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Norms

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# Norm Contestation

Insights into Non-Conformity with Armed  
Conflict Norms

 Springer

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*To Vega, Samara, and Raya  
Who remind me of hope in the world  
when I find myself enveloped by its despair*

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# Chapter 1

## Introduction: How Contestation Provides Insight into Normative Behavior

*“It bothers me when [the CIA] say[s] there were seven guys, so they must all be militants,’ the [Obama administration] official said” (Becker and Shane 2012).*

*“They want us to be rabbits in their war... But I’m a peaceful man and I don’t want to fight. The government is against us – and Isis and Jabhat al-Nusra want to kill us.” Syrian refugee in Serbia (Kingsley 2015).*

These two quotes convey different yet related ideas about who should be protected and not protected during war, issues governed by the civilian immunity norm. The first quote reflects a common and gendered interpretation of this norm: men are typically assumed to be fighters or will become fighters. It is a reason why male civilians are often targeted during armed conflict, including the U.S. war against al Qaeda and the Taliban. The second quote reflects the consequences of this interpretation. As a man, the quoted refugee was pressured to join an armed group and persecuted because of his resistance. Yet he was also targeted because his maleness marked him as a legitimate target by rebel groups. It also prevented him from finding refuge in Canada because that country’s Syrian refugee policy excluded single, unattached men on the basis of security concerns (The Guardian 2015). Yet, according to Charli Carpenter (2006: 88), male civilians are in heightened need of protection from lethal violence:

The empirical record suggests that, of all civilians, adult men are most likely to be targeted in armed conflict. The singling out of men for execution has now been documented in dozens of ongoing conflicts worldwide. More often than women, young children, or the elderly, military-age men and adolescent boys are assumed to be ‘potential’ combatants and are therefore treated by armed forces – whether engaged in formal battle, in low-intensity conflict, or in repression of domestic civilian populations – as though they are legitimate targets of political violence.

The International Committee for the Red Cross (ICRC) advocates an all together different method for determining which civilians can be targeted in war, one based on threatening actions taken by civilians rather than based on their sex. As such, it would have likely determined that the civilian immunity norm protected this refugee.

What do these variations in ideas about protection, targeting, and experiences in war tell us about how the civilian immunity norm is understood by myriad actors? The civilian immunity norm originated to protect the non-threatening during war: if

a person does not pose harm to belligerents, s/he cannot be deliberately targeted. The norm does contain exceptions, allowing belligerents to intentionally kill civilians under some limited conditions. Norm enforcers like the ICRC emerged, and are mandated, to facilitate compliance with the norm. However, the norm does not clearly articulate who receives immunity, leaving civilian protections reliant on various actors' normative interpretations. In response, the ICRC devotes tremendous effort to globally disseminate its understanding of the norm, a strategy employed by global actors to establish a common definition on crucial terms as a means of enhancing norm compliance (Finnemore 1993:565). Have these efforts been successful in yielding a shared understanding of whom the norm protects and whom it does not?

Another armed conflict norm, the norm of non-intervention, reflects a similar dynamic. While the civilian immunity norm regulates how warfare is conducted (*jus in bello*), the non-intervention norm regulates when warfare can be waged (*jus ad bellum*). And, much like the civilian immunity norm, it is one of the oldest norms in international politics, yet ambiguity plagues its conceptualization. The norm emerged as a means of maintaining peace in the international system in response to the devastation of frequent conflicts. It does so by prohibiting the use of force as a means of resolving disputes between units in the global system. The United Nations Security Council (UNSC) plays an important role in diffusing and monitoring compliance with this norm. The norm is not absolute, allowing for permissible breaches of another state's sovereignty in specific circumstances. For instance, violating a state's sovereignty because it committed human rights violations has accumulated increased, if uneven, support in the post Cold War era. However, the conditions under which such actions are normatively sanctioned are unclear.

