international community's collective responsibility in the event that the state fails. Here the emphasis is first on diplomacy and peaceful means, and only thereafter may the UNSC under Chapter 7 of the UN Charter and possibly with the aid of regional organisations invoke the use of force "on a case-by-case basis."

The link created between R2P and the UNSC is quite interesting from a norm evolutionary perspective. By invoking Chapter 7 of the UN Charter, R2P uses existing mechanisms and as such embeds this emerging norm within an already accepted institutional and legal framework. This is noteworthy as the Outcome Document is a General Assembly resolution and as such cannot create a legally binding obligation on member states. Nevertheless, the two paragraphs in themselves signal an important, yet gradual shift in the interpretation of state sovereignty over time. To illustrate, Chapter 7 of the UN Charter refers to the right of the UNSC to take action in instances which pose an "existing threat" to international peace and security. International action can include the

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[12] International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa: International Developmental Research Centre, 2001), xi-xiii.

imposition of sanctions (Art 41) and the use of force (Art 42) and is considered binding on all member states of the UN. Originally such threats were interpreted as a direct attack on a sovereign state. Responses under Chapter 7 in the past included the Korean War in 1950 where the UN authorised the use of force to protect South Korea from an attack by North Korea. It was also invoked in the Gulf War in 1991 to protect the sovereignty of Kuwait against an attack by Iraq. However, over the years the interpretation as to what constitutes a threat to international peace and security has been greatly expanded to include regional threats emanating from refugee flows caused by civil war and, more recently, internal threats through human rights abuses. It should be noted, however, that responses to the latter have generally been limited to the imposition of sanctions, as was seen with the arms embargo against the South African Apartheid state. Only in the post-Cold War era has the use of force slowly become an acceptable alternative in instances of internal oppression. This evolution is interesting, as Chapter 7 was originally put in place to protect state sovereignty, but today it is entirely acceptable to use it to underpin the protection of people as well.

Despite the momentous occasion that the World Summit Outcome Document of 2005 presented, the two paragraphs lack the depth and clarity which the ICISS report contains. Authority is firmly enshrined within the UNSC with no other alternative made available in the event of paralysis in the UNSC. The interpretation of R2P is also much narrower. Originally, the ICISS report invoked R2P in a more general context of human rights abuses, with only intervention by the international community limited to the so-called atrocity crimes. Meanwhile the Outcome Document limits all aspect of R2P, both horizontally and vertically, to atrocity crimes. Furthermore, the Outcome Document remains silent on all important criteria that should underpin such interventions.

Libya brought to the fore the varying interpretations UN member states had around the R2P norm, as well as strong calls to respect state sovereignty. It also revealed the positive side of norm contestation: rather than R2P dying a slow death, Libya invigorated the debate around it. This is most effectively illustrated through the Brazilian call to *Responsibility While Protecting (RWP),* which was tabled by President Rousseff in the UNGA in September 2011 and indicated a willingness to engage further on questions of authority and mandate.[13] Other examples of continuous debate are

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[13] Paula W. Almeida, "Brazilian View of the Responsibility to Protect," *Global Responsibility to Protect* 6 (2014).

the fact that the UN invoked R2P in resolutions more frequently in the year after Libya than the five years before,[14] but also the UN Secretary Generals' annual reports on implementing R2P.

Eliminating incompatibility

It is becoming more and more apparent that most opposition to R2P is coming from the benches of so-called traditionalists, who view state sovereignty as an absolute. Here it is essential to prove that this interpretation of state sovereignty is inaccurate. But what is this interpretation of state sovereignty to be replaced by? Conceptually, interpreting state sovereignty through the lens of popular sovereignty seems to be a way forward. Clearly, in states which are based on democratic principles, an adherence to human rights which balances both collective and individual rights would provide the best foundation for a full realization of state sovereignty. It would also allow R2P to come into full effect, balancing the state's primary responsibility with the international community's secondary responsibility. However, the main challenge remains as to how the will of the people is to be determined, especially in the absence of democracy. It also raises the problem of pluralistic societies where generalizations cannot be allowed to speak for all equally.[15]

As the above has shown, it is conceptually possible to align the R2P norm with that of state sovereignty. However, one major stumbling block remains. International law is created through treaties and custom. The former are negotiated principles applicable to all states party to the agreement. The latter derives from ongoing state practice.[16] Without the consent of representatives of sovereign states, norm evolution at the international level cannot proceed. Reflecting back on the history of state sovereignty, the original corollaries attached to the norm were outlined by scholars and generally lacked implementation by states, resulting in the ongoing interpretation of sovereignty as inalienable. Hence, it is the current pattern of state action that needs to be broken.

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[14] Alex J. Bellamy, "R2P – Dead or Alive?" in *The Responsibility to Protect – From Evasive to Reluctant Action?*, ed. Malte Brosig (Johannesburg: HSF, ISS, KAS & SAIIA, 2012), 13.

[15] Simone Chambers, "Democracy, Popular Sovereignty, and Constitutional Legitimacy," *Constellations* 11, no. 2 (June 2004): 155.

[16] John Dugard, *International Law: A South African Perspective* (Johannesburg: Juta, 2005), 28-29.

Conclusion

As is apparent, international norms such as state sovereignty and R2P undergo a continuous process of evolution, often driven by norm contestation. The historical outline provided shows that any conceptualization of either norm as fixed is inaccurate. The above highlights that, despite the ongoing norm contestation between state sovereignty and R2P, it is possible to identify an attempt at norm conformity. Surprisingly, this does not necessarily result in the newer norm conforming to the older one, but may include a reconceptualization of the older norm to align with the emerging one. This can be facilitated by what Peters' refers to as a push for greater socialization of "humanized state sovereignty."[17]

However, as scholars we can present the case of a reimagining of state sovereignty along the lines of popular sovereignty as much as we like, but unless state authorities buy into this interpretation, it is unlikely to guide state action and hence result in the amendment of international treaty or customary law. Bellamy and Luck's upcoming book also is an attempt to tackle precisely this question of "practice."[18]

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[17] Anne Peters, "Humanity as the A and Ω of Sovereignty," *The European Journal of International Law* 20, no.3 (2009), 513.
[18] Alex J. Bellamy, and Edward C. Luck, *The Responsibility to Protect: From Promise to Practice* (Polity, 2018).

Norm Evolution a Matter of Conformity and Contestedness: South Africa and the Responsibility to Protect

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Abstract

Research on international norms has been thriving for decades, most prominently exploring processes of norm creation and compliance. Yet the mainstream literature has paid scant attention to the issue of continuous norm evolution beyond a norm's emergence. In this article we aim at framing the wider context in which norm evolution is taking place. We identify two antipodes: conformity and contestedness between which norms continue to evolve. We will exemplify this by analysing the norm of the responsibility to protect (R2P) through general usage and South Africa's response. The article finds that norm evolution is mostly influenced by conformity with some measure of contestedness as a motor for change.

Introduction

Research on international norms has come a long way from demonstrating that norms matter in world politics. It is now established as a flourishing sub-discipline within International Relations. Today hardly any researcher

would doubt that norms are influential and worth studying. For a long time mainstream research on international norms has treated them as social facts which need to pass a tipping point,[1] proliferate from international organisations,[2] or run through a spiral system of socialisation.[3] These traditional conceptual paradigms are meanwhile seen with increasing scepticism.[4] The emergence of the concept of the responsibility to protect (R2P) and today's power shifts away from traditional centres in the Western world has the potential to propel research on international norms by emphasising the need to further explore continuous norm evolution beyond merely their emergence.[5] In this context constructivist approaches have gained momentum.

Still, our knowledge about the conditions and processes of norm evolution remains imperfect. While constructivism provides for a macro-theoretical framework of analysis, the circumstances through which norm evolution is driven are underexplored. In this article we do not aim at detecting every single causal condition contributing to norm evolution as these might be very case specific. Nevertheless, we are interested in exploring the wider context in which norm evolution takes place, providing a framework for research. As norms never operate in a vacuum and need contextualisation, this article explores both a global and country specific response in the shaping of a particular norm.[6] Overall, we find two processes to be particularly important: norm conformity

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1 Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change', *International Organization*, 52/4: 887–917 (1998).

2 Martha Finnemore, 'International organizations as teachers of norms: the United Nations Educational, Scientific, and Cutural Organization and science policy', *International Organization,* 47/4: 565–597 (1993).

3 Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (eds.), *The Power of Human Rights – International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999).

4 Malte Brosig, 'No Space for Constructivism? A Critical Appraisal of the European Compliance Research', *Perspectives on European Politics and Societies,* 12/4: 390–407 (2012); Mona Lena Krook and Jacqui True, 'Rethinking the life cycles of international norms: The United Nations and the global promotion of gender equality', *European Journal of International Relations*, 18/1: 103–127 (2012); Susanne Zwingel, 'How Do Norms Travel? Theorizing International Women's Rights in Transnational Perspective', *International Studies Quarterly*, 56: 115–129 (2012).

5 Amitav Acharya, 'The R2P and Norm Diffusion: Towards A Framework of Norm Circulation", *Global Responsibility to Protect,* 5/4: 466–47 (2013); Jennifer Welsh, 'Norm contestation and the Responsibility to Protect', *Global Responsibility to Protect,* 5/4: 365–396 (2013); Natalie Zähringer, 'Norm evolution within and across the African Union and the United Nations: The Responsibility to Protect (R2P) as a contested norm', *South African Journal of International Affairs,* 20/2: 187–205 (2013).

6 Krook and True 'Rethinking the life cycles of international norms'; Zwingel 'How Do Norms Travel?'.

and norm contestedness (differentiation). The former refers to the need of aligning norms to established orders and pre-existing norms in order to validate them, while the latter relates to the need of norm evolution to differentiate itself from existing norms or older versions of the norm. Without these two conditions, we argue, norm evolution cannot take place. Developing norms are placed within this nexus of conformity and contestedness, confirming and contesting existing normative orders.

The article is structured as follows. The conceptual section provides a short review of the most essential studies on international norms on which we will build our framework around the notions of conformity and contentedness. Subsequently we introduce a five point typology which assesses the current state of R2P as a norm. The empirical section thereafter evaluates the South African 'footprint' on the R2P debate based on this taxonomy.

Debating International Norms

The seemingly most influential studies on international norms were published in the 1990s with Finnemore, Sikkink, and Risse forming the nucleus of this literature. Models such as the life cycle of norms, which emphasised the role played by norm entrepreneurs and norm cascades[7] and the spiral model of norm socialisation,[8] found wide-spread recognition. Interestingly, although norms are central for this literature, they have rarely formed the centre of analysis often leaving out processes of norm evolution beyond the norm's emergence. This is surprising as the research on norms has a constructivist background which recognises norms as inter-subjective entities emerging out of social interaction. In the spiral model of norm socialisation, norms are treated as social facts with a stable meaning which get diffused down to the state level through mechanisms of socialisation.[9] Likewise, the model presented by Finnemore and Sikkink on the life cycle of norms does not comprehensively problematize norms.[10] While norms go through different phases, norm internalisation somehow marks the end point of their analysis.[11] The potentially most vibrant branch

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7   Finnemore and Sikkink, 'International Norm Dynamics and Political Change'.
8   Risse et al, *The Power of Human Rights*.
9   *ibid*.
10   Finnemore and Sikkink, 'International Norm Dynamics and Political Change'.
11   See also Jeffrey T. Checkel, 'International Institutions and Socialization in Europe – Introduction and Framework', *International Organization*, 59/4:108–128 (2005), pp. 808–809.

of research on international norms concerns the question of compliance.[12] This literature has explored a wealth of conditions impacting on the course of domestic norm diffusion.[13] Again norms are not problematized but taken as fairly fixed social kinds which can be transferred from one place to another. However, it is questionable if norms can really be kept separate from their effects. De facto large parts of the literature have 'ontologized' norms 'as stable factors in world politics'[14] and this despite their inherently intersubjective nature.

Against this positivist trend, a number of authors have taken a more critical approach towards established models and concepts. Amitav Acharya emphasises the importance of norm pruning at the local level.[15] His idea of localisation 'describes a process in which external ideas are simultaneously adapted to meet local practices.'[16] This leaves space for altering norms, an idea which is mostly missing in established models. Antje Wiener has repeatedly focused on the contested quality of norms, arguing that norms acquire meaning through application and processes of norm validation in which the norm itself forms the centre of analysis.[17] In this vein, Mona Lena Krook and Jacqui True have been explicit that norms when placed in different contexts will almost inevitably give rise to different interpretations and applications.[18] They argue that 'norms diffuse precisely because – rather than despite the fact that – they may encompass different meanings, fit in with a variety of contexts, and be subject to framing by diverse actors.'[19] Thus the indeterminacy and continuously changing quality of norms is recognised as a key characteristic that is central to the understanding of norms and their impact. This very much resonates with

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12 As summarised by Oliver Treib, 'Implementing and complying with EU governance outputs, *Living Reviews in European Governance*, 3/5: 4–30 (2008).

13 Brosig, 'No Space for Constructivism?'

14 Antje Wiener, 'Constructivism: The limits of bridging gaps', *Journal of International Relations and Development*, 6/3: 252–275 (2003) p. 266.

15 Amitav Acharya, 'How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism', *International Organizations*, 58/2: 239–275 (2004).

16 *ibid.*, p. 251.

17 Antje Wiener, 'The Dual Quality of Norms and Governance beyond the State: Sociological and Normative Approaches to 'Interaction', *Critical Review of International Social and Political Philosophy,* 10/1: 47–69 (2007); Antje Wiener, 'Contested Meanings of Norms: A Research Framework', *Comparative European Politics*, 5: 1–17 (2007).

18 Krook and True, 'Rethinking the life cycles of international norms'.

19 *ibid.*, p. 105.

R2P and its constantly evolving character.[20] Finally, recent constructivist research on norms holds that norms cannot simply be transferred between actors but rather need to be translated into different contexts in order to explore their meaning and get validated.[21] Instead recent research sees norms as continuously evolving in interaction with their environment. There is presumably no clear end point to norm evolution even after it has been internalised. As long as actors keep the norm alive by referring to it and acting upon it, it will continue to evolve.

Hence, the constructivist turn treats norms as social constructs which change and adjust due to application by various actors. As norms only have an intersubjective meaning, the substance of a norm is a matter of agent interaction. This makes norms conducive to change. In the end, we argue that norm evolution takes place between two equally strong forces: the push for norm conformity and alignment to existing norms; and norm contestation (as norms are not static but require instantiation to be meaningful). Between these two antipodes is where continuous norm evolution takes place.

Engaging Processes of Norm Evolution

In an attempt to identify the processes of norm evolution, this paper draws on principles of the different strands of institutionalist theory, since institutions are also understood as norms.[22] Our study is not interested in the emergence of new norms but enquires into existing ones. While it can be argued that new norms do not emerge out of the blue but have connection points to prior existing norms, this is even more relevant for the continuous evolution of norms. In other words, for existing norms there is a trajectory or history, maybe even a path dependency which needs to be considered for any further development. Therefore at one end of the spectrum we find conformity, which is linked to this idea of path dependencies. These have been explored extensively by historical institutionalism.[23] The main argument is that past events exert considerable influence over present action as past decisions cannot be revoked easily.

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20   Welsh, 'Norm contestation and the Responsibility to Protect'.

21   Zwingel, 'How Do Norms Travel?', p. 124.

22   John Duffield, 'What are international institutions?', *International Studies Review,* 9/1: 1–22 (2007), p. 2.

23   Paul Pierson, 'The Path to European Integration: A Historical Institutionalist Analysis', *Comparative Political Studies*, 29/2: 123–162 (1996); Fritz Scharpf, 'The joint decision trap', *Public Administration*, 66/3: 239–278 (1988).

This leads to a bias towards what is there, simply said. Based on historical institutionalism, institutions hence norms are perceived to be sticky and difficult to change. It should be noted that we view conformity from both the perspective of the existing normative framework, but also in terms of the evolutionary path of the norm itself. We specify this as internal and external conformity. Although norms are not static and undergo a continuous process of evolution, this does not mean change is easy, very frequent, or substantial. It can be but there is no guarantee it will. We can assume that there is a significant degree of inertia in processes of norm evolution and thus normative trajectories matter for the incessant evolution of norms.

A bias towards the status quo seems to be tolerable for at least two reasons. Firstly, in terms of practicality, norms which undergo a process of change are seldom designed in a way that openly contradicts existing standards. They thus tend to continue existing patterns. This is particularly relevant for issues of internal conformity. Additions to the R2P norm do not aim at replacing it. They tend to confirm many aspects of the norm while trying to change it. Secondly, changing norms induce resource costs for norm entrepreneurs in many different forms. The more substantial a norm is changing, the greater the resource implication which would bias actors towards aiming at economical changes. For example a complete renegotiation of R2P akin to the 2005 World Outcome Document implies significant diplomatic efforts with uncertain results. Therefore norm entrepreneurs would most likely favour a moderate alteration in opposition to fundamental changes. Thus, inertia is a force which should find recognition when analysing processes of norm evolution.

Logically, norm evolution requires norms to change as evolution is a process, not an end state. Thus, in addition to the forces of inertia we need to explore contestedness and differentiation as driving forces for norm evolution. Where conformity provides the force in favour of inertia, contestedness provides potential momentum towards change. Contestedness is a wide field and involves not only a process which distinguishes the norm from other related norms (external contestation), but also adaptations of the norm itself in terms of alternative interpretations (internal contestation), in other words changes which alter an existing norm but do not replace it fully.

External contestation is more apparent. As new norms arise they challenge existing ones. The emergence of the human rights discourse from the outset conflicted with the well enshrined principle of state sovereignty. Such external contestation often occurs at (but is not limited to) the international level in which norms are created, discussed, monitored and acted upon, seeing norm entrepreneurs more actively remodelling a norm. On the other side, the main mechanism of internal contestation is norm diffusion, considered by many

scholars an integral component of norm evolution. Here Acharya's idea of norm localisation proves useful. He argues that norms spread because there is scope for local interpretation and application.[24] Yet it is precisely this process which results in different, often contested, meanings of the norm emerging. In other words, internal contestation appears where the same norm is found to have different interpretations. Consequently, Acharya speaks about processes of norm circulation, emphasising the importance of continuous norm enactment.[25] As the need arises for collective international action, for example to prevent mass atrocities, conflict between R2P and older norms such as state sovereignty on the one hand and local variations in the interpretation of R2P on the other both become apparent. In an effort to avoid gridlock renewed discussion and debate is necessitated, thereby driving norm evolution. It seems that both external and internal contestation facilitate the evolutionary process.

