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Close Cousins In Protection: The Evolution Of Two Norms

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Close cousins in protection:

the evolution of two norms

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The Protection of Civilians (PoC) in peacekeeping and the Responsibility to Protect (R2P) populations from atrocity crimes are two norms that emerged at the turn of the new millennium with the aim of protecting vulnerable peoples from mass violence and/or systematic and widespread violations of human rights. While R2P addresses a specific set of extreme situations in which any of four crimes (genocide, war crimes, ethnic cleansing, crimes against humanity) have been committed, PoC tackles a broader set of threats and is concerned with violence directed at civilians in conflict and post-conflict settings. To date, most scholars have analysed the evolution of discourse over the status, strength and robustness of the two norms separately.[1] Moreover, actors both within and outside the UN system have frequently insisted on their separation. And yet the distinction between the two norms has at times been exceptionally fine. The Security Council has made reference to R2P in the context of particular peacekeeping operations and, in the case of Libya in 2011, authorized enforcement action to protect civilians without explicit reference to R2P.

In this article we draw on the framework established by Stimmer and Wisken to analyse the joint evolution of PoC and R2P within the UN system and the related question of the discrepancy between their degree of institutionalization and actual state practice. The framework is valuable in that it distinguishes between discursive and behavioural forms of contestation;[2] identifies implementation access as a

[1] On R2P, see Ramesh Thakur, 'The Responsibility to Protect at 15', *International Affairs* 92: 2, March 2016, pp. 415–34; Philipp Rotmann, Gerrit Kurtz and Sarah Brockmeier, 'Major powers and the contested evolution of a Responsibility to Protect', *Conflict, Security and Development* 14: 4, 2014, pp. 355–77; Jennifer M. Welsh, 'Norm contestation and the Responsibility to Protect', *Global Responsibility to Protect* 5: 4, 2013, pp. 365–96; and Jennifer M. Welsh, 'Norm robustness and the Responsibility to Protect', *Journal of Global Security Studies* 4: 1, 2019, pp. 53–72. On PoC in peacekeeping, see Alex J. Bellamy and Charles T. Hunt, 'Twenty-first century UN peace operations', *International Affairs* 91: 6, Nov. 2015, pp. 1290–94; Emily Paddon Rhoads, *Taking sides in peacekeeping: impartiality and the future of the United Nations* (Oxford: Oxford University Press, 2016). Several scholars examine the similarities and contrasts between R2P and PoC, including how these norms are viewed by different audiences. They do not, however, explicitly analyse their joint evolution. See Angus Francis, Vesselin Popovski and Charles Sampford, eds, *Norms of protection: Responsibility to Protect, Protection of Civilians and their interaction* (Tokyo: United Nations University Press, 2012); Hugh Breakey, 'Protection norms and human rights', *Global Responsibility to Protect* 4: 3, 2012, pp. 309–33.

[2] Stimmer and Wisken define discursive contestation as 'debates about different understandings of the meaning and/or (relative) importance of a norm', while behavioural contestation occurs 'when the actions of relevant actors imply the existence of conflicting understandings of the meaning and/or (relative) importance of a

prerequisite for behavioural contestation;[3] and posits norm ambiguity and degree of norm acceptance as triggers that increase the likelihood of dissent.

Our central arguments regarding the joint evolution of PoC and R2P are twofold. First, while there is strong evidence of institutionalization and implementation of particular aspects of both norms, discursive and behavioural contestation of pillar three of R2P—which concerns the responsibility of the international community to take appropriate collective action where a state is manifestly failing to protect its own population—and of the use of force for protection in peacekeeping have increased significantly over time and are closely linked. Second, the evolution of R2P and PoC has broadly unfolded in a diamond-shaped fashion: having emerged from a similar individualist normative starting-point, they then diverged in their early development as their proponents interacted with relevant audiences and identified the practical implications of their respective normative imperatives; more recently, they have begun to reconverge in their return to a state-centric focus on building and strengthening the capacity of national authorities to protect populations. This prioritization of the state is a result partly of efforts by norm advocates to shore up support for PoC and R2P, but also—particularly in the case of R2P—of the ability of key states, through discursive contestation, to shape the meaning of these norms in ways that speak to their normative priorities.

Our analysis contributes to the broader theoretical literature on norms and norm contestation in a number of ways. First, we move beyond earlier constructivist studies that examine a single norm and thus underplay the existence of broader 'norm complexes' that encompass related principles with shared ethical or political foundations.[4] Where scholars have focused on more than one norm, the relationship between ideational units has been framed in one of two ways: either as a relationship of competition, in which one norm, often an emerging norm, vies with another existing norm; or as an adaptive process of norm localization, in which international norms are reinterpreted and reconstituted through their interaction or 'fit' with pre-existing local normative orders.[5] By contrast, we demonstrate that PoC and R2P have evolved and continue to evolve together, underscoring the importance of ideational interplay and the way in which actors may seek to strengthen support for one norm, or dimension of a norm, by contrasting it or linking it with another. Second, our discussion of PoC and R2P draws attention to the importance of 'venues' for norm dynamics and how choice of venue and institutional processes is used strategically to frame normative discourse.[6] Finally, with

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norm'. See Anette Stimmer and Lea Wisken, 'The dynamics of dissent: when actions are louder than words', *International Affairs* 95: 3, May 2019, DOI: 10.1093/ia/iiz019.

[3] Stimmer and Wisken define implementation access as the 'positional, material and social assets required for putting a norm into practice'. These resources 'endow actors with greater leverage for affecting norm implementation and hence also greater abilities and incentives to use behavioural contestation': 'The dynamics of dissent'.

[4] Notable exceptions include Welsh, 'Norm contestation'; Paddon Rhoads, *Taking sides in peacekeeping*; and Carla Winston, 'Norm structure, diffusion, and evolution: a conceptual approach', *European Journal of International Relations* 24: 3, 2018, pp. 638–61.

[5] See e.g. Amitav Acharya, 'How ideas spread: whose norms matter? Norm localization and institutional change in Asian regionalism', *International Organization* 58: 2, 2004, pp. 239–75.

[6] Katharina Coleman, 'Locating norm diplomacy: venue change in international norm negotiations', *European*

respect to the norm contestation framework proposed by Stimmer and Wisken, we argue that application or invocation of one norm instead of another may itself figure as behavioural contestation. By extending their framework, we also identify the absence of clearly assigned responsibility for acting on the prescriptions of the two norms, and the ambiguity over the nature of obligation inherent in both of them, as factors that perpetuate both discursive and behavioural contestation, including the choice to invoke one norm rather than the other.

The article proceeds in three sections. First, we briefly compare and contrast PoC and R2P according to their origins, scope and structure. We identify three features common to both norms that render them particularly susceptible to contestation. The second section traces the evolution of the two norms and their dynamic interplay across three phases that roughly correspond to norm emergence and institutionalization (1999–2005), conceptual refinement and early implementation (2006–10) and the 'mature' implementation (2011–18) that followed particularly contentious cases, such as those of Côte d'Ivoire and Libya. For each phase, we identify forms of discursive and behavioural contestation, at the macro level in policy and mandate creation at UN headquarters, and at the micro level in specific operational contexts. The final interpretative section engages more closely with the insights developed in Stimmer and Wisken's framework regarding the nature and impact of behavioural contestation, and the ways in which the inherent features of R2P and PoC create opportunities for states to dissent.