For example, in explaining its intervention in Crimea, Russia claimed that the Russian speaking population and Russian citizens there needed its protection. Thus, it claimed its Crimean intervention was consistent with accepted violations of the non-intervention norm, such as the illegal yet legitimate humanitarian intervention in Kosovo. Vladimir Putin stated,

if we see such uncontrolled crime spreading to the eastern regions of the country, and if the people ask us for help, while we already have the official request from the legitimate president, we retain the right to use all available means to protect those people. We believe this would be absolutely legitimate (Lally and Englund 2014).

However, some members of the UNSC did not accept this interpretation of the non-intervention norm's parameters and were willing to enforce the more dominant version. The United States stated, "Indeed, the United States will stand with the international community in affirming there will be costs for any military intervention in Ukraine" (White House 2014). What do these differing interpretations of the boundaries of the non-intervention norm tell us about its application? How might they impact compliance with this norm?

Materialist and norm diffusion frameworks provide compelling answers to these questions. In a nutshell, their explanations center on the pursuit of material interests consistently with the logic of consequences or a faulty dissemination process. Yet, examples also abound in which actors behave in normatively unexpected ways that do not necessarily advance their material interests or when they claim they are complying with the norm.

This study probes such instances. Specifically, this study asks if there is intersubjective agreement, shared understandings of desirable and acceptable behavior (Kratochwil and Ruggie 1986), on the prescriptions and parameters of durable and widely accepted norms, like the civilian immunity norm and the non-intervention norm. Martha Finnemore and Kathryn Sikkink define norms as “‘standard[s] of appropriate behaviour for actors with a given identity’” (Finnemore and Sikkink 1998: 891). A norm’s prescriptions guide actors in what is considered proper behavior; they are “the part of the norm informing actors within an identity what to do (or what not to do)” (Shannon 2000: 295). A norm’s parameters instruct actors of the conditions under which such collective expectations arise (Shannon 2000: 295). In other words, a norm’s parameters inform actors of when they are supposed to display the appropriate behavior contained within the norm’s prescriptions.

This study examines whether apparent departures from normatively expected behavior might be related to the presence or absence of intersubjective agreement within a norm’s components. Thus, while the civilian immunity norm’s prescriptions stipulate that soldiers cannot intentionally kill all civilians, is there intersubjective agreement on which civilians are specifically protected? Regarding the non-intervention norm, could the above differences articulated by Russia and within the UNSC indicate a lack of intersubjective agreement on the norm’s parameters, particularly under what conditions the norm does not apply? In other words, could the absence of intersubjective agreement yield differing notions of what norm compliance and norm violation entails? Is one actor’s norm compliance another’s norm violation?

This study’s findings tell us that a norm contestation framework can help explain departures from expected behavior. This framework understands that a norm may be ambiguous; that is, its content may be subject to different interpretations of how actors should behave. Actors may rely on background information and their local contexts, known respectively as the logic of practicality and the logic of contestedness, to help them determine what the logic of appropriateness in a given norm requires. Because norm enforcers and norm users may not share a common context, they may arrive at different interpretations of compliance. This generates intersubjective disagreement on the norm’s content and norm contestation.

This study’s findings are consistent with these dynamics. First, it reveals that these well-entrenched norms are ambiguous. Both the civilian immunity norm and the non-intervention norm are prone to multiple interpretations. In the case of the civilian immunity norm, we see that the norm users and norm enforcers examined differently understand who is protected. Intersubjective agreement is missing between these groups and even within them. Considering the issue of age helps illustrate this finding. These two groups articulated divergent ideas about whether and how age should be determinative of a civilian’s protected status. This was also the case between Russia and the UNSC regarding the non-intervention norm. For one thing, they differed on what constitutes a humanitarian exception to this norm.

The findings also articulate actors’ willingness to comply with particular normative interpretations in ways unexpected by the logic of consequences. Behavior consistent with these interpretations did not always advance actors’ material interests. Instead, the logic of appropriateness helps us understand the particular dynamics

explored in this book. For instance, belligerents claimed women should receive blanket immunity from lethal targeting because of local gender norms even when they fought female soldiers on the battlefield. Russia continued to offer humanitarian justifications despite the economic sanctions placed on it for violating Ukraine's sovereignty and challenging dominant ideas of permissible interventions. Deeper scrutiny demonstrates actors utilized background information and local contexts in order to determine what the logic of appropriateness required them to do.

