Zähringer, Natalie

Taking stock of theories around norm contestation: a conceptual
re-examining of the evolution of the Responsibility to Protect

Taking stock of theories around norm contestation: a conceptual re-examining of the evolution of the Responsibility to Protect

Abstract

This research consolidates debates around the impact of international norm contestation and evaluates previous findings. It conceptualises a typology for norms and norm contestation and applies this framework to R2P to test its explanatory effectiveness. The typologies draw on work by Finnemore and Sikkink, as well as the applicatory versus justificatory discourse by Deitelhoff and Zimmermann and Wiener's modes of contestation, amongst others. It also proposes additional factors such as the location of contestation as well as the commonalities of norm challengers. The recent conceptualisation around norm robustness is found to be only useful in evaluating the strength of norms.

Introduction

Research into the emergence, evolution and diffusion of international norms has become a focal point of constructivist scholars in International Relations. Since Finnemore and Sikkink (1998) first published their paper on the life cycle of norms, our ability to understand how norms are shaped has progressed in leaps and bounds. Nevertheless, at the heart of this research agenda emerged and remains the question on how processes of norm contestation may impact norm evolution. It was found early on that rather than norm contestation leading to an assumed slow death, in-depth studies over the past two decades continued to highlight that contestation can be instrumental towards a norm's evolution. However, not all types of contestation lead to a progression which strengthens the norm. Our understanding of what factors around

Natalie Zähringer[1]

[1]University of the Witwatersrand, Faculty of Humanities, Johannesburg, South Africa
(natalie.zahringer@wits.ac.za)

ORCID ID:
orcid.org/0000-0003-4451-6335

Rev. Bras. Polít. Int., 64(1): e006, 2021

Zähringer ▶

norm contestation are influential and the manner in which they are, is still only at the beginning. This continues to highlight the importance of ongoing research into the respective impact of different types of contestation on different categories of norms.

This paper aims to investigate whether identifying the type of norm in conjunction with the type of contestation, contributes to a better understanding of norm evolution. The first challenge is to provide a comprehensive typology for both, as so far, no common understanding of either has found broad acceptance. Hence, the next section examines some existing frameworks on different categories of norms, outlined chronologically and starting with Finnemore and Sikkink, moving on to Duffield, Wiener and Winston. The second section proposes a typology of norm contestation, again, based on a consolidation of current research in the field. This section focuses on Deitelhoff and Zimmermann, who apply a differentiation of applicatory and justificatory discourses as well as ideas around norm robustness. In turn, Wiener's work on a *Theory of Contestation* raises the question as to whether the facilitation of active or explicit contestation, rather than reactive or implicit responses, can contribute to a favourable progression of the norm. However, the proposed typology of contestation also highlights other factors, previously given less attention and which may prove of importance. These include the location of contestation as internal and/or external contestation, as well as the positioning of norm challengers and their impact.

Once this comprehensive conceptual framework is outlined, it will be applied to the Responsibility to Protect (R2P) as an example of an emerging and evolving norm. Arguably much has already been written on R2P. Jennifer Welsh especially, as a former UN Special Representative on R2P, has contributed with in-depth analyses which apply aspects of the proposed framework, which on their own remain inconclusive. None of the existing research applies the proposed framework in its entirety. Hence, before the proposed framework is applied to other, less researched norms, it makes sense to first test whether it can make a contribution to our understanding of a seemingly over-researched norm. The application of the overall framework outlined below allows for a differentiated comparison of the various aspects in R2P's evolution. Ultimately, the main question is which factors of the proposed conceptual framework provide good explanatory power with regards to R2P's evolution so far.

A typology of norms

Over two decades of research on norms and their evolution have yet to provide a common accepted typology of norms. With no clear agreement, it proves impossible to investigate whether norm contestation with regards to various categories of norms results in any differentiable evolution. If we are to understand norm evolution fully, then the first step must be to seek some form of consolidation around a common typology of norms. This section will examine how prominent scholars have previously defined and classified norms. Subsequently, it attempts to outline a more comprehensive typology for norms.

A justifiable starting point would be with Finnemore and Sikkink's ground-breaking research in 1998. They highlight that a common classification of norms focuses on *regulative* norms, "which

Taking stock of theories around norm contestation: a conceptual re-examining of the evolution of the Responsibility to Protect

2

Rev. Bras. Polít. Int., 64(1): e006, 2021

Zähringer ▶

order and constrain behaviour" and *constitutive* norms, "which create new actors, interests, or categories of action" (Finnemore and Sikkink 1998, 891). This underlying differentiation can be identified in most subsequent research presented here, although some scholars add to this. However, Finnemore and Sikkink themselves argue that one category is often neglected, what they term *evaluative* norms, defined as norms which "involve standards of appropriate or proper behaviour" (Finnemore and Sikkink 1998, 891).

In turn, Duffield's approach (2007) adds the idea of *procedural* norms to the constitutive and regulative divide, which he posits apply specifically to the institutional context. He also separates regulative norms into two sub-fields: prescriptive (requiring or prohibiting certain behaviour) or permissive (allowing optional action) (Duffield 2007, 14).

Wiener (2014, 7) too embarks on a typology of norms, using somewhat different terminology. She 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 (Wiener 2014, 24). Although similarity exists with the constitutive norms mentioned above, the aspect of appropriateness is more in line with Finnemore and Sikkink's evaluative norm. At the other end are *standardised procedures* that are stipulated in treaties and entail specific instructions (Wiener 2014, 37). 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 (Wiener 2014, 39).