Here the concept of norm validation is relevant. Wiener and Pütter understand validation as a form of social recognition and acceptance of norms through application.[26] In this sense, a norm acquires meaning primarily through its 'meaning in use.'[27] Through application a norm gets translated not merely 'into a legal concept, but into culturally understandable and acceptable context.'[28] The original norm absorber becomes a norm creator through engagement with the norm due to its principally contested nature and ability to adapt.

In summary, there are well-founded reasons to assume that norm evolution is framed by two strong forces: conformity and contestation, both in relation to other existing norms or older/parallel versions of the norm itself. The analysis below argues that the interplay between both of these competing forces, of conformity and contestation, underpin gradual, actor driven norm evolution.

A Typology of Norms

In order to better assess how norm evolution is placed between conformity and contestation we suggest a five point taxonomy for measurement, assessing

24   Acharya, 'How Ideas Spread'.

25   Acharya, 'The R2P and Norm Diffusion'.

26   Antje Wiener and Uwe Pütter, 'The Quality of Norms is what actors make of it – Critical Constructivist Research on Norms', *Journal of International Law and International Relations*, 5/1: 1–16 (2009).

27   *ibid.*, p. 4.

28   Zwingel, 'How Do Norms Travel?', p. 125.

the substance, specificity, regulative and constitutive qualities, and enforce-ability of norms (see table 1).

Firstly, there are potentially many degrees to which a norm's *substance* can be altered, ranging from substantial changes in a norm's content and intent to only adding more detail to existing standards hardly altering the core of the norm. The substance of a norm is certainly addressed when changes are not just literal or technical additions but alter visibly the intent of the norm. Assessing the depth of change is equally important to assessing the number of changes and for making a meaningful judgement about norm evolution. For illustration: a small substantive change would be amending a general ban on discrimination by listing specific discrimination as prohibited. This does not alter the ban on discrimination per se, but highlights more prominent and urgent cases. Meanwhile, revoking a general discrimination ban by asking for qualifications for only specific types of discrimination affects the substance of the ban itself. This in principle still recognises the ban on discrimination but may limit its applicability significantly. It is important to note when norm evolution reinforces the substance of a norm or possibly alters it.

Secondly, *vagueness* and *specificity* are well known categories used in the compliance literature.[29] They usually refer to a more technical quality of a norm, or its determinacy.[30] A norm can be considered as specific if it provides clear indications into what needs to be achieved for its implementation. This refers to its degree of technical detail but also questions instructive language such as the lack of definitions. For example, an international convention against war crimes, even if highly detailed, remains difficult to apply if no definition of the term war crime is provided. With regard to norm evolution we can expect that the more open the wording and meaning of a norm, the easier it is for norm takers to engage in processes of norm localisation and consequently norm evolution.

Furthermore, the literature on norms often distinguishes between two quali-ties of a norm.[31] One is its *regulatory quality* which refers to the properties of a norm directly influencing state behaviour, following a consequentialist under-standing of norms as social entities regulating action. A legal document prohibit-ing war crimes is certainly regulatory in character. The other quality, from a more

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29   Jeffrey Legro, 'Which Norms Matter? Revisiting the "Failure" of Internationalism', *International Organization*, 51/1: 31–63 (1997).

30   Frank Schimmelfennig and Ulrich Sedelmeier (eds.), *The Europeanization of Central and Eastern Europe* (Ithaca and London: Cornell University Press, 2005), p. 32.

31   Antje Wiener, 'The Dual Quality of Norms and Governance beyond the State: Sociological and Normative Approaches to 'Interaction" Critical Review of International Social and Political Philosophy, 10(1) 47–69 (2007).

TABLE 1   *Typology for norm evolution*

Normative substance	Refers to different degrees of alteration in a norm's substance (intent), for example its scope of applicability
Vagueness/Specificity	Refers to a norm's quality in terms of its clarity and technical detail
Regulative quality	Refers to the quality of a norm in terms of its regulative (behavioural impact) value
Constitutive quality	Refers to the quality of a norm in terms of its constitutive (community building) value
Enforceability	Refers to properties of a norm in relation to its mechanism of enforcement or enactment

critical constructivist school of norms, assumes that norms do more than regu-late, they also have *constitutive qualities*. Any prohibition of war crimes also explicitly or implicitly makes constitutive claims about a world order which is expected to be based on humanitarian values. It provides an overarching frame-work for world society and functions as an identity reference point and provides common assurances to all those who feel bound by it. Indeed, norms vary signifi-cantly in terms of both their regulatory and constitutive quality, and therefore both these qualities are included in the typology above.

Lastly, norms as defined as standards for appropriate behaviour often directly indicate their degree of *enforceability*. Norms can take many forms of enforceability such as domestic or international law or non-legal standard. They are enforceable through different methods which are either part of the norm itself (internal) or the wider normative framework in which they operate (external). While some institutions can issue hard sanctions such as fines, oth-ers only monitor and make public expert opinions. In other cases sanctioning might only consist of social pressures. Often the sharpest difference occurs between legal norms with clear sanctioning instruments and non-legal norms which only entail social consequences.

The next section will examine the R2P norm as a whole, applying the typology outlined above, and determine to what extent this norm exhibits con-formity with the pre-existing normative order and alternatively where it intro-duces different more challenging ideas which result in contestation. Similarly, this will be followed by an analysis of South Africa's foreign policy. Here we are interested in how South Africa has accepted or critiqued the R2P norm from within its own contextual framework, and how this has endorsed or challenged both the R2P norm and the existing normative order.

Overall Assessment of the R2P Norm After 10 Years

In the case of R2P a vibrant literature exists tracing the emergence of R2P as a norm following key events such as the report of the International Commission on Intervention and State Sovereignty (ICISS) in 2001, the 2005 United Nations General Assembly (UNGA) *World Summit Outcome Document* and the discussion around its application. As this process is already well documented,[32] we will not inquire into foundational history writing but start our analysis with a current assessment of R2P following the five point typology.

Normative Substance

The norm is substantially rich in that it fleshes out a comprehensive responsibility in instances of grave human rights abuses. All states and the wider international community are called upon to prevent, react and rebuild. Paragraph 138 of the 2005 UNGA *World Summit Outcome Document* links the applicability of R2P clearly to atrocity crimes. States are called upon to prevent such atrocities from happening (Pillar 1) with the support of the international community (Pillar 2). In addition, paragraph 139 calls on the UN to use 'appropriate diplomatic, humanitarian and other peaceful means' under Chapters 6 and 8 with a minor reference to possible collective action under Chapter 7 on a case-by-case basis (Pillar 3).[33] In terms of the latter, the General Assembly in 2005 pursued a more cautious approach in contrast to the 2001 ICISS report. It acknowledged the extensive range of possible reactive means such as mediation, peacekeeping and peace building, thereby including sentiments which enjoyed more wide-ranging support and conformed to accepted ideas. Although the possibility of military action was acknowledged, it remained controversial.

One of the greatest merits of the concept is that it breaks with impunity in cases of severe crimes and human rights violations. It is clear that those crimes cannot be justified under the conflicting norm of domestic non-interference. Although this is not entirely new thinking, given major international post-Cold War crises such as Rwanda, it attempts to eliminate selectivity in response and validate the principle.

In terms of external conformity, it is apparent that R2P's substance clearly conforms to pre-existing human rights and humanitarian law which monitors and calls upon states to act when lives are threatened, while international individual accountability for atrocity crimes has emerged under the auspices of

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32   See, for example, Noha Shawki, 'Responsibility to Protect: The Evolution of an International Norm', Global Responsibility to Protect, 3/2:172–196 (2011).

33   '2005 World Summit Outcome', UNGA Res.60/1, 16 September 2005, p. 31.

the International Criminal Court (ICC). The list of atrocity crimes in which each state has a responsibility towards its own people, exhibits a close affiliation with the ICC Statute, hence reinforcing the latter.

Despite what many may presume, the principle of state sovereignty is not challenged openly by R2P but reinforced, albeit with a somewhat different interpretation which sees sovereignty attached to the people rather than the government. This is seen through the rise in democratic values and institutions which reinforce this idea of popular sovereignty. In other words, to avoid interference the new notion highlights the need for the state to protect its people. By emphasising this primary responsibility of the state, only a failure to do so would transfer this responsibility to the international community,[34] thereby exhibiting external conformity through the complementary nature of the responsibility. Therefore, R2P highlights that when a state is unwilling or unable to act the international community needs to step in.[35] Nevertheless, we see R2P's divergence with older notions of sovereignty which emphasise territorial integrity, opening up space for external contestation in the event of the use of force.

Vagueness and Specificity of the Norm

Despite the original ICISS report's many elaborate pages, the *World Summit Outcome Document* condenses R2P into only two paragraphs. The result is a much more restricted interpretation of R2P with fairly open wording, making it easier for norm takers to accept and abide by. Yet, the much narrower conceptualisation of R2P is found in the four scenarios being attached to R2P in general and a state's responsibility in particular. While this mirrors the ICC Statute, all preceding documents attached these scenarios specifically to the international community's right to intervene forcefully. It leads to a much more restrictive reading of the applicability of R2P with the norm divorced from the broader human rights discourse.

Similarly, the use of the Protection of Civilians (PoC) terminology by organs of the UN, especially in numerous United Nations Security Council (UNSC) resolutions, limits the scope of R2P, but is essential in validating R2P at the UN as the PoC is an older and more accepted norm. While R2P is much broader, more general and applies to both war and peace time, the PoC is enshrined in

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34   Francis M. Deng, 'The evolution of the idea of 'sovereignty as responsibility" in Adekeye Adebajo (ed.), *From Global Apartheid to Global Village: Africa and the UN* (Pietermaritzburg: UKZN Press, 2009), pp. 191, 198.

35   Carsten Stahn, 'Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?', *The American Journal of International law*, 101/1: 99–120 (2007), p. 104.

humanitarian law and specifically applies to conduct in times of war. Seen through the lens of R2P, the PoC extends to both the state and the international community, but its applicability would be constrained to military conflict.[36] Limiting R2P as a whole to focusing on the accepted norm of the PoC seems a step back towards conformity with the externally prevailing normative framework, while also exhibiting contestation with the original conceptualisation of R2P as envisioned by the ICISS.[37]

Internal contestation is further exhibited when noting the ICISS outline of specific intervention criteria. These have been excluded from the *World Summit Outcome Document*. After Libya it is apparent that some version of these needs to be included, whether through political agreement or practice.

The above inconsistencies originate in states' fears of being on the receiving end of intervention and hence sovereignty trumps normative consideration, highlighting internal and external contestation around R2P early on. Consequently, R2P is a norm which makes substantive claims but lacks specific operationalization. Meanwhile it is this openness of the wording which to a certain extent legitimates a plurality of opinions, divergent interpretations and action all in the name of conformity, as per Acharya's idea of localisation. At the same time it is the cause of its internal contestedness in situations where actors are required to apply the norm to international crises.

Regulative Qualities

R2P entails a strong regulative impetus through the banning of war crimes, crimes against humanity, genocide and ethnic cleansing.[38] At the moment R2P is mostly institutionalised through different mechanisms. On paper it has varying degrees of authority like the ICISS Report (expert authority), the *World Summit Outcome Document* (political authority), UNSC Resolutions (political and legal authority), UN Secretary-General reports (political authority) and the African Union Constitutive Act (legal authority). To a lesser extent the norm appears in the form of institutions such as R2P focal points or the UN representative for R2P. Although R2P has strong political authority through UNGA support, it relies on the existing provisions of the UN Charter regarding UNSC

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36   Zähringer, 'Norm evolution within and across the African Union and the United Nations', pp. 197–198.

37   We acknowledge that the line between internal and external can be blurred at times. At what point does the PoC, originally an independent norm which predates R2P, become inseparable from the R2P norm itself? For the purpose of this paper we treat the PoC as a separate (external) norm.

38   UNGA Res. 60/1.

action. With the ongoing call for UNSC reform to make it more legitimate, external contestation remains. Hence R2P lacks legal and regulative authority in terms of a separate multilaterally negotiated treaty. It is highly regulative in intent but is missing operationalization which undercuts its regulative impetus. Nevertheless, the link of R2P to atrocity crimes conforms with the Geneva Conventions of 1949 and the post-World War II emergence of an international criminal justice system, which recently culminated in the formation of the ICC.

Constitutive Qualities

R2P can surely be placed within the context of a post-Westphalian world order. Despite reinforcing state sovereignty, we can observe a reinterpretation of state power and a stronger emphasis on elements of human security linked with a very basic understanding of global citizenship and its responsibilities. Yet what kind of world culture R2P resembles remains open to debate. While Pillar 1 and 2 are widely accepted, Pillar 3 remains contested. What is perceived by human rights activists as a welcome end to impunity to severe crimes and resembling a humanitarian act of solidarity within a global society might be perceived with greater scepticism and suspicion by other actors. Especially military interventions need to follow tight rules of self-restriction to avoid the impression of neo-imperial ambitions. In this context it is important how R2P is perceived as a concept constituting a certain kind of global order. It is by no means fixed but will develop further as it is used by pivotal actors in specific circumstances.

Enforceability and Enactment

While in cases of severe human rights violations the condemnation is often widely shared, there remains a margin of uncertainty of when the responsibility of the wider international community kicks in and the single state has failed. So far concrete norm enactment has taken place in crises such as Libya, the Democratic Republic of the Congo (DRC), Central African Republic and Syria to name a few. Ironically, the most heated issue, namely international military intervention, was conceptualised by R2P as a means of legitimising the latter. However the first clear practical application in Libya has highlighted that this aspect remains disputed. In this sense there seems to be conformity towards the status quo. Yet Libya has invigorated the debate around R2P. Rather than outright rejection of the idea of military force, states are debating the criteria and modalities of such force. For instance the UN is frequently criticised for not treating like cases the same and for insufficient oversight over the intervener. Here more than anywhere the interplay between contestedness and conformity is apparent.

TABLE 2   *The R2P norm at 10 years - between conformity and contestedness*

	Conformity		Contestedness	
	Internal	**External**	**Internal**	**External**
Substance	– Enacts the responsibility to prevent, react and rebuild for both states and the international community	– Origin in Human rights and Humanitarian law – emergence of ICC – State sovereignty is reinforced	– More restrictive interpretation from the original ICISS report emerged (i.e. atrocity crimes define the full scope of R2P, not just the qualification of international action)	– International military intervention acknowledged, yet remains controversial in relation to state sovereignty
Specificity	– R2P remains vague and hence easy to abide by.	– Restricted conceptualisation in line with ICC – UN discourse focuses on PoC, especially in terms of state responsibility in conflict situations	– Narrowing of original ICISS conceptualisation to atrocity crimes and PoC – Exclusion of intervention criteria – Different interpretations of R2P emerge across various belief systems, which lead to contestation when international action is required.	– PoC focus leads overall to narrower conceptualisation around conflict situations
Regulative quality	– Relies on existing legal framework	– Shares with international criminal justice and the ICC the outlawing of atrocity crimes	– Lack of dedicated legal mechanism	– Call for UNSC reform to ensure legitimacy
Constitutive quality	– Pillar 1 (state responsibility) and Pillar 2 (global assistance) are widely accepted	– Reinforces state sovereignty – Link to human rights discourse and emerging criminal justice regime	– Pillar 3 (international action under UNSC, especially the use of force) partly seen as neo-imperial ambitions	– Attempt to reinterpret state sovereignty with emphasis on human security.
Enforceability	– Use of force falls under the sole authority of UNSC	– aligned to existing mechanisms of the UN Charter – role sought for regional organisations under auspices of the UN	– Sole authority and selectivity by UNSC questioned	– use of P5 veto seen as problematic

There is also less agreement on who and with what tools the international community should react. While the 2005 UNGA World Summit Document clearly aligns R2P enforcement with the UN Charter, which sees the UN Security Council as the decisive decision maker in terms of authorising the use of force, delegation to regional organizations is permitted under Chapter 8. Yet regional organizations such as the African Union (AU) contest the primary role played by the UN and reserve the right to initiate action. This discontent is amplified by the continued existence of the P5 veto which often results in selectivity or non-action. Therefore the de facto enactment of R2P is a fairly fragmented process, leading to contestation. There is currently no truly inter-locking governance system connecting the UN with the many regional organizations.[39] Combined with the rather vague conceptualisation of regulative quality of the norm, the enforceability of R2P remains a story of fragmented responsibilities with little specific guidance providing many potential entry points for contestation.

Table 2 summarises the general conceptualisation of R2P in terms of substance, specificity, regulative and constitutive elements, and enforceability. There is a strong emphasis on conformity, while clear areas of contestedness are also apparent. At the present moment R2P remains a contested norm, however this contestation has not resulted in its demise. In contrast, 10 years on from the 2005 *World Summit Outcome Document*, R2P is gaining in awareness and relevance with ongoing debate around operationalisation resulting in adaptation and socialisation.

South Africa and the Responsibility to Protect

Given our emphasis on norm takers becoming norm enactors, in this next section an effort is made to contextualise R2P's evolutionary process by tracing a particular state's path. The focus is on South Africa's understanding and application of the norm. South Africa has been selected because the issue of R2P is most urgent in Africa's current and past conflicts. Furthermore, South Africa is a regional power with considerable influence on the continent and has an active interest in R2P.

The previously introduced taxonomy and its five properties of norms allows us to measure to what degree South Africa has accepted R2P and where it

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39   Malte Brosig, 'An inter-locking security system for R2P: Are we there yet?' in Eduarda
      Passarelli Hamann and Robert Muggah (eds.), *Implementing the Responsibility to Protect:
      New Directions for Peace and Security?* (Brasilia: Igarapé Institute, 2013), pp. 18–23.

challenges its conceptualisation. Naturally, exploring the South African position does not exhaustively explore the evolution of R2P as a norm. Our aims are more modest as we explore how South Africa exhibits both internal and external conformity and contestation when it comes to the R2P norm and how this may lead to ongoing norm evolution.