Similar but different norms

The emergence of R2P and PoC at the turn of the new millennium was a direct response to the failures to protect civilians in the 'safe areas' of the former Yugoslavia and from genocide in Rwanda, and the perceived need to clarify the broader protection obligations of UN forces and member states.[7] It was thus propelled by the normative impulse to prioritize the security not just of sovereign states but of individuals, both in countries' foreign policies and in the work of international organizations. A central figure in the promotion of this process of 'individualization' was the new UN Secretary-General Kofi Annan, who was significantly affected by previous experience in the Department of Peacekeeping Operations (DPKO) during the painful episodes of the 1990s.[8]

Explicit authorization to protect civilians under Chapter VII of the UN Charter was first mandated by the Security Council in 1999, when Resolution 1270 authorized the UN Mission in Sierra Leone (UNAMSIL) 'to afford protection to civilians under imminent threat of physical violence'.[9] The genesis of UNAMSIL's

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Journal of International Relations 19: 1, 2013, pp. 163–86.

[7] NATO's intervention in Kosovo also influenced advocates of R2P. See Kofi Annan and Nader Mousavizadeh, *Interventions: a life in war and peace* (New York: Penguin, 2012).

[8] Annan and Mousavizadeh, *Interventions*. See also Gabriella Blum, 'The individualization of war', in Austin Sarat, Lawrence Douglas and Martha Umphrey, eds, *Law and war* (Stanford, CA: Stanford University Press, 2014); Jennifer Welsh, 'Humanitarian actors and international political theory', in Chris Brown and Robyn Eckersley, eds, *The Oxford handbook of international political theory* (Oxford: Oxford University Press, 2018).

[9] S/RES/1270, 22 Oct. 1999.

landmark mandate, and the broader thematic work of the Security Council on PoC, can be traced back to Annan's 1998 report to the Council on conflict in Africa, which identified PoC in conflict as a 'humanitarian imperative' and called upon the Council to address both the deep causes and immediate implications of intrastate wars.[10] In February 1999 the Security Council, under the Canadian presidency, hosted its first open debate dedicated to PoC, followed by the release of a Council presidential statement and the Secretary-General's first report on 'the protection of civilians in armed conflict'.[11] These foundational documents articulated a broad and multidimensional PoC agenda that the Security Council continues to pursue today. As Annan's 2001 report on PoC indicates, protection of civilians was conceived of as a 'multi-layered process involving a diversity of entities and approaches' and encompassing a range of activities from 'the delivery of humanitarian assistance; the monitoring and recording of violations of international humanitarian and human rights law … [to] institution building, governance, and development programmes; and, ultimately, the deployment of peacekeepers'.[12]

While PoC's birth and early development took place within the UN, R2P was initially conceived and advocated 'from without'—though with Annan's strong encouragement. The independent International Commission on Intervention and State Sovereignty (ICISS), created by the Canadian government, provided the intellectual underpinnings for the Responsibility to Protect, through its efforts to reshape the meaning of sovereignty and to identify a spectrum of actions to address the challenge of atrocity crimes, that ranged from prevention to response to post-conflict rebuilding.[13] The concept of R2P subsequently entered the UN system as part of the preparatory documents for the 2005 world summit.[14] After intense negotiations during which opposition to R2P was voiced from various quarters,[15] member states included the principle in article 138 of the summit outcome document, which affirmed the primary responsibility of states to protect their own populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Article 139 outlined a collective responsibility on the part of states to assist each other in fulfilling this responsibility, and declared their preparedness to take timely and decisive action, through the Security Council and in accordance with the UN Charter, when national authorities 'manifestly fail' to protect their populations.[16]

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[10] *The causes of conflict and the promotion of durable peace and sustainable development in Africa,* Report of the Secretary-General, S/1998/318 (New York: UN, 13 April 1998).

[11] *Statement by the President of the Security Council,* S/PRST/1999/6 (New York: UN, 12 Feb. 1999); *Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict*, S/1999/957 (New York: UN, 8 Sept. 1999).

[12] *Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict*, S/2001/331 (New York: UN, 30 March 2001), para. 6.

[13] International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Centre, 2001).

[14] See *A more secure world: our shared responsibility*, Report of the Secretary-General's High-level Panel on Threats, Challenges and Change, A/59/565 (New York: UN, 1 Dec. 2004); *In larger freedom: towards development, security and human rights for all*, Report of the Secretary-General, A/59/2005 (New York: UN, 21 March 2005).

[15] See Alex J. Bellamy, *Global politics and the Responsibility to Protect: from words to deeds* (London: Routledge, 2011).

[16] *World summit outcome document*, A/Res/60/1 (New York: UN 16 Sept. 2005), paras 138, 139.

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Vulnerability to contestation

As Winston observes, the fact that norms—by their very nature—are both stable and flexible often makes it difficult to reach agreement on their content and to identify the particular behaviours that their underlying values demand.[17] This difficulty is particularly acute for R2P and PoC, which, as relatively recent and 'emerging norms', have experienced significant discursive and behavioural contestation. Three features, intrinsic to both norms, have made them particularly vulnerable to contestation.

The first concerns issues of legality and the status of both norms. Whereas many of the norms studied in International Relations have been enshrined in legal form, PoC and R2P have a different relationship to international law. Both norms have elements that comprise and build upon existing international law, along with elements that some would argue go beyond the law's stipulations. This gives rise to contestation over their scope and the nature of the obligations associated with them, including the degree to which they are considered 'binding'.

In the case of PoC, the Security Council's framing of the norm in peace-keeping has invoked a general, non-legalized concept of physical security aimed at addressing a wide range of threats to civilians in conflict and post-conflict settings. The absence of reference to international humanitarian law and international human rights law in most PoC mandates broadens the norm's scope to encompass incidents of physical violence that may not contravene international law.[18] The lack of legally defined triggers for action also gives peacekeepers significant discretion in interpreting what constitutes a threat.[19] Furthermore, scholars and practitioners remain divided over the question of whether protection mandates entail an affirmative legal obligation on peacekeepers to act when civilians are threatened or actually being attacked in their areas of deployment.[20] Thus, while it is generally accepted that Chapter VII mandates provide peacekeepers with legal authorization to use force to protect civilians, in practice such mandates seem to provide more of a discretionary right, allowing peacekeepers themselves to use their judgement in deciding whether and how the use of force is appropriate.

In contrast to PoC, R2P was deliberately institutionalized at the 2005 world summit as a *political* rather than a legal principle. As a result, the General Assembly resolution endorsing R2P can be seen—at most—as an authoritative interpretation of established legal regimes related to both the prevention and the punishment of international crimes and the use of force.[21] Proponents of R2P did not

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[17] Winston, 'Norm structure, diffusion, and evolution', p. 639. As she notes, while norms entail that a state is constrained to 'do something appropriate', the flexibility inherent in norms means that states can often determine for themselves what appropriate behaviour means in any context (p. 647).

[18] Ralph Mamiya, 'A history and conceptual development of the Protection of Civilians', in Haidi Willmot, Ralph Mamiya, Marc Weller and Scott Sheeran, eds, *Protection of Civilians* (Oxford: Oxford University Press, 2016), p. 79.

[19] Mamiya, 'A history and conceptual development', p. 79.

[20] Mona Ali Khalil, 'Legal aspects of the use of force by United Nations peacekeepers for the Protection of Civilians', in Willmot et al., eds, *Protection of Civilians*, pp. 205–23.