Winston (2017) takes a very different approach, but one which still mirrors the above categorisations. She acknowledges that norms have various functions. The first being constitutive, which adds *value* and is determined by society as good or bad. But this in turn creates *problems*, where facts need to be understood in terms of these values, which in turn elicit the constraining function and add *behaviour* to any norm. In her view, norms have a tripartite structure, where the problem creates the bridge between the constitutive and constraining functions. In other words, "Given this problem, my values dictate this behavior" (Winston 2017, 640).

Finally, Winston proposes the idea of a "norm cluster" to explain how to treat norm complexity that is created by the overlapping functionalities of the norm itself. "A norm cluster is a bounded collection of interrelated specified problems, values and behaviors that are understood to be similar enough that their adopters form a family group" (Winston 2017, 647).

Table 1. A comparative typology of norms

Finnemore, Sikkink (1998)	constitutive (create new actors, interests, or categories)	evaluative (standards of appropriate behaviour)	regulative (order and constrain behaviour)	
Duffield (2007)	constitutive shape identities, preferences and interests		regulative (order and constrain behaviour, permissive and prescriptive)	procedural (specific to institutional context)

Taking stock of theories around norm contestation: a conceptual re-examining of the evolution of the Responsibility to Protect

3

Rev. Bras. Polít. Int., 64(1): e006, 2021

Zähringer ▶

Continuation

Wiener (2014)	fundamental norm (just and legitimate principles and rules of global governance)	organising principle (where normativity becomes negotiable)		standardised procedures (specific instructions in treaties)
Winston (2017)	value (constitutive)	problem (interpretive)	behaviour (constraining)	

Source: own elaboration

Table 1 summarises the similarities and differences between Finnemore and Sikkink, Duffield, Wiener and Winston's typologies of norms. An attempt is made to align similar definitions in the same column and to illustrate a spectrum of norms from one end to the other. Starting at the far right, Duffield's procedural function of norms seems to overlap with Wiener's standardised procedures as both emphasise the institutional aspect. To the left thereof is the regulative and constraining feature, mentioned by three of the four scholars assessed. On the far left are constitutive norms, mentioned by all, although Wiener's fundamental norms and Winston's values, it could be argued, share the idea of legitimacy with the second column, which highlights the evaluative and interpretive aspect of norms. This is also the space where Wiener argues for explicit engagement around normativity. As will become apparent below, the above extremes of the outlined typology of norms mirror the main discourse around norm contestation. This discourse illustrates an alignment between constitutive qualities and a justificatory discourse on the one end as well as any regulatory and procedural qualities as part of an applicatory discourse on the other. The framework also acknowledges that there is a space in between for actors to be reactive and active, to interpret as well as negotiate.

A typology of norm contestation

Moving on to norm contestation, agreeing on the existence and importance of contestation was the easy part. Much more complex was (and still is) identifying how contestation impacts the evolutionary process. The challenge is to identify the factors of contestation which impact a norm's evolutionary path and how these factors do so. This necessitates the categorisation of norm contestation in an effort to identify whether certain types of contestation have a greater impact on a norm's successful evolution. The typology proposed here considers commonly accepted approaches such as Deitelhoff and Zimmermann's justificatory and applicatory discourse, but it also highlights those aspects which often seem to be overlooked, one of which will be discussed first.

The obvious place where norm contestation has always been apparent is in what is termed here external contestation, when the norm is seen in competition with other existing norms. Originally, internationally adopted norms were considered as uncontested with fixed definitions, while the existence of internal contestation was unrecognised (Deitelhoff and Zimmermann 2019, 5). When

contestation research first emerged, the emphasis was placed on how the existence of other conflicting norms influenced a norm's evolution (for example, state sovereignty versus R2P). External contestation is clearly more obvious, especially as it becomes quickly apparent at the international level when collective action is required. There is also a bias, which favours existing norms over new ones, and if evolving norms are embedded in the existing normative framework, they are more likely to be accepted (Brosig and Zähringer 2015). Both Sandholtz (2019, 141) and Deitelhoff and Zimmermann (2019, 10) argue that greater research is needed to identify how existing structures impact a norm's robustness. This includes its legal basis, how well it has been institutionalised in global and regional organisations, as well as the prevailing normative order. In essence, these elements provide the broader external context to a particular norm. The proposed typology of contestation acknowledges that recently external contestation has been somewhat neglected, as current studies favour the application of contestation solely to its internal dimension. This is something which must be remedied in any revised contestation framework.

Nevertheless, what is termed here as internal contestation exists and it leaves the norm soft and much more pliable. It is important as it highlights that any investigation into norm contestation must also consider the impact of different emerging meanings in use 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. Evidence suggested that norms often remain "works-in-progress," not "finished products" (Krook and True 2012, 105), thereby complicating how states interpret and apply them. For these theorists, internal norm contestation is a requirement to facilitate the evolutionary process as these divergent expressions or contradictions necessitate a re-conceptualisation of the norm towards convergence as otherwise collective international understanding and action become untenable. In other words, it is only once contestation becomes apparent through norm usage that actors are confronted with the necessity to reflect and reconstitute it. Winston goes so far as to highlight a dual nature of norms according to which they include both stability and flexibility. They are simultaneously "stable social facts" which are "continuously contested and reconstituted" (Winston 2017, 639-642). This complicates any analysis of norm evolution as it affects the relationship "between actor (norm adopter), process (diffusion mechanism), and object (the norm itself)" (Winston 2017, 642).