With the advent of South Africa's multiparty democracy, President Mandela's government came out strongly in favour of a human rights based foreign policy approach. This was in line with the new South African Constitution and in recognition of the role international human rights norms had played in ending Apartheid. In the early years of post-1994, South African foreign policy also sought to overcome its former isolation. Today it is the only African country part of both the BRICS (Brazil, Russia, India, China, South Africa) and G20 groupings. In the last 10 years South Africa was elected twice as a non-permanent member onto the UN Security Council as an African representative (2007–2008 and 2011–2012). Regionally it has acquired a leading political role with a former South African cabinet minister currently heading up the African Union (AU) and South African forces contribute largely to important AU and UN peace-keeping initiatives. Given this leadership position South Africa has little option but to engage on R2P. Yet on the face of it, South Africa's position is somewhat contradictory and confusing.

Current Deputy President Cyril Ramaphosa was one of the 12 ICISS members, and during the formative stages of R2P between 2001 and 2005 South Africa played a visible, albeit limited role at the UN.[40] Yet after the adoption of the 2005 *World Summit Outcome Document*, South Africa opposed certain human rights focused UN Security Council resolutions during its first term on the Council which made it appear as if South Africa was siding with the likes of repressive regimes in Zimbabwe, Myanmar and Iran.

Yet parallel to the emergence of R2P, South Africa together with Nigeria and Libya championed the transformation of the Organization of African Unity (OAU), known for its preference for non-interventionism and culture of impunity, into the AU, which establishes the principle of non-indifference. Specifically, the Constitutive Act of the AU in Article 4(h) stipulates 'the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.' While R2P as a concept is not specifically mentioned and Article 4(h) hardly covers the complexity of the norm or provides guidance

40   Faith Mabera and Tim Dunne, 'South Africa and the Responsibility to Protect', *AP R2P Brief*, 3/6 (2013), p. 2.

on its application, the AU is and remains the only international organisation which has given legal effect to R2P. The protocol of the AU Peace and Security Council (PSC) explicitly refers to Article 4(h) as its guiding principle for its operation and the protocol formulates a more comprehensive R2P mandate through responsibilities in terms of conflict prevention and rebuilding.[41]

South Africa's most outspoken engagement and reflection on the R2P discourse took place during its membership on the UN Security Council in 2011–2012, and hence deserves some consideration. With the outbreak of the Libyan conflict in early 2011, it shared the concern of the international community. It supported an AU communiqué on 23 February condemning 'the indiscriminate and excessive use of force against peaceful protesters' and calling 'on the Libyan authorities to ensure the protection and security of its citizens (…).'[42] South Africa voted in favour of Resolution 1973 and in his justification the South African ambassador re-iterated the need to protect civilians on the ground, while also encouraging support for the AU's newly created ad hoc committee on Libya which was tasked with finding a lasting political solution through mediation. The statement nevertheless reaffirms the sovereignty and territorial integrity of Libya.[43] Surprisingly, tensions existed between African states on the UNSC and the official AU position. While all three African states on the UNSC voted in favour of Resolution 1973, the AU just a week earlier rejected the idea of foreign military intervention. South Africa justified this at the time in that it supported the view of the League of Arab States which was calling for the action in light of a credible threat to the civilian population.[44] However, the disagreement was short-lived as not long after South Africa's representatives were also lamenting that action was going beyond the UNSC mandate with Libya's sovereignty being threatened by political agendas.[45] South Africa's first attempt to send an AU mediation team to Libya headed by President Zuma was thwarted by the no fly zone and further alienated South Africa from the Western led military intervention.

41   Zähringer, 'Norm evolution within and across the African Union and the United Nations', p. 190.

42   AU Peace and Security Council Communique, PSC/PR/COMM(CCLXI), 216st meeting, 23 February 2011.

43   Baso Sangqu, 'Statement by Ambassador Baso Sangqu in explanation of the vote in the UN Security Council on the Situation in Libya', 17 March 2011, accessed 7 November 2013. http://www.southafrica-newyork.net/speeches_pmun/view_speech.php?speech=9729502

44   Institute for Security Studies (ISS), *Peace and Security Council Report No. 21*, April 2011, p. 5.

45   United Nations Security Council 'Open Debate on Protection of Civilians', *Record of the 6650th meeting*. S/PV.6650, 9 November 2011.

Clearly the South African concern over the implementation of R2P in Libya was primarily driven by its alleged miss-use to pursue regime change, which arguably went beyond the mandate granted by resolution 1973. In this concern South Africa was not alone but found support from other emerging powers, particularly groupings such as BRICS. While most BRICS members remain sceptical of R2P, Brazil has since attempted to 'bridge the diplomatic divide' by introducing the concept of the Responsibility While Protecting (RWP) at the UN in November 2011 (see Kenkel and Felipe in this special issue).

After Gadaffi was ousted, the focus shifted onto Syria in October 2011. South Africa abstained on the first resolution as it felt that the sponsors were seeking regime change, even though no such call was being made.[46] Yet contradictorily, in February it subsequently voted in favour of a resolution which urged the Syrian President to step down.[47] Over the subsequent months the position crystallised somewhat with representatives re-endorsing Syria's sovereignty and territorial integrity and re-iterated the need for a comprehensive, all-inclusive mediation process in which the efforts of regional organisations should be supported.[48]

The 2011 Foreign Policy White Paper[49] does not make references to R2P directly, yet it is important because it sets the context in which R2P is placed locally. Accordingly, South African foreign policy follows a 'Diplomacy of Ubuntu', which is an African concept of humanity based on reciprocity: 'we affirm our humanity when we affirm the humanity of others.'[50] While the foreign policy is unique in placing humanitarianism at its core, the concept of Ubuntu remains vague and aspirational. Furthermore the White Paper highlights the nature of South Africa's foreign policy as 'Afro-centric', rejecting the

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46   Simon Adams, 'Emergent Powers: India, Brazil, South Africa and the Responsibility to Protect', *Global Centre for the Responsibility to Protect*, (2012), www.globalr2p.org/publications/10.

47   Festus Aboagye, 'South Africa and R2P: More State Sovereignty and Regime Security than Human Security?' in Malte Brosig (ed.), *The Responsibility to Protect: The Role of Global Middle Powers*, HSF, ISS, KAS, SAIIA, (2012), p. 42.

48   Baso Sangqu, 'Statement by the South African Ambassador to the United Nations at a Briefing of the United Nations Security Council on the Situation in the Middle East (Syria)', 31 January 2012, accessed 7 November 2013.
      http://www.southafrica-newyork.net/speeches_pmun/view_speech.php?speech=5844971

49   Department of International Relations and Cooperation (DIRCO), 'Building a Better World: The Diplomacy of Ubuntu', *White Paper on South Africa's Foreign Policy*, Pretoria, 13 May 2011.

50   *ibid.*, p. 4.

'legacy of colonialism'[51] and opposing 'structural inequality and abuse of power in the global system.'[52] Human rights questions are seen from the perspective of a continued fight for freedom with 'non-interference in domestic affairs' perceived as a strong anti-imperialist position.[53] Unsurprisingly South Africa shows great sensitivity on questions of military interventions including those in the name of R2P. However, the White Paper also acknowledges that 'sovereignty and non-interference in domestic affairs are coming under legal scrutiny in the search for suitable responses for intervention.'[54]

South Africa has played an important role as African champion, especially with regard to African conflict areas, and has more recently embarked on a more assertive foreign policy. Accordingly, Foreign Minister Mashabane declared 'So yes, preventative diplomacy, intervening when there are situations of strife, when we are called upon to do that, we will always be there, we will never say no.'[55] This new assertiveness has materialised in at least two important projects. Firstly, South Africa championed the deployment of an international intervention brigade in the eastern DRC which sought to 'neutralise' the M23 and other rebel groups. The mission was deployed in July 2012 under a UN mandate and is de facto a peace enforcement operation. Secondly, South Africa is the driving force behind the establishment of the African Capacity for Immediate Response to Crisis (ACIRC) which is planned to be a military rapid reaction instruments at the hand of the AU. While the ACIRC is still in an early planning phase, the PoC is explicitly referred to by the AU as one of its tasks.[56] Certainly the ACIRC would extent the toolbox of the AU and South Africa in conflict management beyond peace mediation and give it a military intervention instrument.

Despite its sometimes confusing stance, a foreign policy trend emerged which favours all inclusive political dialogue. South Africa believes that preference for one side only polarises the conflict, while regime change on its own is no guarantee for future peace and security. Despite advocating the R2P norm in theory, in practice its application is much more guarded, giving

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51   *ibid.*, p. 7.

52   *ibid.*, p. 11.

53   Thabo Mbeki, 'What the World got Wrong in Côte d'Ivoire', *Foreign Policy,* 29 April 2011.

54   DIRCO, *White Paper*, pp. 16–17.

55   ISS Today, 'Are we seeing the emergence of a new 'Zuma doctrine' on Africa?', 2 May 2013, http://www.issafrica.org/iss-today/are-we-seeing-the-emergence-of-a-new-zuma-doctrine-on-africa, accessed 7 November 2013.

56   AU Commission, 'Report of the Chairperson of the Commission on the Operationalisation of the Rapid Deployment Capability of the African Standby Force and the Establishment of an African Capacity for Immediate Response to Crises', 29–30 April 2013, paragraph 28.

consideration to the many different facets involved in a crisis. Not inherently opposed to Pillar 3 action, they support the Brazilian initiative of greater control and accountability of enforcers, while also calling for more involvement of regional organisations.[57] It is the latter which may explain its selectivity in the use of force. At the global level more emphasis is placed on sovereignty, while regionally South Africa has been instrumental in the building of the AU's security architecture and is an active participant therein. Then there are its contradictory alignments which oscillate between support for the AU position and that of the BRICS countries. So despite engaging in the discourse of R2P, its final considerations seem to be based on practicalities which include weighing its global and regional alliances while balancing its commitment to human rights and democracy with that of sovereignty and territorial integrity.

In summary, President Zuma's speech at the UN General Assembly in 2012 accurately reflects the position of South Africa on R2P:

> Any member state or international body that implements Security Council Resolutions should be accountable to the Security Council. This will ensure that we avoid the abuse of internationally agreed concepts like Responsibility to Protect and Protection of Civilians. These principles must not be used to amongst other things, justify the notion of regime change. .... We should continue the debate on these principles in order to develop norms and standards for accountability when actions are taken. It is also of critical importance for the UN to closely guard its impartiality, independence and objectivity.[58]

Norm Conformity and Contestation as Evidenced by South African Foreign Policy

The introductory section introduced five indicators for norm evolution: normative substance; specificity; regulative versus constitutive qualities of a norm; and enforcement. We will now assess South Africa's internalisation of R2P using these five indicators. A summary of the South African position can be found in table 3.

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57   Mabera and Dunne, 'South Africa and the Responsibility to Protect', p. 8.

58   Jacob Zuma, 'Statement by President Jacob Zuma of the Republic of South Africa to the General Debate of the 67th Session of the General Assembly', New York, 25 September 2012, accessed 7 November 2013. http://www.dirco.gov.za/docs/speeches/2012/jzum0925 .html

TABLE 3   *South Africa and the R2P norm - between conformity and contestedness*

	Conformity		Contestedness	
	Internal	External	Internal	External
Substance	– SA acceptance of full scope of R2P, responsibility to prevent, react and rebuild	– Endorses human rights protection within the constraints of state sovereignty	– Opposes regime change	– State sovereignty and territorial integrity considered paramount
Specificity	– Terminology aligned to that of the UN	– Replicating UN PoC discourse	– Call for clearer mandates, greater transparency and accountability – Greater effort at mediation	– Emphasis on intervener's adherence to PoC.
Regulative qualities	– Co-drafter of AU Const. Act and AU PSC Protocol, both endorsing R2P.	– None apparent in light of prevailing contestation	– Primacy of UNSC around R2P questioned	– Seeks new interpretation of UN Charter, Chapter 8- Legitimacy of ICC questioned after its perceived selective focus on Africa.
Constitutive qualities	– Strong endorsement of R2P at regional level; AU mechanisms are first and only legal authority.	– Strong support for rules based and HRS orientated international system	– Rejection of Western hegemony relating to R2P	– Rejection of Western hegemony in relation to global policy making
Enforceability	– Support for Ezulwini consensus, which acknowledges UN authority	– Rejects unilateral response and acknowledges use of collective and inclusive approach	– Scepticism about P5's motives when exercising right to intervene	– UN's sole authority questioned; greater authority for regional organisations sought

Normative Substance

Most would argue that South Africa has done little in the way of contributing to the normative substance of R2P. In its early days the norm itself aligned perfectly with South Africa's human rights based foreign policy approach and hence South Africa was a major facilitator in entrenching the R2P norm within the emerging AU framework, exhibiting internal conformity. Yet on the face of it South Africa's repertoire varied from direct military action, to verbal condemnation of interventions and keeping a position as neutral negotiator.

In the case of Libya, South Africa continued to lend support to the AU's mediation effort with the South African President leading a high-level delegation to Libya in April 2011. The result was an acceptance by the Gadaffi regime of the AU's terms, while the National Transitional Council (NTC) representing the rebels rejected them after realising that NATO had come out in favour of regime change.[59] It has been argued that South Africa's stance favoured regime security over human rights.[60] This is not entirely accurate. In a clear show of contestedness internal to the norm, South Africa views any intervention which seeks to eliminate the incumbent regime as likely to cause a hardening of the stance of the latter, which would negatively impact any prospect of successful negotiations. Neither is there a guarantee that a forced removal of one repressive regime will lead to greater freedom under a different regime. Drawing on its own history, South Africa advocates a transitional arrangement which includes all parties until such time as the will of the people can clearly be determined.[61] As to regime change, the *World Summit Outcome Document* leaves this very important question open. South Africa is adamant that the UN was too quick with the use of force in the case of Libya, especially with NATO advocating regime change, while not making enough of an effort at mediation.

It does seem that South Africa conforms closer with the older norm of state sovereignty and seeks to implement human rights protection within the constraints of the former by advocating negotiations that embrace all sides. As such its support for non-interference highlights a degree of external contestation with regards to R2P as the latter recognises the need for intervention in extreme situations. Ultimately, South Africa's stance contributes to the debate

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59   Zähringer, 'Norm evolution within and across the African Union and the United Nations', p. 196.

60   Aboagye, 'South Africa and R2P', p. 39.

61   Ebrahim Ebrahim, Deputy Foreign Minister of South Africa, 'Twenty Years of South African Involvement in Conflict Resolution: Lessons Learned and the Case of Syria', University of Pretoria, 24 February 2014.

around when and how intervention should take place, but it does not add much substance to the existing norm.

Specificity and Vagueness

Overall South Africa's statements before the UN could be interpreted as alignment with the concerns of the Brazilians and their efforts at elaboration. Not rejecting the R2P norm outright, South Africa has reiterated the call for clearer mandates, greater transparency and accountability in cases of international action summarised under the acronym of RWP. This internal contestation resulted in efforts to clarify these aspects. It forms an important part of the evolutionary process which is encouraging ongoing interaction and discussion around the R2P norm and may well lead to greater clarity in the future. At this point it remains open as to whether this will actually lead to globally accepted codification.

Furthermore, South Africa's discourse focuses on the PoC. Here the use of the PoC language is in line with that used in UN resolutions, so greater conformity to the global interpretation of R2P and the older norm of the PoC is apparent. South Africa and the AU have consolidated the PoC with specific references to it in all mandates of regional troops.[62] Yet in contrast it argues that international military intervention compounds the threat to civilians. Hence, while the UN uses the PoC language to justify military action when a state fails to protect civilians, internationally South Africa uses it to argue against intervention, arguing that the use of force compounds the threat to civilians. This opens up space for at least some degree of contestation.

Regulative Qualities

South Africa has also questioned the primacy of the UNSC and indicated its support for seeking a different interpretation of Chapter 8 of the UN's Charter, whereby regional organisations are given more scope for independent action.[63] Here internal contestation is quite apparent as the *World Summit Outcome Document* clearly delegates authority to the UNSC through Chapter 7. Yet the wider foundation for a regional approach is being laid and South Africa was instrumental in the drafting of the AU Constitutive Act and the Peace and Security Council Protocol, both of which legalise R2P (albeit not explicitly). As

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62   Zähringer, 'Norm evolution within and across the African Union and the United Nations',
        p. 191.

63   Jacob Zuma, 'Statement by President Jacob Zuma to the General Debate of the 66th
        United Nations General Assembly', New York, 21 September 2011,
        http://www.dirco.gov.za/docs/speeches/2011/zuma0922.html, accessed 7 November 2013.

such South Africa has contributed somewhat to the regulative side of R2P. Its main external challenge to the R2P regulative framework though is its increasing opposition to the ICC, which it sees as selective in its prosecutions and holding a disregard for African peace processes.[64]

Constitutive Qualities

The South African contribution to the constitutive quality of R2P might be less visible at first sight, however, it is still an important one. The norm of R2P bears an important promise: that of non-indifference and an end to impunity which is essential for the AU's political credibility. South Africa's non-interventionist posture in some instances should not be misinterpreted as opposition to the norm of R2P as such. Rather it advocates greater power to regional organisations and challenges the primacy of the UNSC and its perceived Western hegemony. In the case of Libya, it was problematic that NATO is non-African and hence seen as an imperialist power. R2P certainly plays an important part in creating a just and rule-based international system and is therefore very much in line with South Africa's foreign policy doctrines. However, the use of R2P for power politics originating from outside the continent is clearly opposed.