[21] See Carsten Stahn, 'Responsibility to Protect: political rhetoric or emerging legal norm', *American Journal of International Law* 101 : 1, 2007, pp. 99–120; Maria Banda and Jennifer Welsh, 'International law and the Respon-

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seek to create new law, but rather to enhance compliance with states' existing legal commitments. The new principle would do this, they hoped, by legitimizing a shift in expectations about how the international community should view a specific set of extreme situations in which any of four crimes are imminent or have been committed. That R2P has a narrower scope of concern and greater precision than PoC has not, however, eliminated the possibility of contestation. Instead, the debate has shifted to the epistemic problems associated with arriving at a collective view on a situation involving an atrocity crime and on whether the international community's responsibility has been triggered, as well as the difficulty of determining *if* and *when* military force should be considered.[22]

Second, a lack of specificity as to what is required for their implementation renders both norms particularly vulnerable to contestation. With PoC this ambiguity results primarily from the fact that Security Council mandates are outlined only briefly in resolutions, which provide general direction but little operational guidance. PoC is framed directively as a norm requiring action from peacekeepers when civilians are threatened. Nevertheless, *how* peacekeepers are meant to intervene—what types of actions are required, including the extent to which force can and should be used proactively or pre-emptively—has been underspecified, as have details on the procurement of resources necessary for protection. Beginning in 2010, the DPKO developed conceptual and operational guidance on PoC, moving beyond the 'domain of physical protection from imminent threat' and outlining three tiers of protection: (1) protection through political processes (e.g. mediation, good offices); (2) protection from physical violence (e.g. through deterrence or forceful response); and (3) establishment of a protective environment (e.g. through capacity-building and the rule of law).[23] However, rather than making the norm more precise and providing more guidance for action, as discussed below, this three-tiered framework has arguably increased its ambiguity as well as the possibilities for confusion and conflicting interpretations.

Like PoC, R2P is a directive norm that articulates a desired state of affairs—protection for individuals threatened with atrocity crimes—but does not set out a particular set of behaviours for states or other international actors. This ambiguity is compounded by two factors. The first is the norm's three-pillar framework, developed by Secretary-General Ban Ki-moon in his first report to the General Assembly in order to give greater guidance on how R2P could be operationalized.[24] The 'complex norm' of R2P thus not only contains more than one prescription—for states and for the international community—but also creates a situation in which the *breach* of one of the components of R2P (failure by a national government to protect its population) is meant to act as a trigger for *fulfilment* of another component (the international community's remedial role in protecting). This

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sibility to Protect: clarifying or expanding states' responsibilities?', *Global Responsibility to Protect* 2: 3, 2010, pp. 213–31.

[22] See Jennifer Welsh, 'The Responsibility to Protect after Libya and Syria', *Daedalus* 145: 4, 2016, pp. 75–87.

[23] *Draft Operational Concept for the Protection of Civilians in United Nations Peacekeeping Operations* (New York: UN Department of Peacekeeping Operations / Department of Field Support Policy, 2010), p. 4.

[24] *Implementing the Responsibility to Protect*, Report of the Secretary-General, A/63/677 (New York: UN, 12 Jan. 2009).

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formulation makes the norm susceptible to what scholars have called 'applicatory contestation',[25] given that states can debate whether greater emphasis should be placed on one pillar rather than another, and when the international community's remedial role has been activated. The second factor contributing to ambiguity is the tendency for actors to invoke the morally charged concept of responsibility primarily as a means to summon up political will, rather than to establish a concrete plan of action. Pillar three does not prescribe a specific collective action to be taken by the international community, but rather establishes a more general 'duty of conduct' on the part of its members to identify when atrocity crimes are being committed or are imminent,[26] and to deliberate—on a 'case-by-case' basis—on how various actors (national, regional and international) can and should respond.

The third element of both norms that has increased their vulnerability to contestation is their ambiguous relationship to other, more mature norms. As a relatively recent priority for peacekeepers, PoC interacts in controversial ways with established principles of peacekeeping: impartiality, host-state consent, and non-use of force except in self-defence and defence of the mandate. The institutionalization of PoC has resulted in a reinterpretation of this trinity.[27] Impartiality, no longer construed as passive, now prescribes that 'UN forces should implement their mandates without favour or prejudice to any party',[28] while consent is divided into two levels: strategic and tactical.[29] While the former is still a requirement for any peacekeeping mission, the latter is no longer deemed necessary: forceful action should be taken against those who imperil civilians.

Notwithstanding this refinement by the Secretariat, tensions remain. There is confusion over what actions are permissible to implement the protection imperative and whether force can be used against one party without the mission being regarded as partial. Additionally, although missions authorized under Chapter VII have procedures for enforcement action and are legally allowed to use force without host-state consent, the belief is still widespread among member states and within the Secretariat that consent remains a political if not a legal requirement.[30] This tension has arisen in contexts such as Darfur, the Democratic Republic of Congo (DRC) and South Sudan, where government forces have been major perpetrators of violence against civilians.

As a political norm, R2P has been positioned as a reinforcer of established legal obligations related to atrocity crimes. Some scholars have therefore begun to refer to a broader 'normative complex' for protection that encompasses genocide

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[25] 'Applicatory contestation' refers to contestation over '(1) [whether a norm is] appropriate for a given situation and (2) which actions it requires': Nicole Deitelhoff and Lisbeth Zimmermann, *Things we lost in the fire: how different types of contestation affect the validity of international norms*, PRIF working papers no. 18 (Frankfurt am Main: Hessische Stiftung Friedens- und Konfliktforschung, 2013), p. 5.

[26] Welsh, 'Norm contestation'.

[27] Paddon Rhoads, *Taking sides in peacekeeping*.

[28] *United Nations peacekeeping operations: principles and guidelines* (New York: DPKO, 2008), p. 33.

[29] *United Nations peacekeeping operations: principles and guidelines*, pp. 19, 67; *The protection of civilians in United Nations peacekeeping* (New York: UN Department of Peacekeeping Operations / Department of Field Support Policy, 1 April 2015), p. 7.

[30] See e.g. *Report of the Special Committee on Peacekeeping Operations, 2016 substantive session*, A/70/19 (New York: UN, 15 March 2016), p. 11.

prevention, particular principles of international humanitarian law, accountability for international crimes, and PoC in armed conflict.[31] Yet R2P's origins lie in a perceived tension between two sets of norms: those related to the promotion and protection of human rights, and those related to non-intervention and the non-use of force. By rooting R2P's coercive aspects firmly within the collective security provisions of the UN Charter, and effectively ruling out the legitimacy of unilateral humanitarian intervention, the 2005 summit outcome document arguably resolved that tension: any use of force to implement R2P is to be authorized by the Security Council and thus should not be deemed unlawful interference in a state's domestic jurisdiction. Nonetheless, the annual dialogues in the General Assembly reveal a belief on the part of some states that R2P creates a more permissive approach to intervention by legitimizing a wider range of protective action.[32]

Contestation of R2P and PoC has been shaped not only by these intrinsic features of both norms, but also by two additional factors: the institutional 'homes'—or venues—in which the norms have been embedded, as well as the degree to which actors have implementation access.[33] PoC was owned first and foremost by the Security Council—the body that issues protection mandates. Implementation access was therefore limited to permanent and non-permanent members of the Council as well as, to a lesser extent, countries contributing troops to peacekeeping missions. As shown below, PoC also gradually came to be discussed within the C34—the Special Committee on Peacekeeping Operations that was established by and reports to the General Assembly. In this venue, a broader range of states has, on the basis of deliberation and consensus, fleshed out how peacekeeping operations actually function. But the creation of twin homes for PoC—the Security Council and C34—has opened up a gap between the venue where the norm is formally authorized and that where its implementation is most actively discussed and planned, thereby increasing the likelihood of behavioural contestation and underscoring the importance of venue and access in accounting for norm dynamics.