This raises the idea of the role played by specific or groups of actors as norm challengers. Originally, research into norm emergence focused on norm entrepreneurs, generally viewed as advocates of a new norm (Finnemore and Sikkink 1998; Checkel 2012). Subsequent research found that the impact of norm challengers (Heller and Kahl 2013) or "antipreneurs" (Bloomfield 2016) was being neglected. Sandholtz (2019, 139) also finds that norm robustness depends on who the norm challengers and norm defenders are. If norm challengers consist of mostly powerful states, then the assumption would be that the norm would be less robust and even weaken. However, this was not found to be the case. Instead, norms were found only to weaken as part

Rev. Bras. Polít. Int., 64(1): e006, 2021

Zähringer ▶

of the internalisation process by the states challenging the norm, but globally it was found that many norms remain surprisingly robust, even if challenged by powerful states. Furthermore, the more diverse the range of actors in support of a norm, the greater the likelihood of overcoming any challenges to the norm (Sandholtz 2019, 140). For this reason, norm challengers have been included in the typology of norm contestation below. It is important to investigate how powerful such challengers are, whether they are a small or large group and whether they share an ideological approach or are more diverse.

Deitelhoff and Zimmerman's (2013) representation of norm contestation is widely considered. They argued that contestation could lead to both the strengthening and weakening of norms and they attempted to identify the conditions under which either can happen. Ultimately, they postulate that contestation around the application of a norm leads to its strengthening, 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 an 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.

In a more recent article, Deitelhoff and Zimmermann's (2019, 11) further extend these ideas and their terminology changes to *applicatory contestation* and *validity contestation*. Their recent paper redefines these dimensions of contestation in terms of *norm robustness*. I argue that although norm robustness is useful to assess whether a norm has strengthened or weakened, the distinction in discourse should not be overlooked. Robustness is found when a norm has both *validity* (acceptance of the discourse) and *facticity* (compliance in practice) (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, concordance and third-party reactions, indicate elements of justificatory/validity discourse around the norm, while the last two, compliance and implementation, illustrate applicatory dimensions (Deitelhoff and Zimmermann 2019, 8). Interestingly, a 2019 special issue published by the *Journal of Global Security Studies* applied the above framework of norm robustness to a series of case studies in the security arena, in particular the use of force, chemical weapons, torture, female combat, international criminal law, the ICC, as well as R2P. Its focus was on the relevant indicators of robustness and found that no clear pattern emerged. Hence, it may be useful to return instead to the distinction between applicatory and justificatory discourse with its assumption of opposing influences. Norm robustness in turn should be used more as a means of measurement of a norm's strength.

When looking at all of the above research, it is justifiable to surmise that norm contestation has an impact. However, is there a way to manipulate the process towards evolution rather than decay? Wiener not only believes so, but also encourages this. In her book *A Theory of Contestation*, Wiener (2014) identifies a *legitimacy gap* between the two ends of the norm spectrum. According

Rev. Bras. Polít. Int., 64(1): e006, 2021

Zähringer ▶

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. She argues for regular contestation to be actively facilitated to avoid conflict. In other words, actors need to move away from the *practice* of contestation, which only highlights a legitimacy gap, to a *principle* of contestation which facilitates regular access to contestation to avoid this gap (Wiener 2014, 2). In the absence of a principle of contestation, actors will resort to the existing implicit practice, which includes neglect, negation or disregard. However, with the introduction of a principle of contestation, the mode of contestation would hopefully shift to an explicit approach which includes arbitration, deliberation, justification and contention. For clarification, *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 likely resolved through this mode. However, *deliberation* is more likely, identified as the political mode, where transnational regimes address the rules and regulations. 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 within non-formal environments (Wiener 2014, 2).

Table 2. A proposed typology of contestation

Norm	constitutive/fundamental/evaluative/regulative/procedural
Location	internal vs external
Challengers	powerful states vs groups of states ideologically aligned vs diverse
Discourse	applicatory (practice) vs justificatory (validity)
Mode	implicit (neglect, negation or disregard) vs explicit (arbitration, deliberation, justification and contention)

Source: own elaboration

Given that the above discussion highlights that no one factor has been found to clearly impact norm evolution one way or the other, this paper applies a combined framework by including insights into the type of norm, location of contestation, norm challengers, as well as the discourse and mode of contestation. Table 2 summarises the above discussion into a typology of contestation. It illustrates that when investigating any form of contestation, it may prove helpful to first identify the type of norm. It is the categories of norms that are found in between the extreme poles on the spectrum of constitutive/fundamental on the one end, and regulative/procedural on the other, which allow contestation to exist and provide a progressive momentum as here interpretation and evaluation take place and appropriateness is questioned. The location may also be of importance with regards to different interpretations of the norm itself, but also its relationship to other norms or the structural context. The role of norm challengers and supporters should also be considered with wide-ranging support from a diverse group possibly counteracting powerful states. Furthermore,

Rev. Bras. Polít. Int., 64(1): e006, 2021

Zähringer ▶

the focus of the discourse likely remains important. Overall, it is the applicatory discourse which is seen as being a stronger facilitator of norm evolution. Lastly, identifying and moving to a more explicit mode of contestation may be useful to avoid norm neglect and decay. Putting all this together, the above conceptual framework makes the following assumptions: contestation is more likely to facilitate effective norm evolution when the focus is on evaluative aspects, the contestation is located internally rather than externally, when the discourse is applicatory rather than justificatory, and when the mode is explicit rather than implicit. Robustness is used more as a measure of strength and less as an intervening factor. The next section will apply this framework to the Responsibility to Protect to identify whether these assumptions hold or not. Despite limiting the analysis to R2P, this research hopes to track whether any singular or multiple factors have significant explanatory power in describing R2P's evolutionary path.