Enforcement

While accepting the AU's deference to the UN under the Ezulwini Consensus, which sees the AU seeking UN permission for the use of force even if after the fact,[65] scepticism as to the P5's motives and paralysis in the UNSC are a prominent feature in the South African discourse. Especially in the case of Libya the separation between mandating (UN) and execution (NATO) proved difficult as it fostered a lack of oversight by the UN. Here South Africa's argument of greater regional involvement finds credence. Although the AU Constitutive Act technically contravenes the UN Charter, it is seen as a more legitimate alternative. With the deployment of an African intervention brigade in the DRC and the future establishment of the ACIRC South Africa contributes significantly to the regionalisation of R2P and the development of essential instruments of reaction. In doing so, South Africa (and its African counterparts) implicitly challenges UN authority. It should be noted that at no point is South Africa seeking the sole leadership role of Africa and unilateral enforcement. All cases

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64 Elizabeth Sidiropoulos, 'Bashir, immunity, impunity and South Africa', SAIIA Opinion Piece, 15 June 2015. http://www.saiia.org.za/opinion-analysis/bashir-immunity-impunity -and-south-africa, accessed 10 July 2015.

65 AU Executive Council, Ext/EX.CL/2 (VII), *The Common African Position on the Proposed Reform of the United Nations: The Ezulwini Consensus*, (2005), p. 6.

of regional norm enactment have been collective. It is this collective approach which exhibits some conformance to R2P.

Although the South African position as a whole is not necessarily uniform, its overall approach could be summarised as emphasising the primary responsibility of states, while contesting certain aspects of R2P, by stressing such internal criteria as territorial integrity and sovereignty, international mediation and internally owned conflict resolution. Yet the South African standpoint mostly conforms to the accepted notions around R2P. Apparent external contestation only comes into play around the question of regional authority and the role of the ICC in prosecuting atrocity crimes. Overall, South Africa is making an important contribution to the evolution of R2P. Originally a norm taker, it is engaging in a feedback loop in terms of norm enactment, which (in conjunction with other actors doing similarly) may well result in a reconceptualization of R2P.

Conclusion

Instead of treating norms as stable and fixed as the literature on norm diffusion, socialisation, and compliance tends to do, we have emphasised that norms continue to develop beyond their first formal appearance or recognition as a norm. In this vein, we have illustrated that two opposing forces, the processes of inertia as well as ongoing momentum towards change, are at work in ongoing norm evolution. On the one hand is the desire to align with the existing normative framework which encourages norm conformity (in line with the historical institutionalist idea of path dependency), while on the other hand there is a need to adapt norms and differentiate them from precisely this normative framework (using Acharya's notion of localisation). We also contend that norm development does not take place in a vacuum. Both conformity and contestedness are very much contextualised processes. Norms are assumed to be sticky, which means that even actors which aim at changing a certain norm substantially can do this only within the given normative context and even less so outside of it. Still, as Acharya would say, 'norms get localised'. The end result is that normative change is neither static nor explosive, but rather more gradual than originally assumed. From an institutional perspective the analysis above aligns itself with the more recent supposition of third generation institutionalism, an institutionalist approach which attempts to identify common ground amongst the different competing strands of institutional theory. Overall, this approach recognises a more gradual movement towards change which extends beyond merely considering the impact of single

critical junctures on evolutionary processes. Change is furthermore understood to be driven by both exogenous and endogenous factors, mirroring our internal and external approach. It also highlights the role played by both rule makers and rule takers, with especially the latter participating in a feedback loop which may initiate revisions.[66]

As illustrated by our overall analysis, R2P exhibits obvious conformity to older norms. By reiterating the outlawing of atrocity crimes in a new conceptualisation, it strengthens human rights, international criminal justice and humanitarian law. State sovereignty is not challenged, but reinforced and reinterpreted through Pillar 1 and 2. Nevertheless, R2P remains vague and without a dedicated legal instrument and therefore it is open to various interpretations and contestedness. Yet while the authority of the UNSC is questioned because of its selective approach, R2P is not simply shelved, but renewed discussions are triggered, such as the Brazilian RWP initiative. We clearly can identify a gradual process of ongoing norm evolution, driven by the forces of internal and external conformity and contestedness.

The South African case also illustrates that both conformity and contestation are playing themselves out with regard to the R2P norm. In this instance, they are chiefly driven by events (for example the Libya intervention). South Africa interprets the R2P norm from the perspective of older existing norms such as state sovereignty. This is evident in its strong support for the state's primary responsibility, which includes but is not limited to assisting internal negotiations and conflict resolution, as well as its hesitancy to support the use of force. At the same time it is encouraging changes to the R2P norm, specifically in its call for more regional involvement which extends to the use of force, thereby challenging the primacy of the UN. Meanwhile South Africa supports the concept of RWP globally with its emphasis on greater accountability for interveners. As such we conclude that South Africa exhibits a greater degree of internal conformity and to some extent external contestation. Yet it is through the latter that it has some scope of affecting the evolutionary process of R2P within a feedback loop. We found that an actor such as South Africa has a valuable contribution to make through implementation, evaluation and reinterpretation. The norm taker becomes a norm entrepreneur.

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66   Vivien Lowndes and Mark Roberts, *Why Institutions Matter: The New Institutionalism in Political Science*. (Houndmills, Basingstoke and New York: Palgrave MacMillan, 2013).

Organised hypocrisy in the African Union: The responsibility to protect as a contested norm

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Organised hypocrisy in the African Union: The responsibility to protect as a contested norm

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ABSTRACT
Since its emergence the African Union has continued to develop its normative framework, overcoming a culture of impunity and non-intervention and promoting innovative concepts such as the responsibility to protect (R2P). However, there appears to be a division between the legal and verbal commitment to R2P and the practical use of the concept. This article argues that the non-application of R2P can best be understood as a case of organised hypocrisy. As an analytical approach, organised hypocrisy explains the gap between commitment and action through the existence of a conflictual political environment. While the AU has made a normative commitment to R2P, it must also recognise member states' interests as well as the international politics of intervention. In this context this article argues that organised hypocrisy is an important contributing condition to norm contestation.

Introduction

Since its establishment in 2002, the African Union (AU) has developed dynamically. It has set up the African Peace and Security Architecture (APSA), which consists of various organs such as the Peace and Security Council (PSC), the African Standby Force (ASF) and the Panel of the Wise (PoW).[1] Furthermore, the AU has produced a wealth of treaties and protocols; 36 legally binding treaties were adopted between 2002 and 2016, nine in 2016 alone.[2] On the policy side the AU is no less ambitious. The number of initiatives, action plans and partnerships is countless and comprehensive. Its Agenda 2063 aims at providing a master plan for the continent's socio-economic development.[3] Additionally, post-conflict reconstruction concepts exist as well as maritime security strategies and a very ambitious plan to 'silence the guns' by 2020.[4] There is no shortage of plans arising from the AU. Since its establishment, the PSC alone has adopted nearly 900 communiqués.[5] At the same time, the organisation has been unable to provide the resources to implement many of these ambitious and costly plans.[6] Treaty and policy implementation deadlines are neglected. On what basis can the AU expect the end of violent conflict in the near future? Undeniably, a glaring gap exists between the ambitions of the AU and its actual achievements. Despite this dismal implementation record, the AU continues to produce norms and policy plans, and at a seemingly faster rate. In these circumstances, how can we explain and

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conceptualise the AU as a norm creator and standard-setter given its underwhelming implementation record? Why would an organisation continue to produce policy plans, legal norms and declarations if it is not capable of implementing them properly?

The literature emerging around the AU is in most cases practically-minded and policy-oriented. There are book-length studies which focus on the APSA and discuss the AU's normative and institutional framework.[7] Increasingly the AU's operational ambit has attracted attention too.[8] However, the institution remains rather under-theorised and no specific approach has been developed to capture its main character, which, arguably, is that of norm producer but reluctant implementer.

This study aims to make a contribution to the conceptual understanding of the AU by using organised hypocrisy as an analytical approach. Organised hypocrisy is ideally suited for exploring the AU because it addresses the full spectrum of the AU's institutional responses, including rhetoric, decision-making and action. Furthermore, it conceptualises and explains the (partial) decoupling between rhetoric and action. The greatest merit of this theoretical approach is that it allows for a better understanding of why organisations actively engage in norm setting and policy creation while their implementation remains lacking. While organised hypocrisy certainly does not form part of international relations (IR) mainstream theorising, there is an increasing number of scholars who are applying the theory to the operation of international organisations (IOs) and African organisations as well.[9]

Empirically, this article explores one specific norm, the responsibility to protect (R2P), widely recognised as an emerging norm[10] but still not accepted as a fully-fledged legal principle.[11] In line with the selection of the R2P norm, this paper investigates the AU's response to the Libyan crisis in 2011. While the Libyan case has been extensively covered in the literature on R2P, we believe that the positioning of the AU within this case has yet to be reflected on adequately

Although the AU does not make specific reference to R2P terminology in its legal framework, it can be argued that the AU has institutionalised the full scope of R2P via the AU Constitutive Act through Article 4(h) and the PSC Protocol.[12] In the case of R2P there is a discrepancy between the AU's rather strong expressed commitment to the norm and the sparse use of the respective articles in practice. While conflicts in Burundi, the Central African Republic, Libya, Sudan and South Sudan are internationally seen as R2P-relevant cases involving atrocity crimes, the AU's involvement in these cases rarely included reference to the term or the language of R2P. It is argued here that the avoidance of express mention of R2P in specific cases where the AU has been involved in conflict resolution can be understood as a form of organised hypocrisy, in which the normative framework is partly decoupled from the organisation's operational action. While others argue that the AU's lack of effective response to R2P-worthy cases is based on institutional capacity shortcomings of the APSA, that argument is not entirely convincing; the AU has managed to respond to crises. In 2015 alone, the AU conducted, was involved in or delegated authority to subregional organisations for seven military operations.[13]

This study found that the decoupling process is, rather, a consequence of the conflictual and inconsonant environment in which the AU operates. The consequences of viewing the AUs approach on R2P through the lens of organised hypocrisy are significant, and the authors argue that it makes a critical contribution to debates around norm evolution and the role played by norm contestation. The source of normative change is not only

associated with deliberate acts of norm entrepreneurship but is also emanating from organised hypocrisy – the institutional juggling between talk, decisions and action.[14] While the concept has not been used in mainstream IR research, the authors believe it can make a valuable contribution to the study of IOs and norm evolution. The article is therefore aimed at connecting the concept with the literature on norm contestation which emerged around the work of Antje Wiener.[15]

The subsequent analysis is structured as follows: the next section provides a short introduction of the concept of organised hypocrisy as developed by Nils Brunsson and Stephen Krasner. The subsequent empirical section applies the proposed theoretical framework, exploring how the AU reacted to the Libyan crisis in 2011. The final section revisits the theoretical framework and discusses its merits.

Organised hypocrisy and norm contestation

The concept of organised hypocrisy is not new to IR but has not been applied extensively, with a few exceptions such as Stephen Krasner, Michael Lipson and Robert Egnell.[16] Brunsson popularised the term in his ground-laying book *The Organisation of Hypocrisy: Talk, Decisions and Action in Organisations*.[17] At the heart of his approach is the assumption that organisations are placed in an environment which imposes conflicting restrictions on them.[18] As organisations are not fully independent actors, they have to accommodate conflicting demands in their outputs. In such a context, inconsistencies in an organisation's behaviour are unavoidable; they are a reaction to conflicting interests within the wider environment with which an organisation has an isomorphic relationship. Brunsson distinguishes between talk, decision and action which an organisation is producing. Corresponding to this, one can distinguish between the verbal and formalised rhetoric an IO produces in the form of declarations, statements, norms, or policy programmes on the one hand, versus its behavioural output and concrete action on the other. Given is the fact that organisations operate within a principally conflictual environment in which they strive to respond to situations with varied formalised rhetoric and behavioural outputs, some of which may be used to satisfy diverging interests confronting the organisation. In order to accommodate these interests, rhetoric and action can or must be (partially) decoupled.[19] When this decoupling process becomes a standard practice of the organisation, one can speak of organised hypocrisy.

The advantage of such an approach is that it is integrative rather than exclusionary, making progress possible within the context of division. This gives IOs with a diverse regional or global membership and comprehensive mandate greater capability to operate and survive as an institution. Thus the greatest value of organised hypocrisy may be to allow for dissent and conflict without incapacitating the whole organisation. However, disadvantages are not difficult to find. Systematic and institutionalised inconsistencies between an organisation's mandate (promise, norms) and its operational achievements can create a credibility crisis and cause stakeholders to scale down their support or even abandon the organisation and make it dysfunctional. In the end, degrees of hypocrisy matter.

Analytically, organised hypocrisy connects two prominent theories frequently used in the analysis of IOs, namely rationalism and sociological institutionalism. Lipson highlights how Brunsson's original work took the approach of the latter, while Krasner's input linked

to the former.[20] The rational approach, associated with the logic of consequence, sees IOs as unitary agents, representations of an equilibrium between principals who are individual rational actors constrained by the institutional environment.[21] The sociological approach, associated with the logic of appropriateness, in turn emphasises the normative and cultural environments to which IOs correspond. It sees the organisation as a collective unit with social agency.[22] Organised hypocrisy satisfies both approaches by arguing that organisations reflect the normative and behavioural side of both member and institutional interests, but in order to do this, norms and actions are at times only loosely coupled.

If normative promises and behavioural action are permanently decoupled, an organisation would hardly survive over the long term. Thus Brunsson still upholds that norms and action are causally linked but in a reverse or loose manner.[23] Representing norms and values symbolically by passing resolutions and intervening verbally can partially compensate for missing action.[24] Lipson, therefore, introduced the term 'counter-coupling' to better describe that reverse causal relationship in which norms and action are placed.[25] Lipson's work on organised hypocrisy applies the concept to the UN. He argues that the UN's global acceptance rests primarily on 'its ability to reflect external constituencies, inconsistent values and preference' and that UN principles can be conflicted too (ie, intervention vs sovereignty), leading to inconsistent behaviour.[26] The same situation can be found in the AU, which is supposed to represent a diversity of 55 states and finds itself confronted with a high degree of critical appraisal of norms such as R2P, and by a membership which is anti-colonialist in orientation and sensitive to any threats to national sovereignty.

Analysing IOs through the lens of organised hypocrisy comes with a number of consequences. Within the vast literature on international norms, IOs have early on been identified as playing an important role as norm entrepreneurs.[27] While they are certainly not the only relevant actors, IOs still occupy a significant space for the creation and evolution of international norms, as a constraint to rational actors under rational choice theory[28] and as actors in their own right according to sociological institutionalisms.[29] If IOs can be identified as cases of organised hypocrisy, what does this mean for the evolution of international norms, and especially for contested norms?

This article argues that the hypocrisy assumption is a norm-generative condition and links in well with the understanding of continued norm evolution and contestation. In the most recent literature on international norms one can identify a trend in which norms are treated not as ready goods diffusing from one place to another but as social entities which undergo a continuous process of instantiation.[30] In this context Wiener speaks about norm contestation.[31] Mona-Lena Krook and Jacqui True see the value of norms not in a unitary interpretation and application but in their ability to give rise to different interpretations and applications. If they diffuse it is because 'they may encompass different meanings, fit in with a variety of contexts, and be subject to framing by diverse actors'.[32] More recent research focuses on the notion of applicatory contestation and argues that the existence of an ongoing discourse around the application of a norm strengthens the norm's evolution by cementing its appropriateness and validity, leading to norm robustness; if this discourse, however, extends into norm justification then the norm's robustness is at risk.[33] In all of this literature, organisations and norms are not understood as unitary entities but as inherently changing subjects displaying variation. If IOs are norm entrepreneurs and can be characterised as displaying a form of organised

hypocrisy, we should assume that the norms they produce and maintain are also a reflection of the conflictual environment in which organisations operate.

It is here proposed that connecting norm contestation and evolution with the concept of organised hypocrisy allows us to better understand the processes in which norms are evolving during – but also after – their creation. As conflictual environments produce inconsistencies between norms and action, one can assume that this has consequences for both the norms and the organisation. Not only are IOs hypocritical; norms also change and adapt if their implementation is incongruent to their original normative substance. In order to assess the influence of organised hypocrisy on norm evolution the analysis will briefly categorise what is meant by a conflictual environment. With regards to the article's empirical example, R2P and the AU, different levels of conflict and contestation will be identified, with a distinction between internal and external dimensions, and between normative and actor level (see Table 1).

Internal and external levels on the conflictual environment of R2P and the AU

On the internal agency side, inconsistencies may emerge as a consequence of disagreements between member states. The AU comprises 55 states representing different interests and most likely different interpretations of R2P and how and when the AU should react to a violent conflict. Because the AU has become the focal point of conflict resolution in Africa and is responding to practically all major conflicts on the continent, its daily practice needs to accommodate different interests. For the AU to project the image of unity, even when unity does not exist, is particularly important because its founding principle is strongly linked to Pan-Africanism, an ideology which binds Africans together.[34] Yet, internal inconsistencies may emerge between different organs of the AU. The AU Commission, which is the executive arm of the AU, enjoys some independence from member states and might thus deviate from the PSC or the AU Assembly, both strictly inter-governmental organs. At the normative internal level one can also observe a tension between an anti-colonialist political stance which emphasises sovereign independence, treating external interventions with deep-rooted suspicion as possible attempts at neo-imperial regime change, and the R2P norm which allows for military and non-consensual interventions in grave circumstances.[35] In practice this becomes clear through ongoing opposition, expressed in regional and global institutions, to any Western force deployed to the African continent that does not have the approval of the state concerned or the AU.

In addition to internal conditions, the external wider environment also contributes to inconsistencies. If the application of R2P by the AU is not fully congruent with its normative substance, this can also be a consequence of incongruent (selective) application of the norm by non-African actors, or it may be a function of the indeterminate meaning of the norm itself. For example, if R2P is used as a means for regime change by non-African actors in

Table 1. Levels of analysis.