R2P took the opposite path. It was initially owned by the General Assembly, offering equal and 'open access'—at least theoretically—for all member states. Key countries such as Russia and China consciously precluded discussion of the principle within the Security Council chamber and sceptical developing countries guarded their role in furthering 'conceptual development' within the Assembly.[34] The General Assembly has continued to be the paramount venue for discussion of R2P, through the annual informal dialogues and, as of 2018, through formal agenda debate. With increased frequency since 2011, however, the Security Council has passed a series of resolutions referring to R2P—both in specific cases and in relation to thematic issues.[35] This has opened up the possibility for preferential implementation access to those countries sitting within the Council chamber. On

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[31] Rotmann et al., 'Major powers and the contested evolution of a Responsibility to Protect'.
[32] See summaries of the General Assembly interactive dialogues, 2013–17, and the formal debate of the Assembly on 25 June 2018, http://www.globalr2p.org/resources/897. (Unless otherwise noted at point of citation, all URLs cited in this article were accessible on 12 March 2019.)
[33] On 'implementation access', see n. 3 above.
[34] Welsh, 'Norm contestation'.
[35] See Global Centre for R2P, http://www.globalr2p.org/resources/335.

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the other hand, the implementation framework set out in 2009 consciously seeks to move R2P beyond 'New York', not only to other intergovernmental bodies such as the human rights mechanisms in Geneva, but also to regional organizations, individual member states and civil society. This move theoretically provides implementation access to a host of actors, though—according to two leading observers of R2P—'to date, embrace of the norm outside of the UN has still been relatively "shallow"'.[36]

In relation to PoC and R2P alike, the UN Secretariat has remained a critical actor in trying to bridge both the gap between authorization and actual practice, and the differing views among member states about the two norms' prescriptions. As a result, largely in response to discursive contestation, Secretariat officials have actively sought to find a consensus on how PoC and R2P should be conceived and operationalized.

Mapping contestation

This section analyses discursive and behavioural contestation of R2P and PoC in three phases, beginning with the late 1990s and concluding with recent events in Burundi, Syria and Myanmar (Burma). We draw on a variety of primary sources, including reports of the UN Secretary-General on R2P and the protection of civilians in armed conflict, Security Council resolutions and statements that make reference to R2P and PoC, summaries of the annual informal interactive dialogue on R2P in the General Assembly and the annual C34 meeting on peacekeeping, as well as individual member state statements and policy actions. In order to supplement these formal documents, and gain insight into the perspective of institutional actors on the interplay between the two norms, we also draw on targeted semi-structured interviews.

The mapping of contestation undertaken here demonstrates that while PoC and R2P developed in different venues and with distinct policy frameworks, they have evolved in parallel. Indeed, in response to contestation, actors have at times explicitly sought to contrast or link the two norms. This section also shows, in line with Stimmer and Wisken's framework, that norm ambiguity, differentiated implementation access and lack of institutional responsibility can increase the likelihood of behavioural contestation.

Phase I (1999–2005)

PoC experienced little overt discursive contestation in its early years, having not yet appeared on the agenda of the C34 and thus lacking substantive discussion by a range of states. The Security Council's pursuit of PoC as a broad thematic issue focused on three initiatives during this period: a 'roadmap' outlining the protection responsibilities of various UN bodies; better coordination between the

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[36] Alex J. Bellamy and Edward C. Luck, *The Responsibility to Protect: from promise to practice* (Cambridge: Polity, 2018), p. 189.

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Office for the Coordination of Humanitarian Affairs (OCHA) and DPKO; and drafting the first aide-memoire on protection.[37] Moreover, while peacekeepers in the DRC, Liberia and Côte d'Ivoire were authorized with protection mandates, the actual practice of PoC during these years was erratic. Evidence of behavioural contestation was therefore also slim, and tended to become manifest more indirectly through lack of resources to support robust protection.

Somewhat surprisingly, it was within the Office of the Secretary-General and the DPKO, and among certain states, that PoC was hotly contested. While states advocating PoC in the Security Council were keen to push implementation of the norm forward with robust peacekeeping mandates, Kofi Annan was concerned about the UN getting ahead of its broader membership, and thus failing to garner the necessary backing to deliver 'real' protection. 'Stern words' were reportedly exchanged between Annan and Canadian diplomat Robert Fowler during the drafting of Resolution 1270 on Sierra Leone.[38] The message from the Secretary-General's office was, as Fowler put it: 'Don't design to fail. Just because you have a nice idea, just because it is informed by goodness doesn't mean it will work. If you set up a mandate like this and we fail, it will be catastrophic for the institution.'[39] In other words, Annan's concern that the UN might overpromise and underdeliver, and thus damage its legitimacy, put brakes on his normative ambition. His 'principled activism' was balanced by 'the hard-learnt recognition that the Council's stated ambitions do not always translate into tangible commitments in practice'.[40]

A related worry among Annan and Secretariat officials was that PoC would be used as token evidence that the Security Council was 'doing something' about a crisis.[41] It would effectively become 'R2P-lite', thereby weakening Annan's other normative agenda. The crafting of robust PoC mandates would serve as a substitute for—a form of behavioural contestation of—not only the Security Council's political engagement, but also more forceful military action. By the mid-2000s, the belief that robust peacekeeping mandates were diverting attention from the requirements of R2P became more widespread in the Secretariat. The reigning assumption was that because peacekeeping still requires, at least in theory, a degree of state consent, it limits the possible coercive use of force and thus avoids R2P's frequent association with humanitarian intervention.

In these early years, it was precisely the continued controversy over humanitarian intervention that dominated the debate over R2P, which took place in a variety of settings outside the intergovernmental frameworks of the UN. Despite the ICISS report's seemingly elegant solution to the twin problems of Rwanda and Kosovo, it quickly became clear that the concept of a 'responsibility to protect' could not avoid normative and legal controversy, or neo-colonial connotations.[42]

[37] UN Security Council, *Protection of Civilians*, cross-cutting report no. 2 (New York, 2008).
[38] Quoted in Paddon Rhoads, *Taking sides in peacekeeping*, p. 106.
[39] Paddon Rhoads, *Taking sides in peacekeeping*, p. 106.
[40] Paddon Rhoads, *Taking sides in peacekeeping*, p. 95.
[41] *The causes of conflict*, p. 77.
[42] Jennifer Welsh, 'The "Responsibility to Protect": securing the individual in international society?', in Benjamin Goold and Liora Lazarus, eds, *Security and human rights* (Oxford: Hart, 2007).

The subsequent war in Iraq was a huge setback for efforts to build normative consensus in favour of R2P and to pursue formal codification, given the fears it seemed to confirm about states bypassing the UN system in using force and twisting humanitarian arguments to buttress more narrow national interests.[43]

Unexpectedly, it was the fallout from Iraq that enabled R2P to re-emerge on the diplomatic agenda.[44] The key moment came when the principle was picked up by the high-level panel of experts chosen by Annan in September 2003 to address the growing tensions in the UN's collective security system.[45] Thus, somewhat paradoxically, while the Secretary-General seemed to be putting the brakes on PoC within the Secretariat, he was simultaneously lobbying extensively for R2P to be brought into the UN system. The high-level panel challenged the view that there were no longer any rules governing military intervention, and endorsed the claims of ICISS that 'proper purpose' in respect of the use of force now encompassed actions designed to save civilians from atrocity crimes. Both positions were echoed by Annan in his March 2005 report to the General Assembly, which laid the groundwork for the intergovernmental negotiations that led to the summit outcome document.[46]

At this point, all member states had the opportunity to discursively contest both the appropriateness and the meaning of R2P. In practice, as with many multilateral negotiations, coalitions of states staked out positions around contentious issues, and those with greater expertise and influence exercised disproportionate impact on the final outcome. For example, the effort to establish Security Council criteria for the use of force was contested by the permanent members of the Council, in particular the United States, which were worried that a checklist 'set in stone' would diminish the flexibility they had hitherto enjoyed to interpret and respond to the international security landscape.[47] Many developing countries (most vocally represented by China, India and Iran) expressed unease about the potential expansion of the legitimate exceptions to article 2(4) of the UN Charter and thus the possibility of further military action by the strong against the weak. They also called for the international community to focus greater attention on building capacity in weak states *before* the development of intervention-generating crises.