The Responsibility to Protect

Much has been written about R2P. It even has its own globally accredited journal. Nevertheless, R2P poses quite a few challenges in applying the above outlined framework, as it is recognised as a complex and multi-layered norm which consists of more than one prescription (Welsh 2019, 56). Sandholtz (2019, 144) even argues that it consists of multiple norms, with some aspects not even having achieved the status of a norm. To complicate matters, R2P as a whole is not considered a legalised norm (Sandholtz 2019, 142), since today's interpretation of R2P is based on the UN General Assembly's *2005 Outcome Document*, paragraphs 138 and 139, a non-binding resolution. Nevertheless, most components of R2P are widely accepted. In interpreting R2P, a series of annual UN Secretary General reports on R2P have outlined R2P's fundamental tenants. The first of which divided the norm into what is today accepted as its three-pillar structure (UNGA 2009). Pillar one focuses on a state's responsibility to protect its own people. Pillar two considers the ways in which the international community can assist states. Pillar three outlines what actions the international community can take if a state fails to meet its responsibility. Responses under pillar three may take various forms, from mediation and sanctions to the use of military force. The latter aspect remains the most contested one, as many states still consider this an unacceptable violation of state sovereignty. As the analysis proceeds, more details on R2P's content and nature are presented.

Norm category

Wiener (2014, 38) identifies R2P as "an organising principle" that is located between the two ends of the norm spectrum, and ideally placed to experience effective strengthening through contestation. Nevertheless, it quickly becomes apparent that R2P also includes both constitutive and procedural dimensions as well. Its constitutive quality strongly reinforces state sovereignty, with an

Rev. Bras. Polít. Int., 64(1): e006, 2021

Zähringer ▶

emphasis on a state's primary responsibility, while also linking the norm to the wider human rights regime and principles of just war (Brosig and Zähringer 2015). In this regard, it does not create any new legal obligations, but is rather an attempt to interpret existing obligations by states and encourage them to act on what they have already agreed to in principle. In line with Wiener's assumption, the constitutive aspect proves to be largely uncontested. However, what makes this norm also procedural is that states are asked to act collectively with regards to other states on principles they have already agreed to individually and which they apply to themselves (Welsh 2019, 56-57). This regulative dimension is based on paragraph 138 and 139 of the UN General Assembly's (UNGA) *2005 World Outcome Document.* Numerous UN Security Council (UNSC) resolutions are also deemed to have invoked R2P. In particular, resolutions on the protection of civilians between 1999 and 2009, as well as resolutions on Sudan in 2006 and Libya in 2011 are attributed to R2P. The *Outcome Document* stipulates the necessary procedures which rely on the existing legal framework of chapter 7 of the UN Charter, while the UNSC resolutions apply R2P to certain situations (Brosig and Zähringer 2015). It is obvious that R2P spans the full spectrum in terms of norm typology.

So, is R2P one norm or a compilation of norms? Sandholtz (2019, 144) divides R2P into at least three norms, each based on one of the pillars. In essence, R2P could also qualify as a norm cluster as outlined by Winston (2017). In terms of pillar one, a state's responsibility to prevent atrocity crimes is well established as part of the following: the 1948 Genocide Convention, the 1949 Geneva Conventions, and more recently the 1998 Rome Statute establishing the International Criminal Court. These treaties not only define the atrocity crimes of genocide, war crimes and crimes against humanity, on which R2P is built, but also call on states to act in each instance to prevent occurrences on their territories and to hold perpetrators accountable. This provides a strong legal foundation as these treaties are widely ratified, with the Geneva Conventions having universal acceptance with 196 parties, the Genocide Convention with 152 parties, and the rather recent Rome Statute with 123 parties.

Pillar two and the idea of collectivity is less apparent in the preceding treaties, but firmly based on the constitutive acts of global and regional intergovernmental organisations (IGOs), outlining additional legal foundations. Collective action is implied in the entire UN framework. The Charter clearly is intended to provide for global responses to assist states, without challenging the norm of state sovereignty. Pillar three, however, stands on somewhat more shaky grounds. On the one hand, the UN acting as a mediator and facilitator of humanitarian assistance is well established, even the imposition of sanctions is common. On the other hand, the powers of the UNSC under chapter 7 have gradually been expanded with an ever-wider interpretation of what is considered a "threat to international peace and security," the essential requirement to take forceful action. Whether the above is enough to classify R2P as multiple interrelated norms is beyond the scope here, but undoubtedly, R2P can be considered a complex norm covering the full range from constitutive to procedural norm with different aspects experiencing various degrees of legality and acceptance.

Location

As to the location of contestation, R2P exhibits both internal and external contestation. Externally, principles around just war and humanitarian intervention far outdate the emergence of R2P, which draws inspiration from these norms. However, compared to these older norms, R2P places a restriction across the entirety of its three pillars with a focus on protection from atrocity crimes, rather than applying this limitation only to its last resort of the use of force. Furthermore, externally R2P's right to use force remains in conflict with the existing norm of state sovereignty and its principle of non-interference as a more obvious example. External contestation is closely linked to internal contestation, as contestation as a whole emerges when actors interpret the norm itself with different understandings of the external context. With R2P, internal contestation sees a narrowing of the scope of the norm from the originally International Commission on Intervention and State Sovereignty (ICISS) report, resulting in a diluted UNGA *Outcome Document*, which severely restricts the authorisation of the use of force to merely one body, the UNSC (Brosig and Zähringer 2015). This is challenged by other IGOs such as the African Union (AU), which is the only IGO that has institutionalised the full scope of R2P in its Constitutive Act and Peace and Security Council Protocol. Consequently, questions arise as to the UNSC's primary role in authorising the use of force, where lack of reform around the veto challenges its legitimacy, while organisations such as the AU are being side-lined (Brosig and Zähringer 2015, 361-363). Yet the AU also exhibits conflicting interpretations of R2P with that of the UN. Its interpretation is more closely affiliated to that of the ICISS, while in contrast it limits R2P's applicability to the protection of civilians with its focus on AU-authorised military operations (Zähringer 2013).