	Internal	External
Agency level	Member states and AU organs	UN, NATO, EU and their member states
Normative level	R2P vs anti-colonial culture and territorial integrity	R2P vs humanitarian and geopolitical interests

the first place and secondly for humanitarian reasons, should there be an expectation that the AU will privilege humanitarian intervention over sovereignty? Or is this merely an expression of a regional variant of organised hypocrisy? Furthermore, R2P has long been criticised for not being operationalised in detail. The norm, de facto, is missing clarity on what to do when, which makes consistent application challenging and opens up opportunities for hypocritical behaviour. This is why it remains a contested norm.[36]

In the case of the AU, R2P and Libya, the phenomenon of organised hypocrisy is observable at different levels which are interconnected and seem to reinforce each other. When evaluating the existence of organised hypocrisy in the AU, it boils down to this question: Is there a standard practice which shows a discrepancy between the stipulated normative framework, which includes the legal mechanisms and overall rhetoric, on the one hand, and the behavioural output, in terms of operational action, on the other? Institutional decisions can be attributed to either rhetoric or action, depending on their objective. They may elaborate a normative standpoint or specify institutional action. If a discrepancy between rhetoric and action exists, organised hypocrisy would explain it by reference to the organisation's conflictual environment (internal and external). In this regard incoherency between the normative commitments and actions of the AU would not be a question of deliberate hypocritical decision-making, but correspond to the conflicting interests inherent to its environment. In the following empirical sections, we analyse each of these levels in more detail. For these next sections, the reader is referred to the appendix for a comprehensive summary of all media data sources in terms of institutional and state positions and reactions.

R2P, Libya and the AU's external context

This section provides a short introduction of R2P and its evolution within the AU and UN. The theoretical framework based on organised hypocrisy will be employed in analysing the example of Libya, so far the only global crisis which has seen an international military response under R2P's Pillar Three; hence the Libyan case will provide important insights into how the AU engaged with this pillar. The analysis will be threefold: (1) an examination of what external factors may have influenced the AU's response to the crisis, (2) an evaluation of some of the AU member states' standpoints, and finally (3) the AU's institutional framework, including the position of institutional actors such as the AU's PSC. This will clearly highlight the existing tension and conflicting positions both within and from outside the AU which result in organised hypocrisy.

For the purpose of this paper, the conceptual emphasis with regard to R2P will be on its Pillar Three dimension, which outlines the responsibility of the international community to intervene in cases of atrocity crimes should the state concerned fail to address the situation effectively. It is this aspect of R2P which is most controversial and contested, as it is in direct conflict with the state sovereignty norm. R2P's evolution as a norm is well known and not covered in detail here.[37]

As to the AU, though some may question its position as a norm entrepreneur with regards to R2P, it should be noted that its formalisation of R2P actually predates that of the UN through the ratification and entry into force of the AU Constitutive Act in 2001. This treaty not only created the AU, but also provides the only explicit legal basis internationally for the implementation of R2P's Pillar Three, under Article 4(h). Despite not using

R2P terminology, the normative overlap is striking. Article 4(h) outlines 'the right of the Union to intervene in a Member State pursuant to a decision by the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity'.[38] However, it does not formulate an obligation to act and the circumstances in which it can or should be applied are not further operationalised.

To illustrate the premise behind organised hypocrisy, this paper investigates events around the Libyan crisis of 2011. Although some may argue that Libya is not an effective case of the use of force on the basis of R2P, Libya remains the only situation where the norm was invoked. Despite no explicit mention of R2P in the UN resolutions on Libya's crisis, many scholars and practitioners treat it as a case of R2P implementation due to the preceding referral to the International Criminal Court (ICC), which implied the presence of atrocity crimes as outlined by R2P. When the crisis in Libya first emerged in 2011, the responses of the AU and UN differed considerably. The focus here is on the influences and dynamics which determined the AU's position, both internally and externally, and how this exhibits a case of organised hypocrisy and norm evolution. Therefore it is necessary as a first step to set the international scene and to describe what decisions were being taken beyond the AU. This will provide an important context in which African states and the AU found themselves, and will highlight the external dimensions which influenced the AU.

The Libyan crisis erupted in February 2011. UN statements and actions clearly classified the situation as a case warranting action under R2P. Most notably, the UN Human Rights Council suspended Libya's membership, and adoption of UN Resolution 1970 (26 February 2011) referred the situation to the International Criminal Court (ICC). In doing so the UN acknowledged the presence of atrocity crimes, ie, 'grave circumstances', in the AU's jargon. Meanwhile the Arab League suspended Libya's membership and subsequently voted to request that the UN Security Council (UNSC) impose a 'no-fly zone' over Libya. This was backed up by the Organisation of the Islamic Conference (OIC) and the Gulf Cooperation Council (GCC). Using these regional organisations as gatekeepers, the UN subsequently passed Resolution 1973 (17 March 2011), which established a no-fly zone over Tripoli and other specific areas of Libya and called on all member states to take 'all necessary measures … to protect civilians' (see Table 2).

Two days later a bombing campaign against Libya's air force commenced, led by three of the UNSC permanent members: the United States, the United Kingdom and France (P3). Subsequent criticism came from the Arab League which said that the UN intervention was harming, not protecting civilians, but it nevertheless reiterated its support for the operation. Meanwhile the GCC contributed to the military coalition.

At the time all five BRICS countries (Brazil, Russia, India, China and South Africa) were members of the UNSC. The first four abstained from Resolution 1973 and remained critical of NATO's military campaign throughout. Despite representing two permanent members, they were unable to agree on an alternative draft resolution. As to the European Union (EU), here the divisions were more pronounced. Germany, present on the UNSC at the time, abstained from Resolution 1973. In doing so it surprised its NATO allies by siding with the BRICS countries and expressing strong opposition to the subsequent military campaign. With a split between the EU's three major powers, EU members of NATO did not participate in the NATO-led military campaign as a collective unit.

Despite this, April saw a major step forward in cooperation at the international level. On 29 March the Libya Contact Group was established in London. This included 21 countries

Table 2. UNSC votes on resolution 1973.

Brazil	Abstain
Bosnia and Herzegovina	In favour
China	Abstain
Columbia	In favour
France	In favour
Gabon	In favour
Germany	Abstain
India	Abstain
Lebanon	In favour
Nigeria	In favour
Portugal	In favour
Russia	Abstain
South Africa	In favour
United Kingdom	In favour
United States	In favour

and representatives of the UN, EU, NATO and Arab League. Two weeks later the group took the decision to supply the Libyan rebels with arms.[39] At the same time the P3 leaders issued a joint media statement indicating that their primary goal was the removal of Colonel Muammar Gaddafi from power. De facto, the no-fly zone became embroiled in a civil war in which rebel forces were supported by those countries implementing the no-fly zone. The initial humanitarian reasons for intervention were mixed with geostrategic interests of the P3 to remove Gaddafi with military force.

What this section aimed to show is that the military intervention in Libya pushed by the P3 and some Arab countries was not endorsed unanimously in the UN Security Council. It was rather the result of a few powerful countries managing to get their resolution accepted without an organised opposition emerging. While decisive and quick action was taken in Libya, support for the intervention was not globally shared and thus not universally accepted. Broader consent only existed around condemning the violence in the country but not necessarily on the specific instruments to be used to address and end the violence. It is within this context that the AU decision-making process evolved. This highlights that at the international level there was contestation emerging around the 'meaning in use' of the R2P norm.

AU member states and the Libyan crisis

A large majority of African states condemned the violence which had erupted in Libya and called for restraint by the Gaddafi government. Beyond that, responses varied. Despite Gaddafi's influence in the formation and running of the AU, some openly sided against him. Countries such as Botswana and the Gambia were quick to urge Gaddafi to step down. Others went even further; Egypt, Ethiopia, Gabon, Senegal and Sudan supported the UN intervention. Then there were those who quickly cut diplomatic ties with Gaddafi's regime, among them Botswana, Liberia and Malawi. Others recognised the National Transitional Council (NTC) very early, such as the Gambia and Senegal in April and May 2011, respectively. Then there were those countries which took a more balanced approach. Burkina Faso offered Gaddafi asylum, despite being a member of the ICC, while Zambia froze Libyan assets.

The pro-Gaddafi camp was much smaller. Algeria was the only North African country to vote against the Arab League's recommendation to impose a no-fly zone. Zimbabwe, Chad,

Uganda and Equatorial Guinea openly sided with Gaddafi. Chad's leader had come to power with Gaddafi's help and was furthermore worried about spill-over. He saw the uprising as an Al Qaeda plot. Chad and Algeria together with Cote d'Ivoire, Niger and Zimbabwe are believed to have gone so far as to supply mercenaries or sell arms to the Gaddafi regime, while Uganda's leader called Gaddafi a 'true nationalist' and was the first country to offer him asylum. Meanwhile Equatorial Guinea lobbied the AU to rally around him.

AU member states were divided along many lines. Even a comparison in terms of a country's regime type – as calculated by the Freedom House Index in 2012 (reviewing 2011) – does not explain why states supported one or the other position. A similar number of states were expressly for or against the UN authorised intervention, with no correlation apparent between their position and their respective classification at the time as 'free', 'partially free' or 'not free'.[40]

It should be noted that a handful of countries' responses were driven by domestic concerns, with some such as Guinea and Niger afraid of spill-over and hence prohibiting pro-Gaddafi protests within their own borders. Libya's neighbours Algeria, Tunisia and Niger were confronted with an influx of refugees which required their attention. Again reactions differed. Niger supported Gaddafi, while publicly Algeria took a strict non-interventionist position and Tunisia opted to support the NTC.

Of importance is also the position of the three African countries that were on the UNSC as non-permanent members at the time: Nigeria, South Africa and Gabon. All three voted in favour of Resolution 1973. Their votes were surprising as the PSC, which included Nigeria and South Africa as members at the time, had rejected any use of force in its consensus-based communiqué just a week earlier. If just one of the African members on the UNSC had abstained, the UNSC would not have had the necessary majority. When military action commenced and subsequent disputes arose around the interpretation of the resolution, Gabon aligned itself with its former colonial power, France. Meanwhile the positions of Africa's two main regional powers, Nigeria and South Africa, differed considerably. Nigeria, remaining faithful to its vote, continued to support the intervention and called for an all-inclusive solution. Its motives are likely linked to the fact that in 2010 Gaddafi attempted to have it split into multiple states. Meanwhile, South Africa very quickly withdrew support once the bombing campaign commenced and lamented that Resolution 1973's call for a ceasefire and mediation had been ignored. In justification, South Africa had proposed the language for paragraph two which mentioned the PSC initiative and hence South Africa in particular believed that mediation would be given a chance first.[41] Subsequently South Africa adjusted its focus towards the AU.

This change of heart was soon mirrored by other African states. Once NATO's intervention was in full swing, there was overall consensus emerging around clear opposition among many AU members. The majority proclaimed that the intervention was disproportionate and had an adverse effect on the original goal to protect civilians in Libya. Furthermore, the P3's objective to pursue regime change was rejected by many African states. Specifically, there was opposition to any form of military intervention in principle, as evidenced by Angola and Ghana, while others such as Kenya and Equatorial Guinea contested the idea of a Western-led intervention over one authorised by the AU. Nevertheless there were some outliers. Botswana, Ethiopia, Nigeria and Senegal continued to support the intervention. Tunisia expressed support for the NTC, while Egypt and Sudan went as far as arming the rebels. Protests in Egypt had already overthrown its own

dictatorship and the interim administration was leaning towards the Libyan rebels. Sudan had a history of Libyan interference in its territory and never was a friend of Gaddafi's.

As the months passed and the balance of power shifted on the ground in favour of the rebels, other African states started to acknowledge the changing situation and more recognised the NTC as the official representative of the Libyan people. By June the number of African states calling for Gaddafi to step down increased dramatically. By August, 19 African states had recognised the NTC, but at its August Summit the AU still voted against such a step. At the UN General Assembly vote on 16 September, 19 AU members voted in favour and 12 against, with five abstaining and the rest absent. African states made up two-thirds of the nay-sayers. But the UN's overwhelmingly favourable vote forced the AU to reconsider. It followed suit four days later.

In sum, during the war in Libya there was no unity among AU member states on how exactly to react to the crisis and how to position the AU as the mouthpiece of African interest in the world. Instead different camps emerged. The outbreak of the crisis was a sudden event in which the P3 as a small group operated with speed while the pluralistic AU did not find the time for consensus building. More than any other IO, the AU was confronted in this situation with a conflicting environment internally as well as externally in which taking coherent action appeared almost as a mission impossible. At this point it is possible to examine the AU's institutional response within the above context.

The AU's response to the Libyan crisis

The main bodies of the union are the AU Assembly, which represents the meeting of heads of states at least once a year, the AU Commission, which reflects the administrative arm of the AU, and the PSC, which was created later to address conflict and security issues. The latter consists of 15 member states, elected on a subregional basis. When invoking Article 4(h), final decision-making authority lies with the AU Assembly. In all other situations the PSC maintains full authority.[42] The PSC remains in continuous session. While the AU Assembly and PSC are considered intergovernmental representations, the AU Commission is the only truly institutional representation. It is headed by the commission chairperson, who attends all institutional meetings and represents the interests of the AU as a whole. The chairperson is a valuable source of information, but the position remains advisory. Although the PSC can formally take decisions by a simple majority, consensus is the informal rule. In the case of Article 4(h), a decision has to be taken by the AU Assembly, where a two-thirds majority is required if consensus fails.

When the Arab Spring erupted, the AU's initial response was unexpected. Instead of condemning the unconstitutional changes in government as dictated by its own constitutive act, the AU chose to interpret the protests in North African countries as expressions of democracy.[43] As to Libya, its first responses came in the form of two PSC communiqués, one on 23 February and the second on 10 March. During 2011 the following 15 AU members made up the PSC: Benin, Burundi, Chad, Cote d'Ivoire, Djibouti, Equatorial Guinea, Kenya, Libya, Mali, Mauritania, Namibia, Nigeria, Rwanda, South Africa and Zimbabwe.[44] Reflecting on this membership in light of the above descriptions of the positions of individual members, it becomes apparent that the PSC membership presents the full spectrum of views held by AU members. Nevertheless, at its February meeting, the PSC condemned Libya's use of force and threats against protesters. By labelling the

government's action as a 'violation of international humanitarian law', they acknowledged the presence of war crimes.[45] Thus the rhetoric was in line with R2P's Pillar One, which highlights the primary responsibility of a state towards its people. Furthermore, by identifying atrocity crimes, it opened the possibility to invoke R2P's Pillar Three as per Article 4(h) of its constitutive act. The next PSC meeting in March was held at the presidential level. It emphasised the desire to find a diplomatic solution with a call for the cessation of hostilities and political reform along the lines of a transitional government. In this case the AU indicated its preference for mediation, which is normatively compatible with R2P where the use of force should be a last resort. The communiqué also rejected 'any foreign military intervention, whatever its form'.[46] Here its rhetoric supported its anti-colonialist stance, while distancing itself from its own constitutive act in terms of action. The PSC outlined a clear roadmap and the High Level Ad Hoc Committee on Libya was created to help implement this plan.[47] This is the first instance of AU specific action on Libya. The committee consisted of the leaders of South Africa, Uganda, Mauritania, the DRC and Mali. Given their individual state positions, membership of the panel indicated that all views on Gaddafi's future were being accommodated,[48] but this diversity of opinion would also hinder its ability to act more forcefully in the name of the AU, as becomes clear below.

Within a week, on 25 March, the committee managed to convene a consultative meeting which included the AU, the UNSC, the EU, NATO, other regional bodies and neighbouring countries of Libya. Consensus was reached on the protection of civilians, humanitarian assistance and the initiation of dialogue between all Libyan parties, while encouraging political reforms.[49] However, just a few days later on 29 March, the Libya Contact Group was established in London. It is not apparent why the AU failed to attend this meeting of all major players; however, this was a major oversight. the AU was subsequently excluded from important international decision-making which followed the path of military force rather than mediation. This 'act of omission' was a missed opportunity, as attendance at the meeting could have illustrated the AU's desire to translate its mediation rhetoric into commensurate action.

Meanwhile, the high level ad hoc committee intended to fly to Libya, but was initially denied permission to enter by the P3 who were policing the no-fly zone. This was highly problematic as it meant that a group of African presidents, mandated by the AU to mediate an African conflict, was prevented from doing so by external actors. By the time the committee finally did fly to Libya on 10 April to present the AU roadmap for resolution of the conflict, the P3 had already come out in favour of regime change and the Libya Contact Group had decided to supply the rebels with arms. Gaddafi, now in a much weakened position, reluctantly accepted the AU roadmap, while the NTC rejected it and insisting on Gaddafi's departure. This instance of AU action, in which the AU stubbornly pursued a mediation outcome without acknowledging the facts on the ground, resulted in a sidelining of the AU's stated primary aim, which was to protect civilians, in favour of support for the incumbent. At the PSC's meeting on 26 April it emphasised the territorial integrity of Libya as well as the aspirations of the Libyan people for democracy and political reform. It felt the AU roadmap was still the best approach and encouraged the High Level Ad Hoc Committee on Libya to continue its efforts, keeping both the roadmap and UNSC Resolution 1973 in mind.[50] AU Commission Chair Jean Ping also subsequently sought to correct the AU's previous mistake and attended the second meeting of the Libya Contact Group in May, where he reiterated the AU's concern regarding the deterioration of the plight of

the Libyan people and the absence of dialogue between all parties.[51] In May an extraordinary session of the AU Assembly took place in which NATO was accused of overreach on its mandate; the AU called for an immediate cessation of NATO bombing.[52] However, all of the statements and calls mentioned above are examples of AU rhetoric. AU action was limited to the high level ad hoc committee's efforts, which included a second trip to Libya. At this point Gaddafi conceded that he was prepared to recuse himself from any negotiations,[53] but without any incentive for the rebels to participate the AU's approach was doomed to fail. In the following months, until the final fall of Gaddafi, the AU's position remained the same, lamenting the ongoing military campaign and situation on the ground while calling for a ceasefire and a political solution.

Overall, the dire situation of the initial civilian uprising against a violent regime exerted a normative pull to apply R2P, while the primarily intergovernmental AU could not formulate a cohesive or quick response. The AU was unable to act according to R2P's Pillar Three, which is anchored in its foundational treaty, when confronted with incoherent member state interests in a rapidly changing international environment. With the West's controversial extension of R2P to regime change, a response could not be coordinated without a degree of de-coupling or counter-coupling as described above. The dilemma in which the AU was placed is obvious. Proactively supporting the ongoing NATO-led intervention clashed with its anti-colonial institutional culture, while actively opposing the no-fly zone and UN resolution 1973 would mean disregarding R2P and Article 4(h).