As a result of this contestation, the language articulating the responsibilities of the international community in the summit outcome document was weaker than that which appeared in the ICISS report. An odd coalition of states—including the United States and many developing countries in the General Assembly—called for this less expansive language. Nonetheless, in opposition to the discursive contestation of states such as Egypt, Iran, Pakistan and Syria, article 139 of the summit outcome document explicitly mentions Chapter VII of the UN Charter. For those states advocating R2P, most notably Canada and EU member states,

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[43] Gareth Evans, 'When is it right to fight?', *Survival* 46: 3, 2004, pp. 59–81; David Clark, 'Iraq has wrecked our case for humanitarian wars', *Guardian*, 21 Aug. 2003.
[44] This point is emphasized by Marc Pollentine. See the discussion in Welsh, 'Norm contestation'.
[45] See *A more secure world*.
[46] *In larger freedom*.
[47] Letter from Ambassador John Bolton to UN, 30 Aug. 2005, available at http://www.responsibilitytoprotect.org/files/US_Boltonletter_R2P_30Aug05[1].pdf.

the principle would have lacked teeth without this link to enforcement by the Security Council.[48]

A final noteworthy feature of the summit outcome document, which laid the groundwork for later episodes of behavioural contestation, is the fact that the international community's responsibility to protect, set out in article 139, is preceded by article 138's emphasis on the 'primary responsibility' of national authorities. While this formulation reflected the normative consensus, it also gave states the opportunity to argue about proper sequencing and, ultimately, to block or sabotage international action to protect. Those states that in 2004 opposed the application of sanctions against the Sudanese government in relation to its conduct in Darfur reiterated that it is sovereign states who remain the 'first responders' in terms of protection, and that the crisis had not reached the point where it could be definitively concluded that Sudan had failed to live up to its responsibilities.[49]

Phase II (2006–2010)

At this point R2P and PoC figured in different institutional forums within the UN, with the General Assembly taking the lead on the former. The Security Council was comparatively silent on R2P, becoming bogged down in lengthy negotiations over two resolutions in 2006,[50] and passing only one resolution on the subject between 2007 and 2010.[51] This reticence on R2P contrasted with the Council's more active and sharper engagement with PoC in this phase, prompted in part by negative news coverage of crises in the DRC, Somalia and Sudan.[52] Resolution 1674 (2006) introduced new language aimed at ensuring implementation of PoC mandates by peacekeeping missions.[53] In 2008, under Resolution 1856, the UN mission in the DRC became the first to operate with a mandate that designated PoC as the highest priority, and to consider physical threats of violence to civilians 'from *any* of the parties engaged in the conflict'.[54] The following year, in a thematic resolution on PoC (Resolution 1894), the Council stressed that for all peacekeeping missions, mandated protection activities had to 'be given priority in resource allocation'.[55]

To bridge these disparate normative discourses and build support for R2P, Secretary-General Ban Ki-moon, unlike his predecessor, actively promoted the linkages between the two norms—a move that caused considerable discomfort within parts of the Secretariat. In his first *Report on the protection of civilians in armed conflict* (2007), the Secretary-General suggested that R2P as manifest in the summit

[48] Welsh, 'The Responsibility to Protect'.
[49] Alex J. Bellamy and Paul D. Williams, 'The Responsibility to Protect and the crisis in Darfur', *Security Dialogue* 36: 1, 2005, pp. 27–47.
[50] Resolution 1706, discussed below, and Resolution 1674 (2006) reaffirmed articles 138 and 139 of the summit outcome document.
[51] S/RES/1894, 11 Nov. 2009.
[52] See UN Security Council, *Protection of Civilians*.
[53] S/RES/1674, 28 April 2006.
[54] S/RES/1856, 22 Dec. 2008, emphasis added.
[55] S/RES/ 1894, 11 Nov. 2009.

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outcome document had advanced the normative framework of PoC.[56] Two years later, he articulated an explicit connection between R2P and PoC, and called for the 'mainstreaming' of R2P through UN peacekeeping operations.[57]

In an instance of discursive contestation, the DPKO responded with a 'deliberate effort' to disentangle the two norms and differentiate PoC from R2P.[58] PoC was to maintain its place of prominence in UN peacekeeping, whereas R2P was expunged from official peacekeeping discourse because of the perceived political sensitivities surrounding it. The DPKO's position reflected broader concerns, voiced by some states, that contestation over R2P—and specifically the norm's link to coercive military means—risked contaminating PoC. While many countries praised the emerging R2P norm, a vocal group of states, notably Cuba, Egypt and Pakistan, expressed unease about the implications of the summit outcome document in the first General Assembly debate on the subject and in subsequent informal interactive dialogues.[59] Resistance to the norm was also expressed by sceptical states through forms of behavioural contestation, including opposition to funding for the Office of Special Adviser during the bi-annual budget debate of the Fifth Committee of the Assembly. Representatives from China, Cuba and Pakistan insisted that the office's budget should be determined by the entire General Assembly—a procedural intervention that stalled funding for three years.[60]

The ongoing crisis in Darfur constituted another early site for behavioural contestation over R2P. Although Security Council Resolution 1706 (2006) and subsequent action represented a victory of sorts for advocates such as France and the United Kingdom, which were trying to build momentum around the emerging norm, the fact that the Council took more than six months to negotiate its response illustrates the degree of unease felt by some member states.[61] The final text of the resolution, which authorized the transition from a regional to a UN mission, raised difficult issues regarding the importance of host-state consent. China and Russia, along with Qatar, ultimately abstained from voting on Resolution 1706, and China (along with Sudan) actively prevented the invocation of R2P in a subsequent resolution on Darfur (Resolution 1769) just a year later.[62] Given that repetition of language in UN resolutions can be interpreted as reaffirmation

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[56] *Report on the protection of civilians in armed conflict*, S/2007/643 (New York: UN, 2007); Thomas G. Weiss and Tatiana Carayannis, 'Windows of opportunity for UN reform: historical insights for the next Secretary-General', *International Affairs* 93: 2, March 2017, pp. 309–28.

[57] *Implementing the Responsibility to Protect*, Report of the Secretary-General, A/63/677 (New York: UN, 12 Jan. 2009), para. 68.

[58] Author's telephone interview with UN official, July 2018.

[59] See remarks by member states in the first informal dialogue on the R2P in July 2009, available at http://www.globalr2p.org/resources/897.

[60] *Fifth Committee takes up financing for special political missions, procurement*, GA/AB/3832 (New York: UN, 17 Dec. 2007). See also Stimmer and Wisken, 'The dynamics of dissent'.

[61] We consider that Security Council resolutions represent one of the strongest forms of action by the Council—given that it is an authorizing rather than an operational body—and thus can be considered as evidence for/against behavioural contestation. When states negotiate for a particular framing of a situation, or for specific language in a mandate, they are directly shaping what operational actors can and cannot do in practice.