Challengers

The preceding section already highlighted at least one challenge posed by a regional organisation. Meanwhile, challenges of R2P by powerful states are also a common occurrence, amplified by the Libyan intervention that led to regime change. Russia and China especially have used their veto powers in the UNSC to prevent more R2P military action from taking place. Nevertheless, China has moved from challenging R2P's scope and implying an attack on state sovereignty in 2009 to calling it a "prudential norm" in 2014, even conceding the possibility of the use of force (Welsh 2019, 59). This illustrates a dramatic shift in its acceptance of the norm. However, the greatest challenge to R2P came in the aftermath of the Libyan intervention, which was the first time pillar three's use of force was invoked. Objections came in particular from the AU and its member states, who argued that efforts at mediation and a negotiated settlement were not given enough time (Zähringer and Brosig 2020). India too exhibited strong anti-regime change rhetoric (Puri 2011) while Germany advocated accountability rather than action (Wittig 2011). In response to the Libyan crisis, Brazil tabled the concept of responsibility while protecting (RWP)

Rev. Bras. Polít. Int., 64(1): e006, 2021

Zähringer ▶

(Kenkel and Stefan 2016). All of these challengers illustrate a global engagement around the norm. Consequently, R2P is seeing a convergence of interpretations which covers all regions, negating the argument that it is a Western imposed principle (Welsh 2019, 58). It has also overcome challenges by powerful states, with Russia, China, India, Brazil and Germany indicating concerns around pillar three, but with no outright rejection of the norm itself. In essence, the diversity reflected by both norm supporters and norm challengers, protects R2P in this instance.

Discourse

When examining the type of discourse around R2P, Welsh (2013) originally examined R2P from the perspective of procedural and substantive contestation. In the first instance she investigated whether the UNGA or rather the UNSC would be the most appropriate forum in developing "the meaning and application of R2P" (Welsh 2013, 382). She reinforces her preference in favour of the General Assembly as the more inclusive body, a fact which is supported by the annual R2P debates held in that chamber each year. Welsh's approach to substantive contestation falls more in line with the above-mentioned applicatory discourse, as it focuses on debates around application of the norm in relevant situations (Welsh 2013, 383). Here she acknowledges a "duty of conduct" on behalf of members in the international community. However, she also concedes that when and what this conduct involves remains unclear, especially given the imbedded selectivity through the *Outcome Document's* "case by case" approach (Welsh 2019, 57). Similarly, Deitelhoff (2019, 152) argues, "While validity contestation can be observed in the R2P case, it has never gained centre stage. Predominantly, the norm has faced applicatory contestation, questioning the appropriateness in specific situations or the kind of actions to be legitimately applied in specific situations."

To evaluate the discourse in detail it is necessary to examine the UN Secretary General's annual reports on R2P and the subsequent discussions in the UN General Assembly. While the 2009 report clarified R2P by introducing its three pillar structure, most reports thereafter have focused on pillar one and two, such as exploring state responsibility in 2013, international assistance and capacity building in 2014, accountability for prevention in 2017 and 2019, early warning systems in 2018, as well as R2P and women in 2020. The only report which highlighted pillar three was the 2012 report (following the Libyan intervention), and which emphasised non-coercive measures, calling for timely and decisive responses, but giving little information on the use of force aspect. Only the 2016 report gave a clear acknowledgement of the obstacles holding back the full realisation of R2P. It mentioned the following: retreating internationalism, political division, especially among major powers, and growing disregard for international law (UNGA/UNSC 2016).

In turn, it is surprising that state representatives responding to these annual reports have increased in number and regularity, as well as addressed the full breadth of the different aspects of R2P, even more than is usually seen with regards to other principles. Mostly these responses agree with R2P's core aspects, especially in terms of pillars one and two, with even pillar three's call to

Rev. Bras. Polít. Int., 64(1): e006, 2021

Zähringer ▶

diplomatic, political, humanitarian measures and the use of force as a last resort finding some consensus (Welsh 2019, 58), indicating little contestation in the justificatory discourse. However, advocates of R2P such as the UN Secretary General, the UN's Special Advisor on R2P, states which form part of R2P's Group of Friends, and relevant NGOs have avoided more "controversial and normative debates" (Welsh 2019, 61). Thus, in a sense they have avoided a justificatory discourse. As to the applicatory discourse, the introduction of the RWP debate is another obvious example of this. In response to Libya, many states did not question the UN's right to military action, but rather on how it proceeded to do so. Brazil's submission of RWP raised issues around the scope of military action, the need to protect, not harm civilians, and better UNSC oversight (UNGA/UNSC 2011). However, the fear here is that with less continuation around the applicatory discourse on R2P, it may well shift to a justificatory discourse, which would presumably result in hardening of positions against the use of force.

Mode

Given the above insights, there remains a considerable risk that contestation could be a hindrance to R2P's progressive evolution rather than a catalyst. The discourse can be identified as using a variety of modes, as proposed by Wiener (2014), which can be either implicit or explicit. The implicit modes are neglect, negation and disregard. Given the primary place R2P holds within the UN annual discourse, neglect is not an issue. Some negation has taken place, especially with the AU challenging the UN's primary authority, as well as a general and outright rejection by many states of regime change. Arguably, the regime change debate has been an unintended consequence of the use of force and never formed part of the original conceptualisation of the norm, and in the current climate is unlikely to ever become part of it. Some disregard of the norm has been illustrated in the Syrian case, when R2P terminology was only used once chemical weapons came into play, despite is applicability already much earlier (Welsh 2019, 65).