The book also illustrates how the norm enforcer's diminished power, specifically its interpretive power, contributed to norm contestation. This book argues that norm enforcers hold that status because the international community confers their determination of norm compliance authoritative weight. Yet, in the case studies here, that power was weakened and helped pave the way for contestation. With the civilian immunity norm case study, the ICRC had little contact with the belligerent-respondents. As such, it was unable to influence how they should consider their normative obligations. Instead, belligerent-respondents relied on the logic of practicality and the logic of contestedness to determine who should be protected and who could be intentionally targeted. With the non-intervention norm study, Russia perceived the UNSC as biased towards the West. This image of partiality weakened the UNSC's interpretive power in Russia's eyes and spurred its contestation.

This chapter lays the foundation for understanding these findings by first briefly discussing the main frameworks critical in this book (which will be discussed in more detail in Chap. 2). An outline of the book's methodology follows, along with a longer presentation of the book's findings. The chapter then discusses how these findings further develop the norms literature and concludes with an overview of the book.

## Materialist and Norm Diffusion Frameworks

Studying the presence or absence of intersubjective agreement on a norm's prescriptions and parameters has the capacity to offer important insights into deviations in norm regulated behavior. Yet, the international relations literature has insufficiently capitalized on this potentially rich source of theoretically interesting explanations. For instance, materialists have offered many useful explanations for norm violations (Chayes and Chayes 1995; Henderson 1993; Verdirame 2001; Legro 1997). However, such explanations are less likely to explore the absence or presence of intersubjective agreement on a norm's components to understand norm related behavior. Instead, they tend to highlight the influence "coercion, cost/benefit calculations, and material incentives..." play in norm deviations (Checkel 2001: 553; see also Cardenas 2004 and Acharya 2011). As noted realist Hans Morgenthau stated, with regards to legal norms, governments "are always anxious to shake off the restraining influence that international law might have upon their foreign policies, to use international law instead for the promotion of their national interests" (quoted in Simmons 1998:85). Thus, not only is the role material interests play in

normatively unexpected behavior emphasized over intersubjective agreement on a norm's components, the desire to violate norms when they clash with material interests is also assumed.

The norm diffusion literature also insufficiently explores intersubjective agreement on a norm's components in its examinations of norm deviations. This literature is useful in explaining how new “objects, processes, ideas and information” (Checkel 1999:85) spread if one treats what is being diffused as monolithic. It is less useful in explaining lacking intersubjective agreement between norms that are long established in local contexts and their global counterparts. Thus, the processes of norm diffusion (including the domestic fit of global norms and the processes of localization of new norms) are less informative for this book. Instead, what is more salient here are differences in what various actors consider as normatively acceptable behavior and how these differences might affect a norm's operation. More recent studies have begun to explore this line of inquiry (Wiener 2004; Stiles 2006; Venzke 2009; Van Kersbergen and Verbeek 2007; Krook and True 2012; Zimmermann 2014).

## Norm Contestation Framework

This study argues that a norm contestation framework can usefully guide the queries posed in this book. It is useful because while much of the norms literature treats norms as independent variables, a norm contestation framework engages in a prior investigation by interrogating the meaning of norms held by various actors (Wiener 2004). A contestation framework argues that much of this normative meaning derives from local contexts (Harre and Gillet 1994:33) and background information (Brunnée and Toope 2010). As such, norm compliance may mean different things to different actors.

Such an approach is particularly useful when examining behavior related to ambiguous norms. Ambiguous norms are norms that generate multiple interpretations of some facet of their content. These multiple interpretations arise when actors operate in different settings. This creates a situation of lacking intersubjective agreement on that specific normative element, which does not necessarily affect general intersubjective agreement on the norm itself (Hoffman 2004; Klotz 1995). In other words, actors may subscribe to a norm but disagree on how and when it should be implemented. The likelihood of this occurring is heightened when the interpretative power of those tasked with monitoring norm compliance, known here as norm enforcers, is questioned or weakened.