[62] See the discussion in Jess Gifkins, 'R2P in the UN Security Council: Darfur, Libya and beyond', *Cooperation and Conflict* 51: 2, 2016, pp. 156–7.

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of principles and practices, the active blocking of R2P language by some Council members can be understood as a form of behavioural contestation.

In addition to forms of discursive and behavioural contestation over R2P, growing dissent over PoC exacerbated the DPKO's concerns about conflating the two norms. During consultations in 2005–2007 to develop the first ever comprehensive peacekeeping doctrine, many states associated with the Non-Aligned Movement voiced objections to the Council's emphasis on the use of force to protect civilians from physical threat.[63] Consequently, when PoC first featured on the C34's agenda in 2008, it was criticized by a number of states—including several of the largest troop-contributing countries (TCCs)—which claimed that PoC mandates were eroding the norms of sovereignty and self-determination.[64] Many of these same states pointed to inherent inequalities in decision-making and peacekeeping policy, namely inadequate consultation with TCCs and lack of burden-sharing.[65]

Implementation of PoC was also compromised by behavioural contestation at the field level. In places like Kiwanja (DRC), peacekeepers with knowledge of imminent threats to civilians failed to take preventive action.[66] The reasons for this inaction included insufficient capabilities, the perceived risks associated with acting, and confusion over conflicting interpretations of mandates. A 2009 OCHA–DPKO study highlighted the dearth of operational guidance on PoC and concluded that UN staff continued to hold widely varying interpretations of the mandate, often within the same mission context.[67]

These various forms of discursive and behavioural contestation were instrumental in motivating efforts to clarify the meaning and scope of both norms. Ban Ki-moon's three-pillar conceptualization of R2P became the accepted consensus on the norm's meaning in diplomatic circles.[68] Furthermore, controversial attempts by states to misapply R2P to the cases of Iraq, Cyclone Nargis and South Ossetia, combined with its successful application in the wake of electoral violence in Kenya in 2007–2008, helped to define the norm's scope.[69] The 'narrow but deep approach' to R2P implementation,[70] advocated by the Secretary-General and his first Special Adviser, clarified both the limited range of situations to which the norm would apply and the broad suite of tools that implementation would require.

Similarly, in response to contestation over PoC, DPKO officials developed the three-tiered conceptualization of the norm that expanded its scope to encompass

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[63] *United Nations peacekeeping operations: principles and guidelines.*

[64] Paddon Rhoads, *Taking sides in peacekeeping.*

[65] *Report of the Special Committee on Peacekeeping Operations*, p.17; *Uniting our strengths for peace: politics, partnership and people*, Report of the UN High-level Independent Panel on UN Peace Operations (New York: UN, June 2015).

[66] Human Rights Watch, *Killings in Kiwanja: the UN's inability to protect civilians* (New York, 2008).

[67] OCHA and DPKO, *Protecting civilians in the context of UN peacekeeping operations* (New York, 2009).

[68] *Implementing the Responsibility to Protect.*

[69] Cristina G. Badescu and Thomas G. Weiss, 'Misrepresenting R2P and advancing norms: an alternative spiral?', *International Studies Perspectives*, vol. 11, 2010, pp. 354–74.

[70] Jennifer M. Welsh, 'The "narrow but deep approach" to implementing the Responsibility to Protect: reassessing the focus on international crimes', in Sheri P. Rosenberg, Tibi Galis and Alex Zucker, eds, *Reconstructing atrocity prevention* (Cambridge: Cambridge University Press, 2015).

prescriptions that do not require use of force and emphasize support to the state.[71] This was partly an attempt to make PoC more palatable to its critics, as one DPKO official observed: 'That was part of the messaging, definitely part of our theory of change … It was in large part about assuring sceptical Member States that peacekeeping is mostly *not* about the use of force.'[72] The Security Council's authorization of increasingly robust mandates in the next phase, however, seemed to suggest otherwise.

Phase III (2011–2018)

The spring of 2011 was a turning point for both norms. In March, the Security Council passed Resolution 1973, which authorized member states 'to take all necessary measures … to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi'. The resolution was unprecedented in its authorization to protect civilians without the consent of the host state. And yet, while the military action in Libya is described as a 'textbook case' of R2P implementation,[73] and the norm is widely viewed as having been an important motivating factor for some western actors in the intervention,[74] the phrase 'responsibility to protect' did not appear in the mandate. Instead, PoC language was used in what was essentially an R2P intervention. The following month a diplomatic furore erupted over the actions of UN peacekeepers in the aftermath of a contested presidential election in Côte d'Ivoire. UN-authorized forces used helicopter gunships against the presidential palace of Laurent Gbagbo—in the name of protecting civilians—while Alassane Ouattara, Gbagbo's opponent, was protected by peacekeepers at his base.

The fallout was immense. In both cases, critics charged that PoC had morphed into regime change and that humanitarian arguments were being abused to further western interests. In an instance of discursive contestation, the Brazilian government launched 'Responsibility while Protecting'—an initiative aimed at reinterpreting R2P by emphasizing the international community's non-military options, limiting recourse to force as a 'last resort', and strengthening the accountability of those who act militarily under a Council mandate. These themes, which garnered a significant degree of support among member states, became sticking points in the (unsuccessful) efforts to pass a new General Assembly resolution on R2P in 2015—ten years after the summit outcome document.[75] The discursive contestation that surrounded negotiations over the draft text illustrates the formation of a new kind of political coalition that included pro-R2P states that perceived an

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[71] *Draft Operational Concept for the Protection of Civilians.*

[72] Author's telephone interview with UN official, July 2018.

[73] Interview with Gareth Evans by Alan Philps for *The World Today* 68: 6, Oct./Nov. 2012, pp. 30–32, http://www.globalr2p.org/media/files/gareth-evans-on-responsibility-to-protect-after-libya.pdf.

[74] Rebecca Adler-Nissen and Vincent Pouliot, 'Power in practice: negotiating the international intervention in Libya', *European Journal of International Relations* 20: 4, 2014, pp. 889–911.

[75] Aarie Glas, 'African Union security culture in practice: African problems and African solutions', *International Affairs* 94: 5, Sept. 2018, pp. 1121–38.

illegitimate stretching of the NATO mandate in Libya and developing countries that had always worried about the prospect of regime change imposed from the outside.[76] This coalition was opposed by France, the United Kingdom and the United States, all of which were and remain resistant to any mechanisms that would curtail the Security Council's freedom of manoeuvre or submit its actions to forms of oversight.[77]

The backlash from the events of 2011 is also evident in the emphasis that some states place on the state-centric elements of R2P and PoC, in contrast to the more individualist or 'people-centred' vision of the ICISS report. A set of developing countries, including China, has drawn on the specific text of the summit outcome document not only to emphasize the pre-eminent role of *national* authorities in the implementation of R2P, but also to call for international assistance that strengthens state capacity, reinforces sovereignty and respects different national 'paths' to implementing R2P.[78] Some states have also pursued this statist inter- pretation of R2P by attempting to inject a notion of hierarchy into the norm's prescriptions, challenging the Secretary-General's claim that the pillars are of equal weight, mutually reinforcing and non-sequential.[79] Assembly discussions of R2P, particularly between 2014 and 2018, feature statements insisting that R2P is first and foremost a national responsibility, and that the role of the international community is always secondary.[80]

In a similar fashion, several states, including a number of TCCs, have increas- ingly framed their support for PoC in the C34 with reference to those activities that fall under tiers 1 and 3 of the DPKO's expanded framework. They maintain that PoC is the primary responsibility of the state, affirm the continued impor- tance of consent, and stress that the UN should pursue protection through unarmed strategies and support for the state and political processes.[81] These same states have resisted the Kigali Principles on the Protection of Civilians,[82] opposed initiatives that seek to strengthen accountability mechanisms for implementation of PoC mandates,[83] and pushed forward the 'force protection' agenda to highlight the risks faced by peacekeepers themselves.[84] Although these interpretations do not amount to a frontal assault on either R2P or PoC, they arguably represent a conscious attempt to reshape the meaning of both norms through a form of 'constructive' discursive contestation.