But unlike most contested international norms, explicit modes with regards to R2P are most prevalent. As indicated above, these modes are considered essential to avoid norm decay. They are arbitration, deliberation, justification and contention. While R2P has not achieved legal status, accessing the legal mode of arbitration through judicial processes remains unavailable. Justification, as seen above, has been avoided, as the moral question of stopping atrocity crimes is a no-brainer. No state wants to stand out as the one arguing that atrocity crimes taking place is good. Instead, the focus is on deliberation, especially the how. In other words, the application remains paramount. The annually scheduled UN debates on R2P go so far as to keeping R2P on its agenda on a continuous basis with the UN Secretary General elaborating on aspects of R2P and states invited to comment. This has resulted in highlighting the many commonalities in their interpretation. However, these debates, as noted above, have deliberately avoided some contention. The annual topics shy away from pillar three and especially from the use of force. For example, despite a consensus around the rejection of any regime change

Rev. Bras. Polít. Int., 64(1): e006, 2021

Zähringer ▶

by interveners, it remains unclear what the alternative strategic options are in achieving R2P's goal of protecting the people, especially when considering the long-term effects and consequent commitment required by the international community. Hence, R2P has seen a focus on one mode in particular: deliberation.

Robustness

Considering the factors above, the question now is whether R2P has strengthened over time or not, and if so, which factors are most likely to have contributed to this. Welsh (2019), as a former UN Special Advisor on R2P, in her 2019 article "Norm Robustness and the Responsibility to Protect" addresses the robustness of R2P in quite some detail. She provides the main source of analysis in this instance.

As mentioned, R2P has a high degree of *validity*, which implies less of a need for a justificatory discourse. There exists considerable concordance, as most states have accepted the underlying principles governing R2P as part of their domestic law, such as state responsibility and human rights. This likely explains the shift from the original ICISS report with its focus on individual security and its possible dilution of sovereignty, to the *Outcome Document*'s focus on state security by highlighting the rights and roles played by national authorities, hence reinforcing sovereignty (Welsh 2019, 61). Nevertheless, Libya highlighted a large number of third-party reactions to violations as seen in the responses by Brazil and the AU. Noteworthy reactions focused on the question of whether action was indeed a last resort and what mechanism should be put in place to contain and hold enforcers accountable. Little or no discussion took place on the use of force being illegal. However, there are some less apparent validity challenges. Pillar three is often equated solely with the use of force while its other aspects, such as mediation and sanctions, are side-lined. This results in an interpretation that all of pillar three is seen as a last resort, not just the use of force (Welsh 2019, 63). Welsh (2019, 60) finds that the norm's validity is strongest in terms of R2P's state-centric elements, but weakest when considering its collective aspirations in terms of action. She believes future validity will depend on states adopting a "bottom-up approach where states fulfil their primary responsibility" (Welsh 2019, 61).

As to facticity, this is based on compliance and implementation. Here especially, any analysis must be multi-layered, as failure to act on one level triggers action on another. What immediately stands out is R2P's inability to invoke the use of force in similar situations to Libya, such as Syria. This shows that there remain deep-rooted disagreements in terms of the application of pillar three. Meanwhile, R2P's pillar two has seen considerable state and IGO action, with actors developing tools for assistance and diplomacy, especially those which amplify risk factors for atrocity crimes (Welsh 2019, 62). However, measuring compliance with pillar three is more difficult, as the *Outcome Document* does not prescribe specific actions other than a collective response invoking chapter 6 and 7 of the UN Charter. Another major implementation challenge is the relationship between the three pillars and when pillar three, especially the use

of force, is activated (Welsh 2019, 62). As such, R2P is vulnerable to an applicatory discourse because states argue about which of the three levels is most important (Welsh 2019, 56). This is despite the UN Secretary General's emphasis that all levels are "of equal weight, mutually reinforcing, and non-sequential" (Welsh 2019, 63). Nevertheless, UNGA discussions show that the state's responsibility is considered primary, with the role of the international community secondary. The Libyan crisis highlighted this, as the subsequent debates did not focus on whether military force was legal and able to achieve its goal of protecting civilians. Instead, the discussions questioned whether the other aspects of pillar three had been exhausted before using force as a last resort (Welsh 2019, 63) and whether the threshold of large-scale loss of life and the presence of atrocity crimes had been met (Welsh 2019, 64). Libya also initiated discussion on what happens once military force is withdrawn, emphasising the need for rebuilding after protection (Welsh 2019, 63). Another major debate emerging after Libya is the question of regime change, which has been unequivocally rejected by a majority of regional organisations and states. This places them in opposition to the US, UK and France, the original advocates of regime change (Obama et al. 2011). All of this clearly falls into the realm of applicatory discourse, and although intense, the debate highlighted important points of clarification in implementation. However, it did not challenge the norm's validity.

According to Welsh (2019, 63), R2P's robustness is also, ironically, safeguarded by its complexity. In challenging one of its many aspects, other aspects are generally reaffirmed. Yet, R2P remains vulnerable to decay (Welsh 2019, 58). Libya created an environment where collective military action now is less likely, hence weakening one of the norm's core aspects (Welsh 2019, 63). Consequently, Syria has seen states acting individually in the absence of international consensus (Welsh 2019, 64). Furthermore, states avoided using R2P terminology, despite the proven presence of crimes against humanity, while only beginning to invoke the norm once the use of chemical weapons came into play (Welsh 2019, 65). Ultimately the Syrian conflict settled into uneasy UN efforts to find a diplomatic solution, while providing humanitarian relief (Welsh 2019, 66). With no effective deterrence in place this may result in a knock-on effect with regards to the other two pillars.