However, with time the AU's normative position on R2P became more articulate. It stipulated that using R2P as a humanitarian cover for regime change was unacceptable. This position burdened corresponding cooperative action with the UN and NATO. While in principle the AU Assembly in May 2011 reiterated its commitment to Resolutions 1970 and 1973, its opposition against regime change led the AU to distance itself in practice from Resolution 1970, in which the Libyan situation was referred to the ICC. At the July summit of the AU Assembly it was decided that member states would not cooperate with executing the arrest warrants.[54] This intensified its ongoing dispute with the ICC, which has since culminated in the AU issuing a 'withdrawal strategy' and pursuing an ICJ advisory opinion on the ICC's criminal prosecution of heads of state; consequently Burundi has withdrawn from the ICC while the Gambia and South Africa have threatened to do so.[55] In distancing itself from the implementation of the underlying principle of the ICC, which was specifically to prosecute atrocity crimes, the AU brings into question its commitment to act on R2P.

Furthermore, subsequent to Libya, the AU elaborated on the protection of civilians (PoC) norm, seemingly equating this to R2P. It institutionalised the PoC as an essential component in any of its future military operations, with the emphasis being on preventing their own military presence from inflicting unjustifiable harm.[56] Indeed, soon after the Libyan crisis, the AU pushed for the finalisation of its guidelines on the PoC.[57] This highlights a very restrictive interpretation of R2P.[58] The PoC is not widely contested as this is an accepted principle in humanitarian law to which all parties in a war should adhere. However, the AU placed this obligation squarely on the shoulders of the interveners and did not address the question of what to do if a state's leadership ignored the PoC in a conflict situation. What is telling is that despite its continued normative commitment to R2P's Pillar Three, there has never been decisive corresponding action, but there has been norm evolution in the form of further institutionalising PoC.

Organised hypocrisy at play in the AU

In identifying the Libyan crisis as an instance of organised hypocrisy, it is necessary to show that rhetoric and action at the institutional level were decoupled. It is here argued that this is found to be true. On the one hand the AU Constitutive Act outlines the normative framework around the right to intervention when atrocity crimes are present, but on the other hand the AU's institutional action seemed to advocate only mediation while repeatedly objecting to the UN's right to intervention. While supporting the global perception that atrocity crimes were present in Libya,[59] the AU justified its position not by pushing its own right to intervene as more legitimate, but by persistently calling for an immediate cessation of hostilities and pursuing a negotiated solution instead. This clearly illustrates that in terms of action, it objected to any form of intervention. Also, despite most AU members recognising that Gaddafi's time to step down from leadership had come, the AU acted as a mediator between the Libyan government and the NTC, hoping to put a transitional unity government in place and holding on to this idea despite the NTC's growing international and regional recognition. These actions seem to be in contrast to the AU's stance in support of democracy on the continent, which it expressed at the outbreak of the Arab Spring. The AUs responses to the two UN resolutions are also telling. While reiterating its support for Resolution 1970, the AU submitted an official request for a deferral of the ICC case. Similarly, it continued to express support for Resolution 1973, but justified its own actions by arguing that a flawed interpretation was used by the P3. Meanwhile the AU also reiterated the resolution's call to protect civilians, but its subsequent decisions illustrate that this was viewed as more applicable to the interveners. Finally, despite advocating a diplomatic solution, the AU failed to attend important meetings of the Libya Contact Group where all stake holders were present. As such its (non-)action could be interpreted as favouring a purely African led solution; the AU could rather have used the meeting to sell its mediation approach.

Internally there was no clear agreement among African countries on how to respond to the Libyan crisis. The much more unified action of the P3 to intervene and remove Gaddafi is contrasted with the AU's response, which reduced it to a by-stander of events. Although most African states called for an end to the violence in Libya and accepted that Gaddafi's time as leader was coming to the end, there were different approaches advocated on how to achieve a leadership transition. The AU's intergovernmental PSC took a clear non-intervention stance, which the African states serving as non-permanent members of the UNSC chose to ignore.

Externally, at the UN, differences emerged between those who supported military intervention, especially the P3, and those who opposed it, which included the BRICS countries and Germany. African members on the UNSC voted in favour of the two UN resolutions despite the PSC's position which opposed any kind of intervention just a week earlier. Consequently, the AU had little choice in its overall approach but to settle on a lowest common denominator agreement – a call for the end of all fighting and the beginning of an AU mediation process in the form of a high level panel. The discrepancy between the internally divided members versus an externally more unified group of intervening states did not allow the AU to act out of its R2P framework.

At the normative level, the right to intervene under R2P is accepted in the AU Constitutive Act as a step in the right direction, away from a culture of non-intervention and impunity

upheld by its predecessor, the Organisation of African Unity. However, R2P forms a certain contrast to the organisation's anti-colonial culture which sees interventions with suspicion.[60] In the case of Libya, calls for intervention to address humanitarian needs were intimately connected with calls for intervention as a tool for (externally-driven) regime change. The AU found itself in an impossible position, needing to adhere to its own normative framework on R2P and opposing the barely masked regime change agenda of the P3. It could be argued that the AU's rhetoric squared this 'normative' circle by accepting the right to intervention, but advocating a regional response over that of the UN. An AU-led intervention would have ultimately been considered more legitimate than any Western-led intervention, under the maxim of 'African solutions to African problems'.[61] However, in terms of AU action it as yet remains to be seen whether the AU will ever pursue such an intervention. Currently lack of action is often attributed to capacity constraints.[62] A matter for future research would be to look at how the AU may react if these constraints are removed and whether evidence of organised hypocrisy would persist.

Organised hypocrisy and its impact on norm evolution

This article not only argues that organised hypocrisy can be an analytically useful instrument to explain an empirical puzzle – ie, the AU's response to the crisis in Libya – but also that processes of norm evolution, in which IOs are chiefly involved, profit from conflictual environments. As norm evolution is linked to norm contestation, the question emerges: what drives contestation? In this case, it is here argued, the conflictual environment that gave rise to the AU's organised hypocrisy was also a catalyst for norm contestation and norm development.

When considering the wider debate around norm contestation, the AU's response to the Libyan crisis, shaped by organised hypocrisy, has contributed substantially to the growing chorus of international voices critical of the implementation of R2P's Pillar Three. Adding its voice to calls for clearer mandates and authority, the AU in 2011 took a stand against regime change while no outright rejection of R2P took place. Globally, the Libyan case, which was the focus of vehement opposition by the AU, has also contributed to the debate around the emerging norm of 'responsibility while protecting' (RwP). RwP was tabled as an extension of R2P by the Brazilian delegation in the UN General Assembly on 11 November 2011.[63] It called for the following to be considered during any implementation by the UN of R2P in the future: [64]

- to exhaust all diplomatic solutions with the use of force remaining a last resort;
- to adhere to the letter and the spirit of the UNSC mandate, while rejecting any attempt at regime change;
- to do no more harm than good; and
- to enact procedures for the UN to monitor and hold accountable those charged with the implementation of R2P.

The AU has also exhibited, in its policymaking, a desire to clarify the applicability and methods of R2P, particularly in its elaboration on the PoC. De facto internal political divisions, which emerged in the form of organised hypocrisy within the AU, led the organisation to pursue a less political approach favouring the further development and

institutionalisation of PoC. With this the AU contributed substantially to norm evolution on this set of standards. Furthermore, by acknowledging that Libya was a case of R2P while disagreeing with how the UN applied R2P in its response to the Libyan crisis, the AU emphasised the need to give mediation and diplomacy a chance before military action commences. In effect, their contestation originating from organised hypocrisy with regard to the R2P norm contributed to a necessary re-conceptualisation of the norm. To illustrate, the UN Secretary General Report on R2P tabled on 28 June 2011, a few months after the Libyan crisis commenced, highlighted the need for regional and sub-regional organisations to be involved in implementing R2P. The following year the report focused on the 'wide variety of tools available' to the UN in responding under R2P, emphasising the alternatives to military action. The list goes on. The UN Secretary General reports of 2017 and 2018, for instance, focused on prevention and early warning.[65] Consequently the AU can be identified as an important norm entrepreneur, despite what seems to be a lack of application. Since the Libyan crisis, the international community has not again used military force in R2P cases, despite many such cases existing. However, the ongoing debates around R2P, especially its Pillar Three, indicate that the norm's evolution is ongoing, not dead.

Lastly, the concept of organised hypocrisy can also profit from the assumption that norms are contested and constantly evolving. Organised hypocrisy as a catalyst for norm contestation and evolution changes the very basis on which the concept is built. Not only are organisations adapting and responding to their environment, they are a product of it. We can argue that norms do the same. The question of which deviates – the organisational action from the norm, or the norm from the action – cannot be answered straight away when both condition each other and are able to change. However, in order to conceptually drive forward norm contestation, it is necessary to analyse those conflictual environments in which norm entrepreneurs are embedded. Further scrutiny of organised hypocrisy is doing exactly this.

Conclusion

The AU's task during the Libyan crisis was to accommodate many different and conflicting interests and norms. Judging with hindsight, it did an acceptable job as it was using most, if not all, opportunities available. The AU condemned the regime change approach of the intervention but not the principle of R2P as such. It aimed at becoming involved in the conflict early on with the resources and mandate made available from its member states, which led to the setting up of a political mediation process, but it was thwarted by international actors' and member states' varying interests and conflicting positions.

This research has illustrated that in the case of Libya and R2P, evidence supports a *prima facie* claim that a practice existed which saw the decoupling of rhetoric and action to a degree which allowed the organisation to justify its purpose and functionality without incapacitating the entire organisation. Using the concept of organised hypocrisy has helped in explaining and analysing how the AU positioned itself in the application of R2P's Pillar Three. Only by integrating into the analysis the various internal and external factors, as well as actor and normative levels of the organisation's environment, do we obtain a comprehensive understanding of the AU's 'failure' to invoke intervention in line with the R2P norm in the Libyan case. Organised hypocrisy has been helpful in

understanding these environments as principally conflictual, compromising the ability of the AU to act coherently in line with perceived stakeholder interests and its own normative institutional basis. But some challenges remain in the application of organised hypocrisy as an approach. The dichotomous classification of rhetoric on the one hand and action on the other is problematic. This case study has shown that many statements and decisions straddle both. It may be useful for organised hypocrisy to rather differentiate between the normative framework in question versus its implementation.

Furthermore, this conflictual environment has not been to the detriment of the evolution of the R2P norm. The Libyan case illustrates that while the AU's initial reaction was in conflict with its existing normative framework, the emergence of organised hypocrisy also had a reactive component which saw the AU reconstitute its normative framework and action to better align with AU objectives. Therefore, we argue that organised hypocrisy contributes to norm contestation, the presence of which in turn facilitates ongoing norm evolution in which the AU continues to play a pivotal role.

Finally, given our examination of only one case (Libya) and one norm (R2P), it would be premature to say that the AU can be categorised by organised hypocrisy to the degree of a standard practice and hence as a whole can be theorised by organised hypocrisy. It needs to be acknowledged that any claim that organised hypocrisy effectively explains the AU would need further investigation. The argument here is merely that organised hypocrisy as an approach has proven useful and deserves further testing.

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Disclosure statement

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Appendix

Reactions to Libya Crisis and Corresponding Sources.

	Position/Reaction	Source
Organisation		
Arab League	Suspended Libya's membership	Ola Galal, 'Arab League Bars Libya From Meetings', *Bloomberg News Service*, February 22, 2011, http://www.bloomberg.com/news/2011-02-22/arab-league-bars-libya-from-meetings-citing-forces-crimes-.html (no longer available).
	Requested no-fly zone	'Arab League Backs Libya No-fly Zone', *BBC News*, March 12, 2011, http://www.bbc.com/news/world-africa-12723554.
	Criticised UN for harming civilians	Edward Cody, 'Arab League Condemns Broad Bombing Campaign in Libya', *Washington Post*, March 20, 2011, https://www.washingtonpost.com/world/arab-league-condemns-broad-bombing-campaign-inlibya/2011/03/20/AB1pSg1_story.html?utm_term=.0dc7a3b509ed.
	Reiterated support	Yasmin Sale, 'Arab League Chief Says he Respects UN Resolution', *Reuters*, March 21, 2011, https://www.reuters.com/article/us-libya-arabs-moussa/arab-league-chief-says-he-respects-u-n-resolution-idUSTRE72K1JB20110321.
African Union	Voted against recognising NTC in Aug	Richard Hall, 'African Union Refuses to Recognize Libya's New TNC government', *Independent*, August 26, 2011, http://www.independent.co.uk/news/world/africa/african-union-refuses-to-recognise-libyas-new-tnc-government-2344675.html.
	Recognised NTC in Sep	Khadija Patel, 'AU – and SA – Finally Recognize Libya's New Government', *Daily Maverick*, September 20, 2011, https://www.dailymaverick.co.za/article/2011-09-20-au-and-sa-finally-recognise-libyas-new-government/.
BRICS	Abstained from UNSC resolution (except SA)	'Libya Conflict: Reactions Around the World', *The Guardian*, March 30, 2011, https://www.theguardian.com/world/2011/mar/30/libya-conflict-reactions-world.

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	Position/Reaction	Source
EU	Divided	Leigh Phillips, 'Italy and Czech Republic Back Gaddafi Despite Blood Bath', *EU Observer*, February 21, 2011, https://euobserver.com/news/31842. Nicole Koenig, 'The EU and the Libyan Crisis: In Quest of Coherence' (Working Papers 11, no. 19, Istituto Affari Internazionali, 2011), 1-21.
	Germany abstained from UNSC resolution	The Guardian, 'Libya Conflict'.
Gulf Cooperation Council	Contributed to military operations	'Gulf Bloc: Qatar, UAE in Coalition Striking Libya', The Hindu, March 21, 2011, http://www.thehindu.com/news/international/Gulf-bloc-Qatar-UAE-in-coalition-striking-Libya/article14956201.ece.
	Backed no-fly zone	Matthias Dembinski and Theresea Reinold, 'Libya and the Future of the Responsibility to Protect – African and European Perspectives', PRIF-Report 107, 2011, https://www.hsfk.de/fileadmin/HSFK/hsfk_downloads/prif107.pdf.
OIC	Backed no-fly zone	Dembinski and Reinold, 'Libya and the Future'.
UNGA	Recognises NTC	UN Press release, 'After Much Wrangling, General Assembly Seats National Transitional Council of Libya as Country's Representative for Sixty-Sixth Session', September 16, 2011, https://www.un.org/press/en/2011/ga11137.doc.htm.
UNSC P3	Advocated regime change	Barak Obama, David Cameron and Nicholas Sarkozy, 'Libya's Pathway to Peace', *International Herald Tribune*, April 14, 2011, http://www.nytimes.com/2011/04/15/opinion/15iht-edlibya15.html.
Country		
Algeria	Voted in Arab League against no-fly zone	Cody, 'Arab League Condemns'.
	Confronted with refugees	Anouar Boukhars, 'Algerian Foreign Policy in the Context of the Arab Spring', Carnegie Endowment for International Peace, January 14, 2013, http://carnegieendowment.org/2013/01/14/algerian-foreign-policy-in-context-of-arab-spring-pub-50613.
	Strictly non-interventionist	'Algeria demands end to air strikes on Libya', *Reuters,* March 22, 2011, https://af.reuters.com/article/algeriaNews/idAFLDE72L1QB20110322.
	Suspected of sending troops and selling arms	'Libya Conflict 2011: Burkina Faso, Algeria and Niger's Long Shared History with Colonel Gaddafi', *International Business Times*, September 6, 2011, http://www.ibtimes.co.uk/libya-conflict-2011-algeria-niger-and-burkina-faso-s-long-shared-history-with-colonel-gaddafi-209338.
	Recognised NTC 22 September	Wikipedia, 'International recognition of the National Transitional Council', accessed July15, 2019, https://en.wikipedia.org/wiki/International_recognition_of_the_National_Transitional_Council.
	FHI 2011- not free	Freedom House, 'Freedom in the World 2012', https://freedomhouse.org/report/freedom-world/freedom-world-2012.
Angola	Opposed military intervention; favoured talks	'Republic of Angola Government Against Military Solution to Libyan Crisis', March 29, 2011, https://republica-de-angola.blogshpot.co.za.
	Voted against accepting NTC credentials at UN	United Nations General Assembly, GA/11137 (2011), https://www.un.org/press/en/2011/ga11137.doc.htm.
	FHI 2011- not free	Freedom House, 'Freedom in the World 2012'.
Botswana	Supported UNSC intervention	Baboki Kayawe, 'Khama Supports No-fly Zone on Libya', *Mmegi*, March 23, 2011, http://www.mmegi.bw/index.php?sid=1&aid=1909&dir=2011/March/Wednesday.
	Call to step down	Wene Owino, 'Botswana Seeks Gaddafi Departure, Welcomes Gbagbo Capture', *Africa Review*, April 13, 2011, http://www.africareview.com/News/-/979180/1143582/-/hp9sqjz/-/.
	Indicated would arrest Gaddafi under ICC warrant	'Botswana Breaks Ranks Over Gaddafi', *News24*, July 6, 2011, https://www.news24.com/Africa/News/Botswana-breaks-ranks-over-Gaddafi-20110706.
	Cut diplomatic ties	Government of Botswana, 'News: Botswana Severs Relations With Libya', February 24, 2011, http://www.gov.bw/en/News/Botswana-severs-relations-with-Libya/.
	Recognised NTC 2 September	Wikipedia, 'International recognition'.
	FHI 2011- free	Freedom House, 'Freedom in the World 2012'.
Burkina Faso	Offered asylum Recognised NTC 24 August	'Burkina Faso Offers Gaddafi Exile', *Reuters,* August 24, 2011, https://www.reuters.com/article/us-libya-burkinafaso/burkina-faso-offers-gaddafi-exile-idUSTRE77N5PG20110824.