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[76] Sarah Brockmeier, Oliver Stuenkel and Mario Tourinho, 'The impact of Libyan intervention debates on norms of protection', *Global Society* 30: 1, 2016, pp. 113–33.
[77] For further discussion of the negotiations, see Welsh, 'Norm robustness'.
[78] See e.g. statements by China, Egypt, India and Morocco in the 2016 General Assembly dialogue, http://www. globalr2p.org/resources/897.
[79] *Implementing the responsibility to protect*, A/63/677; *Mobilizing collective action: the next decade of the Responsibility to Protect*, Report of the Secretary-General, A/70/999 (New York: UN, 2016).
[80] See esp. the comments of Cuba, Egypt and Venezuela at the thematic event of the President of the General Assembly on the Responsibility to Protect, 26 Feb. 2016: for a summary of statements, see http://www. globalr2p.org/resources/897.
[81] See e.g. statements by India, Pakistan, Russia, Senegal and Thailand in the C34 annual meeting of 2016: GA/ PK/223, 16 Feb. 2016, https://www.un.org/press/en/2016/gapk223.doc.htm.
[82] Author's telephone interview with western diplomat, Aug. 2018.
[83] 'UN asked to punish peacekeepers who don't protect civilians', Associated Press, 31 July 2018.
[84] UN, *Improving security of United Nations peacekeepers* (New York, 19 Dec. 2017).

What is more, phase III has been marked by various forms of behavioural contestation. While advances have been made at the national level to assist with implementation of R2P's first pillar, including the National Focal Point initiative,[85] there has been a decline in the use of specific R2P language in deliberations within the Security Council regarding several critical cases where atrocity crimes have been committed or are imminent. During the crisis of 2015–2016 in Burundi, which resulted in widespread human rights violations and systematic killing, some Security Council members (including Russia) insisted that the situation was 'political' and that R2P was irrelevant.[86] They pursued behavioural contestation by opposing any consideration of deploying a UN force under Chapter VII and blocked the inclusion of R2P language in the resolution that was eventually tabled.[87] In the case of Syria, political deadlock within the Security Council over the legitimacy of international efforts to address the violence meant that states initially responded by pursuing independent rather than collective action—for example, through sanctions by the Arab League, EU and United States. The first Security Council resolution on the situation in Syria, passed in 2014, was limited to a demand that parties to the conflict allow delivery of humanitarian assistance.[88] While that resolution—along with subsequent Council decisions[89]—did invoke pillar one by reminding government authorities of their responsibility to protect the Syrian population, it did not articulate any *international* responsibilities associated with R2P. More recently, the Security Council was notably reticent on the situation in Myanmar, limiting its formal response—despite warnings by senior UN officials that attacks by state security forces against the Rohingya might constitute genocide—to the adoption of a presidential statement stressing the 'primary responsibility of the Myanmar government to protect its population'.[90] Given that a key normative prescription for the international community in R2P is a 'duty of conduct', the absence of deliberation and response across these cases is significant evidence of behavioural contestation.

Behavioural contestation with respect to PoC has also increased in this most recent phase. Although missions intensified their involvement in a wide range of protection activities that fall under tiers 1 and 3, and demonstrated ingenuity in developing various protection tools,[91] peacekeepers seldom used force to protect civilians in imminent danger.[92] In its review of eight missions, the UN Office

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[85] Over 60 states have appointed focal points within national governments to coordinate policy development on atrocity crime prevention and response: http://www.globalr2p.org/our_work/global_network_of_r2p_focal_points.

[86] Katja Lindskov Jacobsen and Troels Gauslå Engell, 'Conflict prevention as a pragmatic response to a twofold crisis: liberal interventionism and Burundi', *International Affairs* 94: 2, March 2018, pp. 363–80; Louise Riis Andersen, 'The HIPPO in the room: the pragmatic push-back from the UN peace bureaucracy against the militarization of UN peacebuilding', *International Affairs* 94: 2, March 2018, pp. 343–62.

[87] S/RES/2248, 12 Nov. 2015. See also Welsh, 'Norm robustness'.

[88] S/RES/2139, 22 Feb. 2014. Previous draft resolutions proposing more robust action, including sanctions, were vetoed.

[89] S/RES/2165, 14 July 2014; S/RES/2254, 18 Dec. 2015; S/RES/2258, 22 Dec. 2015; S/RES/2332, 21 Dec. 2016.

[90] SC/13055, 6 Nov. 2017.

[91] *Evaluation of the implementation and results of protection of civilians mandates in United Nations peacekeeping operations*, Report of the Office of Internal Oversight Services, A/68/787 (New York: UN, 7 March 2014), p. 6.

[92] When and where force has been used by peacekeepers (e.g. by the Force Intervention Brigade in the Congo

of Internal Oversight Services uncovered a 'persistent pattern' of peacekeeper passivity in which 'force was almost never used' to protect civilians.[93] Similarly, the 2015 High-level Independent Panel on Peace Operations (HIPPO) lamented that the vast increases in resources, research and policy guidelines on PoC have 'yet to transform reality on the ground, where it matters'.[94]

Failure to implement the more forceful provisions of PoC mandates is in a sense hardly surprising, reflecting as it does what the HIPPO panel found to be a 'lack of consensus' among member states over PoC.[95] Different and conflicting views persist about what constitutes 'imminent threat of physical violence', whether and when force can be used against elements of the host government, and how TCCs should assume the risks associated with the use of force. These concerns and different interpretations are manifest in what UN officials describe as the increasing prevalence of national caveats, creating a de facto dual line of command. In several mission contexts, the advice offered from TCC capitals has conflicted with directives issued by senior mission officials. While TCCs lack the necessary power and access to realize their preferred conception of the norm at headquarters, caveats—as a form of behavioural contestation—attest to the fact that, as those primarily putting application of the norm into practice, TCCs have a certain degree of implementation access and autonomy at the field level.

The shift towards a more state-centric conceptualization of PoC and R2P, and increased behavioural contestation that dilutes the imperative for collective action to protect, are worrying signs of a less hospitable political environment for the advancement of these norms. The dynamics of dissent captured in this third phase thus point to the resilience of other powerful 'pluralist' norms—such as sovereign equality, national ownership, non-interference and consent—that are enjoying renewed consensus in an era of resurgent nationalism.[96] Nevertheless, it is too soon to proclaim the demise of these two protection norms, or of the normative impulse that contributed to their creation and continues to motivate a set of state and non-state actors. The 2015 HIPPO report's call for a more 'people-centred' approach to peacekeeping, and the prioritization of 'people' in Secretary-General Guterres's 2018 'Action for Peacekeeping' initiative, can be viewed as the Secretariat's latest attempts to foster consensus on the continued need to protect individuals and to close the gap between stated ambition and actual practice. Similarly, the successful move to place R2P on the formal agenda of the General Assembly in 2017 and 2018, as opposed to maintaining an informal dialogue, illustrates that there remains a broad and cross-regional grouping of states still committed to its implementation within and beyond the UN.