In the case of the civilian immunity norm, lack of intersubjective agreement on who is protected and who is not might indicate contestation over that norm's prescriptions, even if contesters agree on the general purpose of the norm. The contestation may stem from the norm's ambiguous nature. There is widespread agreement that the definition of civilian is ambiguous, both in the relevant legal texts and in practice, a matter discussed further in [Chap. 3](#).



This issue is not just a matter of semantics. According to Article 85 of the 1977 Additional Protocol I to the 1949 Geneva Conventions, “[m]aking the civilian population or individual civilians the object of attack when committed willfully and if they cause death or serious injury to body and health” is a grave breach and hence, a war crime. Consequently, whether or not relevant actors commonly understand the distinction between permissible and impermissible targets and how these understandings impact targeting decisions carry enormous significance for both civilians and belligerents.

A similar argument can be made regarding the non-intervention norm: norm contestation here has significant real-world implications. Differing understandings of when states can violate another state’s sovereignty may mean the difference between war and peace. In the case of this norm, intersubjective disagreement may manifest over its parameters. The conditions under which a state can permissibly intervene in the domestic affairs of another state are subject to great debate. This is partly due to ambiguous language in the United Nations Charter codifying the norm along with inconsistent state practice, matters discussed in more detail in [Chap. 4](#). Yet, despite this state of incoherence, widespread support for the norm continues. States are still committed to the norm, even if they contest the specific conditions under which it applies.

These examples illustrate the potential a norm contestation framework has to provide additional insights into norm-related behavior. This study demonstrates this utility by applying the framework to the two norms in question, but its explanatory power is certainly not limited to these two norms, as the study’s final chapter argues. More specifically, this study explores whether these well-established and widely endorsed norms have intersubjective agreement on their critical elements. It argues that they do not. Instead, these norms serve as a platform for offering contending ideas of what is considered appropriate behavior.

## Methodology

### *Case Selection*

Despite a norm contestation framework’s potential utility in broadening our understanding of how norms operate in the international system, its emergent status means its methodological toolkit to capture contestation and substantive foci are incomplete. This study strives to build up norm contestation’s repertoire by examining norms deeply entrenched in the global environment like the civilian immunity norm and the non-intervention norm.

Additionally, this study focused on armed conflict norms because in some ways, these types of norms present a hard case for the norm contestation framework. In other words, it would be a surprise to find the norm contestation framework applicable in these cases (Bennett and Elman 2006). One reason they are least likely cases for norm contestation is due to dominant scholarly thinking about the impact of norms on security matters. Peter J. Katzenstein (1996) claims that many scholars

argue that material interests convincingly explain behavior around security matters; norms play less of a role in affecting behavior in this issue area. Russia, in particular, would be a hard case for a norm contestation explanation because its actions regarding the non-intervention norm are often depicted through a materialist lens. Post-World War II, Russia has staunchly advocated for a robust non-intervention norm (Allison 2009) and consequently, has opposed many attempts to cement or enlarge its exceptions, such as humanitarian interventions. Russia's use of humanitarian arguments to justify its violation of another state's sovereignty has largely been seen as strategic cover for material-oriented action. As Roy Allison notes,

To the extent that Russian leaders like Vladimir Putin focus on the fluctuation of relative power in the international system and are convinced of Russia's rising influence, it is not surprising that Russian state practice has been politically driven and selective in its adherence to and interpretation of norms (2009: 189).

Thus, determining that Russia acted for ideational reasons in this instance would certainly enrich our understandings not only of norms, but of Russia as well. The second reason these cases are least likely cases is because both norms have a long history in international relations, we would expect less contestation within them as these differences would have been settled earlier in the norm life cycle (as suggested by the norm diffusion framework).

Additionally, these two cases illustrate that norm contestation occurs under different conditions. Norm contestation can occur when contesters are aware of the norm enforcer's interpretation of norm compliance and can actively resist that interpretation in legitimized sites of contestation. This is the case with the non-intervention norm that Russia can contest in the halls of the UNSC. The civilian immunity case study illustrates that norm contestation can also occur unintentionally. Here, belligerent-respondents may not have set out to contest the ICRC's interpretation of the civilian immunity norm because many were unaware of it. Yet, by articulating their particular meanings of the norm's obligations, the end result is contestation.