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	Position/Reaction	Source
Chad	FHI 2011- partially free	Freedom House, 'Freedom in the World 2012'.
	Leaned towards Gaddafi; fearful of spill over	De Waal, 'African Roles', 373.
	Deby came to power with Gaddafi help; supply of arms to Gaddafi	Anna Mahjar-Barducci, 'Chad: Gaddafi's Best Ally', *Gatestone Institute*, July1, 2011, https://www.gatestoneinstitute.org/2237/chad-gaddafi-ally.
	Sent mercenaries to help Gaddafi	'Mugabe Said to Have Sent Soldiers to Defend Gaddafi', *Zambian Watchdog,* March 2, 2011, https://www.zambiawatchdog.com/mugabe-said-to-have-sent-soldiers-to-defend-gaddafi/.
	Al Qaeda plot	'Al-Qaeda Snatched Missiles in Libya: Chad President, '*Al Arabiya,* March 25, 2011, https://www.alarabiya.net/articles/2011/03/25/143013.html.
	Recognised NTC 24 Aug	Wikipedia, 'International recognition'.
Egypt	FHI 2011- not free	Freedom House, 'Freedom in the World 2012'.
	Supported intervention in Arab League	The Guardian, 'Libya Conflict'.
	Armed rebels	Charles Levinson and Matthew Rosenberg, 'Egypt Said to Arm Libya Rebels', *Wall Street Journal*, March 17, 2011, https://www.wsj.com/articles/SB10001424052748704360045762069992835270906.
	Recognised NTC 22 August	Wikipedia, 'International recognition'.
Equatorial Guinea	FHI 2011- not free	Freedom House, 'Freedom in the World 2012'.
	Lobbied AU to support Gaddafi; banned all reporting on Arab Spring	'Africa Defies AU Chief's Support for Gaddafi', *Afrol News*, March 18, 2011, http://www.afrol.com/articles/37599.
	Rejects foreign intervention if not authorised by AU	Thandi Winston, 'African Union Divided Over Libya', *Inter Press Service*, July1, 2011, http://www.ipsnews.net/2011/07/africa-african-union-divided-over-libya/.
	Voted against accepting NTC credentials at UN	United Nations General Assembly, GA/11137.
Ethiopia	FHI 2011- not free	Freedom House, 'Freedom in the World 2012'.
	Wanted Gaddafi gone	De Waal, 'African Roles', 374.
	Supported Western intervention	Winston, 'African Union Divided'.
	Recognised NTC 24 August	Wikipedia, 'International recognition'.
Gabon	FHI 2011- not free	Freedom House, 'Freedom in the World 2012'.
	Aligned to France	'Africa Defies AU Chief's Support for Gaddafi', *Afrol News*, March 18, 2011, http://www.afrol.com/articles/37599.
	On UNSC – voted in favour of Res 1973	'Libya resolution: UN Security Council Air Strikes Vote', *The Guardian*, March 17, 2011, https://www.theguardian.com/world/2011/mar/17/libya-united-nations-air-strikes-live.
	Recognised NTC 19 August	Wikipedia, 'International recognition'.
The Gambia	FHI 2011- not free	Freedom House, 'Freedom in the World 2012'.
	Pocketed Libyan money	De Waal, 'African Roles', 367.
	Call to step down	Melissa Rudd, 'Gambian President hits out at African Union over Gaddafi protests', *African Business Review*, February 26, 2011, (no longer available).
	Severed ties with Gaddafi	Mark John, 'Analysis: Gaddafi Losing Friends and Influence in Africa', *Reuters*, June 16, 2011, https://www.reuters.com/article/us-libya-africa/analysis-gaddafi-losing-friends-and-influence-in-africa-idUSTRE75F2VY20110616.
	Recognised NTC 22 April	'Gambia: Government Recognises Libya's Transitional National Council', *AllAfrica.com*, April 26, 2011, http://allafrica.com/stories/201104270710.html.
Ghana	FHI 2011- not free	Freedom House, 'Freedom in the World 2012'.
	Support for UN Resolution, but not intervention	'Ghana Against "No Fly Zone" in Libya', *GhanaWeb,* March 23, 2011, https://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=205534.
	Recognised NTC 9 September	Wikipedia, 'International recognition'.
Guinea	FHI 2011- free	Freedom House, 'Freedom in the World 2012'.
	Banned pro-Gaddafi protests	'Guinea Bans Pro-Gaddafi Demonstrations', *CRI English*, March 24, 2011, http://english.cri.cn/6966/2011/03/24/2681s628214.htm.
	Recognised NTC 28 August	Wikipedia, 'International recognition'.

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	Position/Reaction	Source
	FHI 2011- partially free	Freedom House, 'Freedom in the World 2012'.
Cote d'Ivoire	Sent mercenaries to Libya	'Mugabe Said to Have Sent Soldiers to Defend Gaddafi', *Zambian Watchdog*, March 2, 2011, https://www.zambiawatchdog.com/mugabe-said-to-have-sent-soldiers-to-defend-gaddafi/.
	Recognised NTC 25 August	Wikipedia, 'International recognition'.
	FHI 2011- not free	Freedom House, 'Freedom in the World 2012'.
Kenya	Vice President opposed intervention; wanted African solution	John Ngirachu, 'Kalonzo: I'm Opposed to West Attack on Libya', *Daily Nation*, March 23, 2011, http://www.nation.co.ke/News/politics/-/1064/1131288/-/7q6413/-/.
	Voted against accepting NTC credentials at UN	United Nations General Assembly, GA/11137.
	Recognised NTC 24 September	Wikipedia, 'International recognition'.
	FHI 2011- partially free	Freedom House, 'Freedom in the World 2012'.
Liberia	Cut diplomatic ties	John, 'Analysis'.
	FHI 2011- partially free	Freedom House, 'Freedom in the World 2012'.
Malawi	Cut diplomatic ties	'Malawi Cuts Diplomatic Ties with Libya', *News24*, April 15, 2011, https://www.news24.com/Africa/News/Malawi-cuts-diplomatic-ties-with-libya-20110415.
	Voted against accepting NTC credentials at UN	United Nations General Assembly, GA/11137.
	FHI 2011- partially free	Freedom House, 'Freedom in the World 2012'.
Mauritania	Gaddafi's departure is necessary	John, 'Analysis'.
	Winston, 'African Union Divided'.	Winston, 'African Union Divided'.
	Recognised NTC 25 November	Wikipedia, 'International recognition'.
	FHI 2011- not free	Freedom House, 'Freedom in the World 2012'.
Niger	Banned pro-Gaddafi protests	'Niger Airs Concerns over West's Libya Intervention', *Voice of America News*, March 29, 2011, https://www.voanews.com/a/niger-airs-concerns-over-wests-libya-intervention-118851549/157776.html.
	Fearful of spill over	De Waal, 'African Roles', 373.
	Suspected of supplying mercenaries	The Guardian, 'Libya Conflict 2011'.
	Recognised NTC 27 August	Wikipedia, 'International recognition'.
	FHI 2011- partially free	Freedom House, 'Freedom in the World 2012'.
Nigeria	Gaddafi tried to split it into multiple states	'Gaddafi Says Nigeria Should Split into Several States', *BBC News*, accessed August 15, 2017, http://news.bbc.co.uk/1/hi/8593355.stm.
	Wanted Gaddafi gone	De Waal, 'African Roles', 374.
	On UNSC – voted in favour of Res 1973	The Guardian, 'Libya resolution'.
	Called for an inclusive government	Chinedu T Ekwealor and Ufo Okeke-Uzodike, 'The African Union Interventions in African Conflicts: Unity and Leadership Conundrum on Libya', *Journal of African Union Studies* 5, no. 1 (2016): 63–82.
	Recognised NTC 23 August	Wikipedia, 'International recognition'.
	FHI 2011- partially free	Freedom House, 'Freedom in the World 2012'.
Rwanda	Wanted Gaddafi gone	De Waal, 'African Roles', 374.
	Recognised NTC 26 August	Wikipedia, 'International recognition'.
	FHI 2011- not free	Freedom House, 'Freedom in the World 2012'.
Senegal	Wanted Gaddafi gone	De Waal, 'African Roles', 374.
	Supported Western intervention	Winston, 'African Union Divided'.
	First Sub-Saharan leader to travel to rebel stronghold; recognised NTC 28 May	John 'Analysis'.
	FHI 2011- partially free	Freedom House, 'Freedom in the World 2012'.
South Africa	On UNSC – voted in favour of Res 1973	The Guardian, 'Libya resolution'.
	Reversed position	Malte Brosig and Natalie Zähringer, 'Norm Evolution a Matter of Conformity and Contestedness: South Africa and the Responsibility to Protect', *Global Responsibility to Protect* 7, no. 3/4 (2015): 350–375. United Nations General Assembly, GA/11137.

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Continued.

	Position/Reaction	Source
	Voted against accepting NTC credentials at UN	
	Recognised NTC 20 September	Wikipedia, 'International recognition'.
	FHI 2011- free	Freedom House, 'Freedom in the World 2012'.
Sudan	Provided access to airspace for coalition forces	Louis Charbonneau, 'Sudan Allows Over Flights for Libya Ops: Diplomats', *Reuters,* March 25, 2011, https://af.reuters.com/article/topNews/idAFJOE72O03I20110325?feedType=RSS&feedName=topNews.
	Support for NTC; history of Libyan interference in its territory	De Waal, 'African Roles', 373.
	Recognised NTC 24 August	Wikipedia, 'International recognition'.
	FHI 2011- not free	Freedom House, 'Freedom in the World 2012'.
Tunisia	Declined to participate in UN intervention	'Tunisia Won't Join Military Intervention in Libya', *Reuters*, March 18, 2011, https://af.reuters.com/article/commoditiesNews/idAFLDE72H1RL20110318.
	Supported NTC	De Waal, 'African Roles', 373.
	Confronted with refugees	Harriet Sherwood, 'Libyan Refugees Flee to Tunisia as Government Tries to Crush Rebellion', *The Guardian*, April 21, 2011, https://www.theguardian.com/world/2011/apr/21/libyan-refugees-flee-to-tunisia.
	Recognised NTC 20 August	'Neighbouring Tunisia Recognises Libyan Rebels', *Al Arabiya*, August 21, 2011,https://english.alarabiya.net/articles/2011/08/21/163403.html.
	FHI 2011- partially free	Freedom House, 'Freedom in the World 2012'.
Uganda	Openly supported Gaddafi; first to offer him asylum	Godfrey Olukya, 'Gaddafi Can Live in Uganda', *Huffington Post*, May 30, 2011, https://www.huffingtonpost.com/2011/03/30/gaddafi-uganda-exile_n_842451.html.
	Recognised NTC 21 September	Wikipedia, 'International recognition'.
	FHI 2011 partially free	Freedom House, 'Freedom in the World 2012'.
Zambia	Froze Libyan assets	'Zambia Freezes Libyan Government Assets', *Reuters*, March 23, 2011, https://af.reuters.com/article/topNews/idAFJOE72M0ON20110323.
	Voted against accepting NTC credentials at UN	United Nations General Assembly, GA/11137.
	FHI 2011- partially free	Freedom House, 'Freedom in the World 2012'.
Zimbabwe	Wanted to keep Gaddafi in charge	Ekwealor and Okeke-Uzodike, 'African Union Interventions', 63–82.
	Supplied mercenaries	'Mugabe Said to Have Sent Soldiers to Defend Gaddafi', *Zambian Watchdog,* March 2, 2011, https://www.zambiawatchdog.com/mugabe-said-to-have-sent-soldiers-to-defend-gaddafi/.
	Voted against accepting NTC credentials at UN	United Nations General Assembly, GA/11137.
	FHI 2011- not free	Freedom House, 'Freedom in the World 2012'.

Evaluation and Conclusion

1. Relevance of R2P as a Case Study

Undoubtedly, the case of an emerging norm such as R2P is quite suitable to a study investigating the factors and processes affecting norm evolution, especially concerning norm contestation. R2P exhibits both external and internal contestation and therefore provides valuable insights.

The aim of this study was less to provide a comprehensive analysis of R2P across all levels of analysis, but rather the pursuit of theory testing, which examines the current state of conceptualisation around norm evolution, highlighting a variety of factors that contribute to the norm evolution process. Nevertheless, the approach tried to avoid being too narrow. It did so by examining the R2P norm from a three-dimensional perspective which included temporal, horizontal and vertical dimensions. This was justified by an alignment with constructivist scholars who emphasise the necessity of contextualising the norm evolution process. Along temporal lines, the study outlined the evolution of R2P from its emergence in 2001 until post Libya 2011, with the Libyan crisis identified as a critical juncture and hence given more attention. At the horizontal level, the analysis did highlight some important contributions beyond the African continent, such as Brazil's proposal of RWP, but Africa was the focus due to scholarly neglect of theoretical and conceptual research on African IOs, as well as a lack of African perspectives. Furthermore, the vertical dimension examined one state, South Africa, one regional actor, the AU, and one global IO, the UN.

The focus of this study was largely on R2P's pillar 3, the responsibility of the international community to respond in the event of atrocity crimes occurring and the state itself failing to act. This study acknowledges that the scope of R2P is much more than its pillar 3. Most of the UN debates around R2P have focused on the responsibility of the state, as well as the prevention and rebuilding aspects. These are equally important, yet the international community also considers these aspects as much less controversial. Hence, institutional debates involving state representatives keep focusing on the less contested alternatives of pillar 1 and 2. However, pillar 3 is where contestation is the most apparent and the impact of contestation on the evolution of international norms is measurable. Hence, scholarly debate continues coming back to pillar 3 as it best illustrates the impact of norm contestation.

2. Summary of Findings

Unsurprisingly, this study confirms that aspects of the R2P norm remain contested to the present day. Externally, R2P's pillar 3 is in a conflictual relationship with the older more established norm of state sovereignty, as most global actors are very much aware. The likelihood of this tension remaining is high, unless the older norm undergoes a reconceptualization towards popular sovereignty (Article 2). What is less apparent to practitioners is that various meanings-in-use of the R2P norm itself exist. In particular, the location of the PoC is contentious as international actors either perceive the PoC as a completely separate norm from R2P, or the PoC is viewed as one of multiple aspects within the R2P norm, or the PoC is interpreted as the full realisation of R2P. Both the UN and the

AU in their decision-making are somewhat unclear on where exactly the PoC fits in (Article 1). Another variation within R2P's meaning-in-use is the question of possible regime change within the R2P framework. This was expressly forbidden in the ICISS report. However, Western powers favoured the removal of Gaddafi in Libya, an approach the South vehemently opposed (Article 3 and 4).

Of concern around R2P's meaning-in-use is also the fact that the UN in its World Outcome Document, unlike the ICISS report, attaches the atrocity crimes across R2P as a whole and not pillar 3 in particular, dramatically limiting the scope of the norm. In contrast, this is not the case at the AU, where only the right to intervention is limited to the presence of atrocity crimes as stipulated in Article 4(h) of its Constitutive Act (Article 1). Given that the AU ratified its Constitutive Act shortly after the Commission published the ICISS report, one can presume that the drafters were not yet aware of a trend towards a more limiting interpretation, which emerged during the debates leading up to the UN Outcome Document in 2005.

Article 3 and 4 examined in more depth what factors or processes facilitate normative change. The first of these articles looked at the global evolution of R2P and traced how this affected a country specific interpretation, namely South Africa. It also analysed whether an emerging norm such as R2P is more likely to conform to older existing norms such as state sovereignty or whether external and internal contestation will rather lead to adaptation of the older towards the newer norm. The findings highlight that conformity, both globally and in terms of South Africa, is the prevailing force, while the existence of external and internal contestation does facilitate some convergence in the conceptualisation of the R2P norm.

In Article 4, the presence of organised hypocrisy is identified as a catalyst that facilitates ongoing norm evolution within an applicatory discourse. It finds that there is indeed a counter-coupling of rhetoric and action in the AU, which produces a huge amount of policy documents, but the IO has an unimpressive implementation record because of diverging positions of member states. On R2P, the AU has enshrined the norm to the full legal extent, but in Libya it rejected any use of force. Subsequently, the AU focused on the implementation of the PoC and argued that the AU has greater legitimacy on the African continent. The UN picked up on these criticisms, which likely contributed in a failure to intervene in Syria. Since then the discussions around R2P at the UN have focused away from the use of force.

3. Evaluation

3.1. Cyclical Model

In the literature review a conceptual framework to guide this study was proposed. An effort was made to combine the ideas of other scholars and their existing models on norm evolution into one comprehensive model. The result was the proposed cyclical model. As is evident from the above listed findings, there is strong support for the proposed cyclical model of norm evolution. As such, the cyclical model remains a very important contribution this research hopes to make. What follows are brief reflections on each stage.
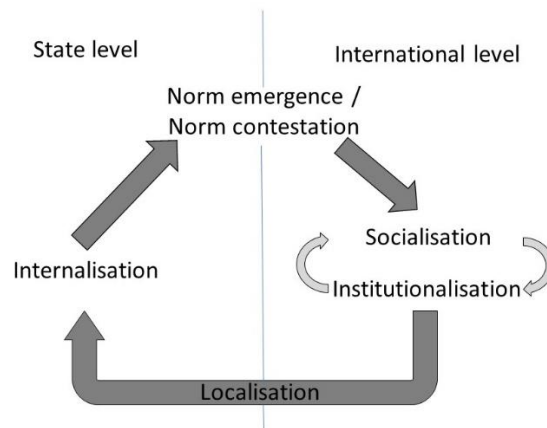
Figure 2: A cyclical model for the evolution of norms

Norm emergence was taken as a given in this study as only a small number of scholars would question the existence of R2P as a norm. Rather, it is the meaning-in-use and the degree of institutionalisation which remains open for debate. Article 1 has shown that the R2P norm cannot be analysed by assuming a fixed conceptualisation post-emergence, as there is clear evidence of diverging meanings attached to R2P. This is illustrated by the placing of the PoC within the discourse (Article 1), or the controversial outcome of regime change (Article 4).

In terms of diffusion, overlapping socialisation is present due to state and institutional interaction occurring at numerous levels at the same time. This is evident by the AU enshrining elements of R2P in its Constitutive Act at the same time as the ICISS was finalising its report (Article 1). Clearly, events in Canada as well as the history of the OAU influenced the emergence of R2P at the AU. This shows that norm evolution occurs in parallel and is not linear. External events have as much of a role to play as the institutional context itself.