Overall, Sandholtz (2019, 144) concludes that R2P's pillar one and two have shown increased robustness, but this is counteracted by reduced validity and facticity in its pillar three. Despite its complex nature, this analysis identifies a strengthening of the R2P norm since its inception, even with regards to most aspects of its pillar three, while some level of contestedness remains on the question of the use of force.

Conclusion

The main research aim proposes a conceptual framework, which assumes a valuable contribution in understanding the factors of norm evolution. This framework categorises both

Rev. Bras. Polít. Int., 64(1): e006, 2021

Zähringer ▶

the norm and the type of contestation. At this point it is necessary to ask whether this is indeed a useful tool which provides explanatory insight.

The analysis has shown that the R2P norm covers the full spectrum, from constitutive to procedural norm, but with an evaluative emphasis. This supports Wiener's proposition that effective contestation is found in the middle. External contestation is limited, as the norm is carefully aligned with existing norms, while it does illuminate atrocity crimes. Yet external contestation regarding pillar three always hovers within grasp though the spectre of state sovereignty. In turn, internal contestation is emphasised because collective action internationally highlights the different meanings in use applied by a variety of states. In this case it remains most noticeable, with disagreement around the respective importance and sequencing of each pillar.

With much of the norm gaining global acceptance, contestation by norm challengers is identified mostly with regards to its pillar three. Both challengers as well as those in support of the norm range across states to IGOs, from north to south, indicating that R2P's acceptance and contestation truly covers the globe. Specifically, challengers have emerged in the form of IGOs, such as the AU and major powers like Russia, China and India, all very opposed to the regime change narrative. Procedural questions have also been raised by the AU, Germany, and particularly Brazil. These challengers represent both major powers as well as a considerable number of states across the ideological spectrum. With supporters also ranging across the political spectrum, the lack of an ideological divide likely explains why in the instance of R2P no clear impact by challengers is identified, supporting the underlying premise. In going forward it should be noted that investigating the distribution and role played by challengers often has been neglected and this should play an ongoing role in the analyses of other norms and their evolution.

As a whole, R2P is identified as surprisingly robust. The reason for this may well be found in the type of discourse identified, which is mainly applicatory. In other words, not on whether it is valid, but rather on how to implement it. This generally favours the strengthening of R2P over time. However, some early indicators are highlighting that the applicatory discourse could be losing momentum. With justificatory discourse being intentionally side-lined, the pendulum might shift. This is supported by the identified modes of contestation, which have some implicit component such as negation (the AU) and disregard (Syria). However, R2P exhibits mostly strong explicit expressions. While it has experienced extensive deliberation, outright contention is being avoided. Overall, the identified modes make R2P unusual as a contested norm, as we observe the explicit mode having been activated. According to Wiener, this should result in strengthening of the norm. However, by avoiding contention on certain issues, such as the use of force, this illustrates that R2P is not out of the woods but may still see a considerable weakening in the future.

This paper started with the assumption that differentiating between types of norms would prove useful. However, there does seem to be an overlap between the typology of norms and the discourse of contestation. The justificatory discourse could be considered as aligned with the constitutive aspects of norms, while the applicatory discourse is affiliated with the procedural

one. This raises the question as to whether it proves useful to examine both the type of norm as well as the discourse. This paper argues that given the fact that norms are found on a spectrum and not split along dichotomous lines such as the two discourses, a differentiation does add value, especially in considering the pliability of norms between the two extremes. It provides a valuable understanding into why and how norm evolution even occurs.

The next point of reflection is the question around norm robustness. Most recently, an analysis of various case studies (including R2P) around norm robustness has failed to show whether norm robustness in terms of both validity and facticity is influential in driving a norm's evolutionary direction (Sandholtz 2019). This paper argues that the emerging norm robustness research agenda conflates the justificatory and applicatory discourse, with interpretations of validity and facticity treated as equally important. Although a useful tool to measure the strength of a norm and whether this is changing, it moves away from the argument that applicatory discourse leads to norm evolution and justificatory discourse leads to norm decay, and in turn lacks any explanatory power on how contestation influences these processes. Ultimately, this paper concludes that an analytical approach which focuses on the discourse remains relevant, with investigations of robustness only supplementing the contestation research as a measurement of norm strength. In the case of R2P, a vigorous applicatory discourse has resulted in R2P becoming more robust, especially in terms of pillars one and two, but with the avoidance of a pillar three applicatory discourse, this remains fragile, as a justificatory discourse could take over.

As to the other factors presented in the framework, differentiating between internal and external contestation, though less revealing in the case of R2P, does prove important. With a more recent focus by scholars on internal contestation, the impact of external contestation may be an important dimension of contestation which is overlooked, especially as the external institutional structures are often responsible for the emergence of internal contestation. Meanwhile, the consideration of norm challengers shows that the evidence of specific types of challengers is inconclusive, as R2P exhibits too wide a variety. However, it can be said that in the case of R2P an applicatory discourse does seem to withstand attacks from powerful states across the ideological divide. Finally, Wiener's modes of contestation highlight that R2P is unusual in the occurrence of an explicit mode. This may well be contributing to R2P's effective strengthening.

In the end, the findings suggest that there is some value in applying the proposed framework. All factors included in the typology show some value in the analysis presented here, albeit some more than others. The latter is found to be more a consequence of the specific nature of R2P. Those factors which have less explanatory power can be explained due to R2P's complex nature and the fact that it spans the entire spectrum of norms. Hence these factors cannot be dismissed outright, as they may still prove important to the evolution of other norms of a different nature. Whether these findings apply to other norms is beyond the scope of this paper. The hope is that a broader assessment of this framework will be taken up by other scholars.