The cases also differ in the actors involved, further highlighting norm contestation's ability to help us understand diverse phenomena. With the civilian immunity norm case study, we see contestation between armed groups and a quasi-nongovernmental organization, the ICRC. With the non-intervention norm case study, we witness contestation involving Russia and the UNSC. In both cases, the contestation possesses similarities in that contesters make rhetorical normative claims that ostensibly undermine their material interests. Yet, as noted above, where and how they make these claims differs. The concluding chapter takes up how these differences impact theory and policy.

### *Analytical Approach*

Both case studies compare statements made by actors within each normative regime but in different ways. The purpose of employing two research designs was to demonstrate to researchers the multiple ways in which norm contestation can be

captured and analyzed. The case study on the civilian immunity norm entailed interviews collected during field research in Botswana and a team of coders. This was a time consuming and expensive endeavor funded by an NSF grant. The non-intervention norm case study illustrates a less resource-intensive but equally fruitful method for these types of inquiries. It utilizes secondary data rather than primary data as useful and informative material was more readily available than was the case for the civilian immunity norm case study.

In the case of the civilian immunity norm, semi-structured interviews provided a window into how former belligerents justified their normative behavior. Interviews more effectively enabled me to collect data tailored to my specific research questions. In particular, interviews helped me gather information regarding whether intersubjective agreement exists on the meanings-in-use held by former belligerents and IHL experts on the category of protected civilians and which logics guide belligerents' actions. For the non-intervention norm, I collected statements made by Russia to the global community explaining how its actions fell within the bounds of permissible norm exceptions and the reactions to these explanations.

I chose to examine narratives offered by the actors operating within each normative regime for two reasons. First, since norms are intangible objects that cannot be directly studied, norms scholars can only indirectly observe them. As Martha Finnemore and Kathryn A. Sikkink argue (Finnemore and Sikkink 1998:892),

We can only have indirect evidence of norms just as we can only have indirect evidence of most other motivations for political action (interests or threats, for example). However, because norms by definition embody a quality of "oughtness" and shared moral assessment, norms prompt justifications for action and leave an extensive trail of communication among actors that we can study.

Statements made by Russia and other statements regarding the Ukrainian intervention and the narratives collected from belligerent respondents can be considered the "revealed meaning" or "'objective' surrogates" which give us a glimpse into the relevant norms themselves (Kratochwil and Ruggie 1986:766).

Second, I chose to analyze the narratives employed by actors operating within these normative regimes because, while the normative frameworks presented in this study are generally couched in system level language, "their operation requires the construction of agent level perception" (Hermann and Shannon 2001: 625–626). Since collected narratives are "attempts to understand the world from the subjects' point of view, to unfold the meaning of peoples' experiences, to uncover their lived world to scientific explanations" (Kvale 1996:1), they serve as useful tools if the research objective is to determine how different actors perceive and constitute important normative concepts.

Once the narratives were collected, they were analyzed to determine if the norm users justified their behavior by offering a different interpretation of the norm from those held by the norm enforcers in each case. These differences would suggest a lack of intersubjective agreement. In the civilian immunity norm case study, one of the first steps in the analytical process was to have a team of coders code this textual data using a set of selective codes generated via a grounded theory approach.

The coders used codes that captured its various prescriptive elements. In doing so, coders coded fairly reliably. For instance, the average Fleiss' kappa result<sup>1</sup> for the "Targets~Legitimate" code was 0.71.<sup>2</sup>

Narratives containing differences in intersubjective agreement were then subjected to a simple cost-benefit analysis. The purpose of this additional analysis was to determine whether the intersubjective disagreement arose when actors justified actions that advanced material interests, consistent with Checkel's description of materially motivated actors. If it did, those narratives were coded as consistent with a materialist framework. If they did not, they were coded as consistent with a norm contestation framework. The norm diffusion framework did not apply since all the actors were cognizant of the core tenets of the norms studied here. The case study on the non-intervention norm, while not employing a team of coders, engaged in a similar analytic approach. A more detailed discussion of this general research design for each case study is offered below.