Finally, it is worth noting some recent concrete efforts to bring the two norms closer together at the field level. One example is a training programme, led by the

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or AMISOM in Somalia), regional interests have played a significant role. See Paddon Rhoads, *Taking sides in peacekeeping*.
[93] *Evaluation of the implementation and results of protection of civilians mandate*, p. 1.
[94] *Uniting our strengths for peace*, para. 82.
[95] *Uniting our strengths for peace*, para. 82.
[96] Andrew Hurrell, 'Power transitions, global justice and the virtues of pluralism', *Ethics and International Affairs* 27: 2, 2013, pp. 189–205.

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Global Centre for the Responsibility to Protect, aimed at enhancing the capacity of peacekeepers to identify and respond to the warning signs of atrocity crimes.[97] For advocates of R2P, this initiative reflects the pragmatic recognition that peace operations and stabilization missions, which—unlike the 2011 Libya mission—operate with the consent of the host state, are likely to be the major multilateral context in which military means are used to protect populations. For those in the peacekeeping community, the project is an acknowledgement that existing training on PoC requires more sophisticated and dynamic threat assessments, and that clearer operational guidance on protection for TCCs is required prior to deployment.

Assessing the dynamics of dissent on protection

Our comparative examination of the nature, evolution and contestation of R2P and PoC underscores the value of considering how norms work together, or are consciously used in juxtaposition. It stands to reason that, as social facts, norms rarely operate in isolation. The stories of the two protection norms have been intertwined—in some cases through the involvement of the same individual norm entrepreneurs, or sceptical member states, but also because contestation has been manifest in the choice to invoke one norm rather than the other.

As we have shown, UN staff have at times consciously sought to separate R2P from the PoC concerns of peacekeepers, predominantly out of fear that equating the two norms would foster resistance to the advancement of PoC. Individual states have also engaged in the strategy of dissociation. Australia and Uruguay, for example, clearly distinguished PoC from R2P when organizing the workshops that served as precursors to the introduction of PoC into the C34;[98] and some member states have deliberately used the language of PoC rather than R2P in their contributing statements to General Assembly informal dialogues. Even Canada, one of the early promoters of R2P, deliberately avoided invoking the norm in justifying its involvement in the Libya bombing in 2011, preferring instead to proclaim its 'resolve to protect civilians'.[99] Since 2011, even with the more statist elements of R2P in the ascendant, some diplomats describe R2P 'talk' in the context of peacekeeping as 'toxic', and to be avoided 'at all cost'.[100]

Our analysis of the dynamics of contestation also reveals the importance of considering which actors contest norms, and where they do so. We have suggested that, despite the origins—and prominence—of R2P and PoC in the UN, individuals within the Secretariat have discursively contested both norms at different points, mainly out of a concern for institutional legitimacy. In the case of R2P, the

[97] Information about the programme, sponsored by the government of Canada, can be found at http://www.globalr2p.org/our_work/peacekeeping_and_civilian_protection.
[98] Angus Francis and Vesselin Popovski, 'The Responsibility to Protect and the Protection of Civilians: a view from the United Nations', in Francis et al., eds, *Norms of protection*, pp. 88–9.
[99] See Mark Kersten, 'The Responsibility to Protect doctrine is faltering. Here's why', *Monkey Cage*, 8 Dec. 2015, https://www.washingtonpost.com/news/monkey-cage/wp/2015/12/08/the-responsibility-to-protect-doctrine-is-failing-heres-why/?noredirect=on&utm_term=.2a08161262cd.
[100] Author's telephone interview with western diplomat, Aug. 2018.

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General Assembly, open as it is to the participation of all UN members, has from the outset been the primary site for discursive contestation among states. Attempts to discuss R2P within the Security Council have enabled states sceptical about the norm, such as Russia, to engage in behavioural contestation through its voting and, given the limited membership of this body, to wield disproportionate influence on decision-making. With respect to PoC, behavioural contestation at the field level in phases II and III has been shaped by TCCs' lack of access, at headquarters and within the Council, to realize their preferred understanding of the norm.

Finally, our study illuminates several elements of Stimmer and Wisken's framework for understanding norm contestation and highlights areas of potential theoretical refinement. First, the analysis supports the assertion that implementation access, particularly when accompanied by weak access to deliberative and decision-making bodies, increases the likelihood that an actor will pursue behavioural contestation. Second, we have shown how the ambiguity surrounding the obligations that underpin both norms, as well as the lack of clear authority or responsibility for their implementation, may increase an actor's proclivity for behavioural contestation. With respect to PoC, this has resulted in increasingly robust peacekeeping mandates, yet little change in PoC practice at the field level. Turning to R2P, we see behavioural contestation in the failure of states to fulfil their 'duty of conduct', exemplified by a lack of deliberation on situations where atrocities have occurred or are imminent. Third, we have demonstrated how other ambiguities surrounding both norms contribute to contestation, by enabling actors to debate which norm applies in a given situation, or to draw on one or more pillars or tiers to emphasize their preferred interpretation of what action the norms prescribe.

The latter aspect of norm ambiguity, which draws on the inherent flexibility of norms, has also had an 'upside': it has proved crucial in keeping both norms alive. In the words of one western diplomat: 'The three-tier conceptualization of PoC has allowed the norm to continue to exist. We would not be having a conversation about PoC, if it was solely about physical protection.'[101] The same could be said about R2P's three-pillar framework. The consensus that protection from atrocity crimes involves national, regional and international efforts, and that prevention is at the core of R2P, has widened implementation access to a variety of institutions and organizations, and has diluted the impact of contestation over the use of military means. As a consequence, despite strategies that seek to set them apart, the two norms of R2P and PoC, these 'close cousins', today have similar structures, strengths and vulnerabilities. They are also both experiencing a disjuncture between macro-level institutionalization and inconsistent or inadequate implementation.

Conclusions

The development of the two norms of R2P and PoC, and their interrelationship, continue to be shaped by failure: failure to consider situations as requiring concerted international action; failure to respond in a timely and decisive fashion

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[101] Author's telephone interview with western diplomat, Aug. 2018.

to protection crises; and failure to fully implement what mandates prescribe.[102] As we have suggested, while some of these failures represent deficiencies in capacity and political will, some have also been shaped by behavioural contestation of the two norms, as states 'act out' their dissent by blocking or hampering efforts to protect populations.

On the PoC side, some might argue that this failure can actually be productive, given the norm's more operational focus. The UN's willingness to be transparent and frank about what has gone wrong in past peace operations also presents opportunities for the organization to bring member states together in efforts to improve doctrine and practice.[103] With respect to R2P, the impact of failure works in different and more complex ways. At the micro level, efforts to build state capacity to protect and to address risk factors leading to atrocity crimes are a powerful, if less visible, testament to the commitment to learn from past failures. But at the macro level, inaction in the face of war crimes, genocide and crimes against humanity—a quarter of a century after their perpetration in Rwanda and Srebrenica—raises doubts among some about the utility of a political principle, despite its unanimous endorsement in 2005, particularly in an international environment where unity among the major powers continues to prove so elusive.

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[102] Rebecca Sanders, 'Norm spoiling: undermining the women's rights agenda', *International Affairs* 94: 2, March 2018, pp. 271–92.

[103] See e.g. *The executive summary of the independent special investigation into the violence in Juba in 2016*, S/2016/924 (New York: UN, 1 Nov. 2016).