Rev. Bras. Polít. Int., 64(1): e006, 2021

Zähringer ▶

References

Bloomfield, Alan. "Norm antipreneurs and theorising resistance to normative change." *Review of International Studies* 42, no. 2 (2016): 310-333. doi: https://doi.org/10.1017/S026021051500025X

Brosig, Malte and Natalie Zähringer. "Norm evolution as a matter of conformity and contestedness: South Africa and the Responsibility to Protect." *Global Responsibility to Protect* 7, no. 3-4 (2015): 350-375. doi: https://doi.org/10.1163/1875984X-00704007

Checkel, Jeffrey T. "Norm entrepreneurship: Theoretical and methodological challenges." Memo prepared for a workshop on *The Evolution of International Norms and Norm Entrepreneurship: The Council of Europe in Comparative Perspectives*, Wolfson College, Oxford University, 2012.

Deitelhoff, Nicole and Lisbeth Zimmermann. "Things we lost in the fire: How different types of contestation affect the validity of international norms." *Working Papers No 18*, Frankfurt: Peace Research Institute. 2013.

Deitelhoff, Nicole and Lisbeth Zimmermann. "Norms under challenge: Unpacking the dynamics of norm robustness." *Journal of Global Security Studies* 4, no. 1 (2019): 2-17. doi: https://doi.org/10.1093/jogss/ogy041

Deitelhoff, Nicole. "Is the R2P failing? The controversy about norm justification and norm application of the Responsibility to Protect." *Global Responsibility to Protect* 11, no. 2 (2019): 149-171. doi: https://doi.org/10.1163/1875984X-01102003

Duffield, John. "What are international institutions?" *International Studies Review* 9, no. 1 (2007): 1-22. doi: https://doi.org/10.1111/j.1468-2486.2007.00643.x

Finnemore, Martha and Kathryn Sikkink. "International norm dynamics and political change." *International Organizations* 52, no. 4 (1998): 887-917. doi: https://doi.org/10.1162/002081898550789

Heller, Regina and Martin Kahl. "Tracing and understanding "bad" norm dynamics in counterterrorism: The current debates in IR research." *Critical Studies on Terrorism* 6, no. 3 (2013): 414-428. doi: https://doi.org/10.1080/17539153.2013.836305

Kenkel, Kai M. and Cristina G. Stefan. "Brazil and the Responsibility While Protecting Initiative: Norms and the Timing of Diplomatic Support." *Global Governance: A Review of Multilateralism and International Organisations* 22, no. 1 (2016): 41–58. doi: https://doi.org/10.1163/19426720-02201004

Krook, Mona L. 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): 103-127. doi: https://doi.org/10.1177/1354066110380963

Obama Barak, David Cameron and Nicholas Sarkozy. "Libya's pathway to peace." *International Herald Tribune*, April 14, 2011. https://www.nytimes.com/2011/04/15/opinion/15iht-edlibya15.html. Accessed on June 8, 2021.

Rev. Bras. Polít. Int., 64(1): e006, 2021

Zähringer ▶

Puri, Hardeep S. "Statement by Ambassador Hardeep Singh Puri, Permanent Representative, Open debate on the protection of civilians at the United Nations Security Council." November 2011.

Sandholtz, Wayne. "Norm contestation, robustness and replacement." *Journal of Global Security Studies* 4, no. 1 (2019): 139-146. doi: https://doi.org/10.1093/jogss/ogy042

United Nations General Assembly - UNGA. "World Summit Outcome." *A/RES/60/1,* 2005. https://undocs.org/A/RES/60/1. Accessed on June 8, 2021.

United Nations General Assembly - UNGA. "Implementing the Responsibility to Protect." Report by the Secretary-General. *A/63/677*, 2009. https://www.un.org/ruleoflaw/blog/document/report-of-the-secretary-general-implementing-the-responsibility-to-protect/. Accessed on June 8, 2021.

United Nations General Assembly and United Nations Security Council - UNGA/UNSC. "Mobilizing collective action: the next decade of the responsibility to protect." Report by the Secretary-General. *A/70/999-S/2016/620*, 2016. https://digitallibrary.un.org/record/837234. Accessed on June 8, 2021.

United Nations General Assembly and United Nations Security Council - UNGA/UNSC. "Letter dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General." *A/66/551-S/2011/701*, 2011. https://digitallibrary.un.org/record/716109. Accessed on June 8, 2021.

Welsh, Jennifer. "Norm Contestation and the Responsibility to Protect." *Global Responsibility to Protect* 5, no 4 (2013): 365-396. doi: https://doi.org/10.1163/1875984X-00504002

Welsh, Jennifer. "Norm robustness and the Responsibility to Protect." *Journal of Global Security Studies* 4, no. 1 (2019): 53-72. doi: https://doi.org/10.1093/jogss/ogy045

Wiener, Antje. *A Theory of Contestation*. Heidelberg: Springer, 2014

Winston, Carla. "Norm structure, diffusion and evolution: A conceptual approach." *European Journal of Internatioanl Relations* 24, no. 3 (2017): 638-661. doi: https://doi.org/10.1177/1354066117720794

Wittig, Peter. "Statement by Ambassador Wittig of Germany on the Protection of Civilians in Armed Confict in the Security Council." November 2011.

Zähringer, Natalie. "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, no. 2 (2013):187-206. doi: https://doi.org/10.1080/10220461.2013.811336

Zähringer, Natalie and Malte Brosig. "Organised Hypocrisy in the African Union: The Responsibility to Protect as a Contested Norm." *South African Journal of International Affairs* 27, no. 1 (2020): 1-22. doi: https://doi.org/10.1080/10220461.2020.1735503

Taking stock of theories around norm contestation: a conceptual re-examining of the evolution of the Responsibility to Protect

18