### *The Civilian Immunity Norm*

I chose to examine whether intersubjective agreement existed between two specific respondent groups, IHL experts, including delegates from the ICRC and IHL scholars, and former belligerents. I chose the ICRC for this case study as it is considered a norm enforcer due to its responsibilities for IHL monitoring (Lavoyer and Maresca 1994), as well as interpreting and diffusing IHL to belligerents (Maragia 2002). With regard to the ICRC interviews, my goal was to include the significant decision-makers for legal policy at ICRC headquarters. I considered such informants most knowledgeable about the issue due to the position they hold (McEvily and Zaheer 1999). In the case of ICRC headquarters in Geneva, Switzerland, the significant decision-makers for legal policy are the legal advisors. I recruited both ICRC respondents and IHL scholars in Geneva by using a snowball sampling method through a contact in ICRC headquarters.

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<sup>1</sup>The kappa statistic "measure[s] the degree of agreement between two raters who rate each of a sample of subjects on a nominal scale... and incorporate a correction for the extent of agreement expected by chance alone" (Fleiss 1971:378).

<sup>2</sup>While there is no generally accepted measure of significance for agreement, the following is a common guide:

"Interpreting Kappa Agreement:

< 0 Less than chance agreement

0.01–0.20 Slight agreement

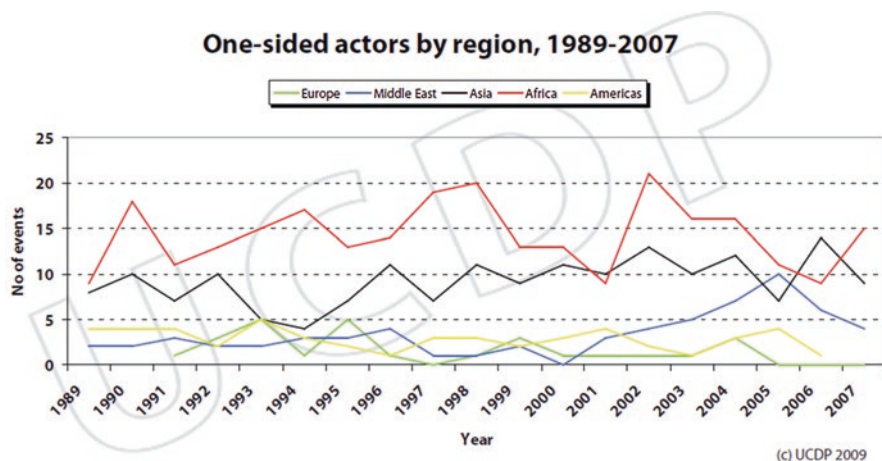
0.21– 0.40 Fair agreement

0.41–0.60 Moderate agreement

0.61–0.80 Substantial agreement

0.81–0.99 Almost perfect agreement"

(Viera and Garrett 2005:362).



**Fig. 1.1** One-sided actors by region, 1989–2007

I selected former belligerents among the refugees living in Dukwi Refugee Camp in Botswana for several reasons. First, more actors engaged in one-sided violence,<sup>3</sup> violence committed against civilians, in the African region than in other regions as depicted in the following figure produced by the Uppsala Conflict Data Program (Uppsala Conflict Data Program 2010) Fig. 1.1:

Thus, it would be important for this case study to focus on a region where perceived violations of the civilian immunity norm have been more prevalent. Additionally, African conflicts could arguably be considered a hard case for the norm contestation framework because many studies examining African conflicts emphasize the materialist motivations for civilian targeting there (see Chap. 3). Dukwi Refugee Camp seemed to be an appropriate location for this study because it hosts both former state and non-state belligerents from international and non-international conflicts. Thus, interviewing respondents in Dukwi would enable me to include a variety of conflicts and belligerents in this study.<sup>4</sup>

Determining whether intersubjective agreement existed on the distinction principle between the narratives of the two respondent groups required a number of steps. First, I had to establish whether or not belligerents espoused the norm's obligation that soldiers distinguish between permissible and impermissible targets. Unlike the case with the IHL experts, I did not assume that former belligerents subscribed to the civilian immunity norm. To uncover whether they did, I posed to them a series of hypothetical scenarios, soliciting their opinions as to whether they would target individuals in a given context and why. I used hypothetical scenarios,

<sup>3</sup>The Uppsala Conflict Data Program defines one-sided violence as “The use of armed force by the government of a state or by a formally organized group against civilians which results in at least 25 deaths in a year. Extrajudicial killings in custody are excluded.” Uppsala Conflict Data Program 2010.