As to institutionalisation, Article 1 examines this at the UN and the AU. The UN relies on existing mechanisms to implement R2P, denying the norm express legal standing, but with an institutional culture that is more favourable towards R2P. The UN has a dedicated office, annual Secretary General Reports and an emerging group of friends of R2P. Meanwhile, the AU represents the opposite by granting R2P full legal status but with an institutional culture that is much less supportive of R2P. This analysis of institutionalisation highlights that limiting institutionalisation to the mere existence of a legal framework is short-sighted. Any norm is only as effective as its acceptance and implementation across various institutional levels, from the highest to the lowest.

Article 3 investigated South Africa as an example of state level internalisation and finds that as per Acharya's idea of localisation, some alignment took place with both locally and internationally held beliefs. South Africa aligns its meaning-in-use on R2P with the substance and specificity found at the UN. It co-drafted the AU Constitutive Act as well as the PSC Protocol, which provided regulative strength and drove the constitutive quality of R2P at the regional level. Furthermore, by supporting the Ezulwini consensus, it acknowledges UN authority. Furthermore, South Africa replicates the UN's PoC discourse as well as rejects any unilateral response to atrocity crimes. The state agrees with the ICISS report in terms of the substance of R2P by opposing regime change and seeing state sovereignty and territorial

integrity as paramount. Yet some local adaptation can be identified. South Africa challenges the specificity of the norm by calling for more efforts towards mediation, clearer mandates and greater transparency, while also emphasising that interveners' need to adhere to the PoC. Furthermore, regulative aspects are questioned around the UNSC's primacy and interpretations of Chapter 8 of the UN Charter. Constitutively, South Africa rejects all Western hegemony, both in terms of the R2P norm and in global policy making. This means that in terms of enforceability the P5 are viewed with scepticism, the UN's authority is questioned and a greater role for regional organisations is sought. It is clear that South Africa's position on R2P matches the post-Apartheid government's human rights and African Renaissance focused foreign policy. With only one detailed case at the state level, this study cannot claim to have proven conclusively that localisation rather than congruent internalisation is a widespread phenomenon. However, when including the different positions, which AU members took in response to Libya in Article 4, there is enough prima facie evidence that diverging internalisation is indeed present.

This study has also proven that norm entrepreneurs come in different shapes and sizes. When examining the evolution of R2P in Article 1, it is clear that the emergence of the R2P norm is less due to powerful states driving this, but rather it commenced with the Canadian government inviting experts from across the globe. African states then embraced this idea and institutionalised it as part of their newly created regional IO, the AU. Only later, when the UN debated R2P, did limitations emerge due to disagreements presented by powerful members. Article 3 showed that South Africa in essence is a norm entrepreneur because of its response to Libya. It chaired the AU's ad Hoc Committee and as a UNSC member at the time, expressed its opinion at the international level. Its criticisms of the manner of implementation caused waves across the AU and UN. As to an independence of action by IOs, this is much more apparent in the UN, where R2P has been debated and implemented in line with recommendations by institutional bodies (Article 1). This is in contrast to the AU where no action is possible without the express will of its members (Article 4). It seems fair to say that IOs have the propensity to act as norm entrepreneurs, but this does not imply that they will do so.

3.2. Typology of Norms and Contestation

Article 3 applies a taxonomy of norms, which includes substance, specificity, regulative and constitutive qualities, as well as enforceability. These indicators are not identical to the typology presented in the conceptual framework, which differentiates between different categories of norms from constitutive, regulative and procedural norms. Rather, substance, specificity and enforceability are characteristics that can be measured across all norms and do not delineate different types. In reflecting on the proposed typology, it becomes clear that R2P spans all three categories, hence Article 3 examines the norm in light of each of these qualities. The article finds that R2P is mostly a constitutive norm. Its substance remains vague and its regulative authority and enforceability are weak. This is in line with Wiener's prediction that it is the procedural aspects which prove most contested.

For this reason, contestation itself is identified as the main motor towards normative change and necessary for the recommencement of the evolutionary cycle. It can be differentiated in terms of location, discourse, mode and robustness, with each of these

predicted to have an impact on the evolutionary progress. As stated in the conceptual framework: Contestation is more likely to facilitate norm evolution when the contestation is internal rather than external, when the discourse is applicatory rather than justificatory, when the mode is explicit rather than implicit and when robustness leans towards facticity.

In the case of R2P, contestation is found to be located both externally and internally, but more towards internal contestation. Furthermore, the discourse is more applicatory than justificatory, the mode is more implicit, (with some deliberation taking place to a lesser extent on the explicit side), while the facticity remains low. This means that the type of contestation, which R2P experiences, would generally favour the strengthening of R2P over time. However, it must be noted that there are some elements mentioned above (such as external contestation, the implicit mode and low level of facticity), which may still hinder this. Although it is still early days, the evidence presented in this study suggests that R2P is seeing gradual developments, mostly in its specificity, which ultimately supports the claim of ongoing norm evolution, likely to result in a strengthening of the R2P norm.

3.3. Contribution to Existing Literature

This study is in line with constructivist thinking, which see norms as social constructs where the substance of a norm depends on agent interaction. Finnemore and Sikkink's (1998) lifecycle of norms remains a valuable starting point in the norm evolution literature. Most subsequent work, including this study, expands on their ideas, but does not disprove the model's fundamental assumptions around norm entrepreneurs, a tipping point and norm cascade.

Subsequent research by authors such as Heller and Kahl (2013), Bloomfield (2016), Acharya (2018) and Wunderlich (2020) posit that the range of norm entrepreneurs is much larger than originally presumed, with especially those in opposition of a norm having a role to play in norm evolution. Here Article 3 adds that any state active on the regional or global stage can become a contributing norm entrepreneur. Meanwhile Article 4 examines the impact of institutional opposition and one conclusion, which can be extrapolated from the findings, is that the AU's objections around Libya affected the subsequent direction taken around the R2P discourse at the UN. Nevertheless, the pursuit of an in-depth examination of African actors and events has illustrated that the role played by non-traditional norm entrepreneurs remains largely underdeveloped and warrants further investigation.

As to the tipping point and norm cascade, these processes were elaborated on in the literature by Checkel (2005) and others under the theme of socialisation. What remains underdeveloped in the lifecycle model is the aspect of institutionalisation, which still lacks an effective definition and more detailed analysis on its various levels of degrees. What this study has shown is that equating institutionalisation with a legal framework is insufficient. If that were the case then the AU would be considered the most institutionalised IO with regards to R2P, while the UN would be seriously lacking. However, the case studies presented indicate that R2P is much more part of the fibre of the UN than the AU in both its discourse and action.

The lifecycle model, however, has two exceptions where subsequent scholarly contributions diverge from the approach presented by Finnemore and Sikkink. Although their model introduces the idea of a cycle, it does not implement it. This study has shown that norm evolution is indeed ongoing and does not end after states have internalised a norm. This was already predicted by Wiener and Puetter (2009), Krook and True (2012), and Zwingel (2012). Furthermore, this study has also highlighted that in contrast to the lifecycle, the substance of each state's internalisation can differ widely, as illustrated by the different responses by African member states to Libya in Article 4. This is clear evidence of internal norm contestation. Acharya's (2004) explanation of localisation effectively explains these diverging interpretations.

It is after this point, where contestation becomes apparent, that this study makes its most valuable contribution by investigating the impact that norm contestation has on norm evolution.

The first assumption tested was whether the type of norm might play a role. Two typologies for norms were introduced, one by Duffield (2007) and one by Wiener (2014). Wiener's typology uses different terminology, but is somewhat congruent with Duffield's approach. However, she inserts a hypothetical type between the two poles at the organisational/regulative level and argues that by actively encouraging contestation, it becomes a useful tool towards norm evolution. Wiener's approach is somewhat problematic as it has an imaginary/visionary component due to her divergent approach as a critical constructivist. The problem with this is that this cannot be assessed unless states are influenced to change their response from an implicit to an explicit mode. Hence, Article 3 focused more on Duffield's typology of norms. Even so, it became clear that R2P contains elements across the full spectrum, making it difficult to assess whether a certain type of norm elicits a specific reaction.

The second assumption assessed was whether norm contestation itself can be classified into different categories, and if so, what the respective impact might be. Here the leading contributors are undoubtedly Deitelhoff and Zimmermann (2013) who posit that the discourse around contestation can be applicatory or justificatory. The presence of the former, they argue, will lead to strengthening of the norm, while the latter to weakening of the norm. R2P is identified in this study as an applicatory discourse and, as per their assumption, this study finds evidence of some norm strengthening. However, with no investigation of a comparative justificatory discourse, the negative impact of the latter was not assessed and cannot be confirmed. Deitelhoff and Zimmermann's (2019) most recent contribution examines norm robustness, in essence the pinnacle of norm strengthening. Robustness occurs if a norm has validity (acceptance) and facticity (compliance). This study argues that validity is linked to the justificatory discourse and facticity to the applicatory discourse. Hence by combining their two papers one could conclude that facticity would be more valuable as an indicator of norm evolution outcomes. In parallel to this study, Welsh (2019) also embarked on an assessment of the robustness of R2P. She finds that the R2P norm in its evolution has seen "convergence on validity" in its pillar one and two dimensions (58), yet she indicates that "persistent applicatory contestation around R2P's so-called pillar three" (53) exhibits "mixed degrees of facticity" (61), resulting in actors avoiding the use of R2P terminology. Welsh's approach, which mirrors the one used in this study's conceptual

framework, also uses the measure of robustness as a means of assessing the R2P norm. Similar to this study, her findings on the impact of the applicatory discourse around R2P remains inconclusive, warranting further investigation.

Some other questions also remain unanswered in the literature. The first is the question of the location of contestation. Most research on norm contestation examines either internal or external contestation, but seldom both. This oversight is problematic. This study finds that R2P exhibits contestation in relation to both existing older norms, as well as diverging meaning-in-use of the norm itself. In the past external contestation was highlighted (see Florini 1996), and it was necessary to acknowledge and investigate internal contestation. However, doing so by focusing on the one and ignoring the other is problematic, as neither exists in isolation. Then there is the assumption made in this study that contestation only emerges when international action is required. This assumption was tested and found valid, however no counterfactual evidence was provided. Ideally, there needs to be an investigation on whether applicatory discourse also applies within the domestic setting and whether a state's internalisation of an international norm can change through a domestic reflection in response to application.

Article 4 uses Brunsson's idea of organised hypocrisy (1986, 1989). This approach was long overlooked until Lipson (2007) and Egnell (2010) took it up again. Parallel to our own research in Article 4, others such as Onditi (2019) and Summer (2019) have concluded that OH has explanatory power with regards to the AU. This study found that the main limitation around applying OH is that it is as yet not developed as a theory, nor is it given its just consideration by norm evolution scholars, despite the fact that it proves to be an effective indicator for the existence of an applicatory discourse as well as providing the potential as a norm generative condition..

The above reflections indicate that this study contributes more to the testing of existing theories around norm evolution, rather than embarking on extensive theory development. The strength of this study is in rich empiricism which assesses the theoretical claims made by other scholars and makes important contributions to the existing literature by assessing some of the assumptions made in the norm evolution and contestation discourse. It should be noted that this research successfully identified and confirmed factors, which contribute to the evolution of the R2P norm. It does not, nor does it presume to, provide a complete empirical study which conclusively proves or disproves the role played by norm contestation. It merely provides prima facie evidence and impetus for future study.

4. Conclusion

4.1. Scope for Future Research

In terms of the use of force under R2P, the Libya crisis took place 9 years ago. In going forward, it is necessary to consider other crises identified as R2P cases. On the African continent alone there have been many. One important case would be the events in Burundi since April 2015. This was the closest the AU has ever come to invoking article 4(h). The PSC in December 2015 went as far as recommending the use of force to the Assembly, which in January 2016 ultimately decided not to do so.

Another future area of inquiry should be the question of regime change. The ICISS report expressly forbids regime change as an outcome in the event of the international community's response to a crisis. Article 2 of the UN Charter would support this interpretation and the AU vehemently opposed the removal of Gadaffi. This stands in contrast to the approach taken by the P3 in Libya, which argued that atrocities cannot be stopped without regime change. Future research would need to consider the question of whether atrocities can be stopped without regime change. If there is little chance of ending atrocities without regime change then R2P's pillar 3 remains pointless unless a consensus in favour of regime change is adopted.

Nevertheless, the scholarly obsession with pillar 3 raises valid criticisms as it neglects developments concerning the other dimensions of R2P. Moving forward it would be essential to investigate what impact the routinized reflections at the UN, the friends of R2P, think tanks etc. have had on the R2P norm's evolution. Since these focus on prevention, rebuilding and state responsibility, it would be interesting to assess whether the discourse has led to a consolidation of the R2P norm and to what degree there are elements of contestation driving this.

Of interest would also be how the International Criminal Court and R2P reinforce each other. Their compatibility is obvious as both were designed specifically to address atrocity crimes. However, in practice they operate quite independently from each other, with the only overlap being UNSC referrals. This raises the question of future alignment and deeper consolidation. New research may also want to focus on how the AU's opposition to the ICC has affected its position on R2P. In a few cases, the AU has asked the UNSC for ICC postponements, including Libya (Article 4), which were denied. This may very well support the AU's approach of African solutions to African problems.

Finally, many scholars of norm evolution refer to or focus on R2P. R2P is the obvious case as it is very much in the public eye. Future research would need to investigate the transferability of the conceptual framework presented in this study to other emerging norms. The question is whether the findings presented here can be reproduced.

4.2. Reflection on Research Process

This study took place over an eight-year period. During this time, the R2P norm saw much debate and consolidation on some aspects, but less so in terms of pillar 3. Nevertheless, I would argue that R2P was a valuable case study in terms of norm evolution as it provided useful insights as listed above. However, R2P is still a very new norm and it must be acknowledged that no guarantees exist as to its future direction. We may see some agreement around the use of force or this aspect may end up discarded completely.

In pursuing this study, I decided to take the route of a PhD by publication. The main advantage thereof was that findings became available to the academic community as well as practitioners throughout the process. This encouraged debate and reflection, which influenced the direction of subsequent articles. The reviewers made helpful suggestions and contributions. However, it also meant that the overall study became less coherent as the

process was externally driven. None of the reviewers were aware of the bigger project and some differed in their methodological preferences. Another disadvantage of going the publication route is the inability to go back and adapt older research to be more congruent with subsequent elaborations in the conceptual framework.

The use of process tracing as the chosen method was effective in achieving the aims of this study, although there were some difficulties. One was a tendency to focus on the legal framework as this was much easier to access, rather than the interactions before and after its adoption. The one concerted effort to avoid this was in Article 4, with a much more in-depth analysis of states' positions. This too proved quite difficult, as not all African states are open and transparent on their views. Hence, some inference took place. On reflection, Hay's criticism of process tracing proved true to some extent. No conclusive finding on applicatory norm contestation as a causal mechanism can be made. Pursuing this research through a series of publications, with only the last two addressing the heart of the matter, considerably restricted the amount of data which could be analysed and from which findings could be drawn. Nevertheless, I am confident that an accurate picture of events was presented, on which the analysis around R2P as a case of applicatory contestation took place.

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R14/49

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PROTOCOL NUMBER H18/06/40

PROJECT	Moving beyond international norm emergence - Diffusion, contestation and adaptation of an international norm: The case of the Responsibility to Protect (R2P)
INVESTIGATORS	Mrs N Zahringer
DEPARTMENT	Social Sciences
DATE CONSIDERED	22 June 2018
EXPIRY DATE	12 August 2021
DECISION OF THE COMMITTEE*	Retrospective Acknowledgement

NOTE:
- The HREC (Non-Medical) acknowledge receipt of this retrospective ethics clearance application.
- The HREC (non-medical) found no ethics problems.
- This acknowledgment is valid for three (3) years.

DATE   13 August 2018   CHAIRPERSON ....
                                            (Professor J Knight)

cc: Supervisor: Professor M Brosig

DECLARATION OF INVESTIGATOR(S)

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Appendix B

Global Responsibility to Protect

Global Responsibility to Protect (GR2P) is the premier journal for the study and practice of the responsibility to protect (R2P). This journal seeks to publish the best and latest research on the R2P principle, its development as a new norm in global politics, its operationalization through the work of governments, international and regional organizations and NGOs, and finally, its relationship and applicability to past and present cases of genocide and mass atrocities including the global response to those cases. *Global Responsibility to Protect* also serves as a repository for lessons learned and analysis of best practices; it will disseminate information about the current status of R2P and efforts to realize its promise. Each issue contains research articles and at least one piece on the practicalities of R2P, be that the current state of R2P diplomacy or its application in the field.

GR2P promotes a universal understanding of R2P and efforts to realize it, through encouraging critical debate and diversity of opinion, and to acquaint a broad readership of scholars, practitioners, students and analysts with the principle and its operationalization.

Global Responsibility to Protect seeks insights and approaches from every region of the world that might contribute to understanding, operationalizing and applying R2P in practice.

Appendix B

Canadian Journal on the Responsibility to Protect

We are very proud to present the *Canadian Journal on R2P (CJR2P),* the inaugural issue of the new journal series from the Canadian Centre for R2P (CCR2P). Based at the Munk School of Global Affairs at the University of Toronto, the CCR2P is an independent, non-partisan, and non-profit research organization mandated with promoting scholarly engagement with and political implementation of the Responsibility to Protect (R2P) principle. These two goals are deeply intertwined, and both missions are at the heart of the *CJR2P*.

This inaugural edition is centred on the question of R2P's future – and how Canada may play a constructive role in that future. Our quest is a timely one: over the course of this decade, the global conversation surrounding R2P has shifted towards the question of implementation – yet the challenges to effective implementation are as numerous and pressing as ever. Mass atrocity crimes continue to be committed in places such as Syria, Myanmar, Yemen, and the DPRK – with many more communities throughout the world showing the early signs of atrocity crimes. We believe that Canada has a special role in championing R2P; from the 2001 ICISS report to the 2005 World Summit Outcome, the R2P has been a proud Canadian intellectual legacy and we all share a collective responsibility to protect people in peril.

The submissions compiled in this volume were generously contributed by members of the CCR2P's Scholars' Network and advisory board, and delve deeply into these pressing questions, exposing both the shortcomings and potential of the R2P principle, and contemplating Canada's role in the past, present, and future of the Responsibility to Protect.

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CANADA AND THE FUTURE OF R2P

2019