<sup>4</sup>Specifically, I interviewed respondents who fought in conflicts in Angola, Zimbabwe, the Democratic Republic of Congo, Mozambique and Namibia.

in lieu of personal accounts, because with these types of voluntarist accounts there are concerns with the data collected.<sup>5</sup> Despite these potential challenges, I believe that “what people say or do matters” (Skocpol 1979: 18). But being aware of these issues is the reason why I asked belligerent respondents about hypothetical scenarios: to encourage them to engage in open discussions and to minimize reasons to misrepresent their actions. It is also the reason I asked these respondents about the actions of other belligerents. Additionally, former belligerents were asked what they considered were the costs and benefits of complying with their version of the civilian immunity norm. Thus, rather than imposing my own or other scholars’ sense of what the costs of their actions might be, the costs and benefits were derived from the belligerents themselves. These responses would help me later on in the analysis to discern between accounts consistent with materialist and norm contestation frameworks.

The next step entailed comparing those belligerent articulations of the civilian immunity norm’s prescriptions with those articulated by IHL experts. This step allowed me to determine where intersubjective agreement existed between the two respondent groups. In those instances where it did not, if the cost-benefit analysis for the corresponding belligerent narrative suggested material interests were not served, I concluded norm contestation was occurring. I also conducted in-group comparisons to see if intersubjective agreement existed among the members of a particular respondent group.

### ***The Non-intervention Norm***

In this case study, I was interested in the discourse around Russia’s intervention in Crimea. As such, my analysis did not take up the reasons for the intervention itself. Instead, I focused on explanations offered by Russian officials found in news sources that target a regional and global audience, including *The New York Times*, *The Guardian*, and *Russia Today*. The reason I selected arguments directed at a global and regional, rather than a domestic, audience is because the non-intervention norm is a norm regulating international behavior. Thus, the perceptions of an external audience are more significant than the perceptions of a domestic audience in determining the occurrence of the violation or compliance of a global norm. I also analyzed language used by the international community in response to Russian humanitarian justifications.

I first identified which Russian justifications referenced the non-intervention norm. These particular justifications were subjected to further analysis to determine Russian articulations of the parameters of the non-intervention norm. More specifically, this analysis focused on whether Russia claimed its actions fell within the permissible exceptions to the norm of non-intervention, and if so, why. These articulations

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<sup>5</sup>Essentially, voluntarist accounts are accounts which come from the perspective of the participants in the phenomenon studied (Skocpol 1979:18).

were then compared to responses from other states or the UNSC condemning or rejecting these Russian explanations. In the case of non-intervention norm, the UNSC is considered the norm enforcers (Kegley et al.1998). The comparison between statements made by Russia and the norm enforcer determined where intersubjective agreement and disagreement existed over the non-intervention norm.

I then examined the material costs to Russia for pursuing its rhetorical course of action in Crimea. To do this, I analyzed statements made by norm enforcers in response to Russian justifications to determine what the material costs of any threatened and actualized punitive actions may be. I then examined whether Russia continued the use of humanitarian rhetoric even after the international community imposed costs to its material interests. A preliminary examination of the facts related to this case shows that Russia has continued to advance these arguments even after the deployment of very punishing international economic sanctions.

## General Findings

### *Civilian Immunity Norm Case Study*

The civilian immunity norm case study found that intersubjective agreement is lacking on the norm's prescriptions. Furthermore, it found that materialist motivations based on the logic of consequences cannot account for all the rationales belligerents provided to explain intentional civilian deaths. The analysis of belligerent narratives reveals that belligerents utilize non-materialist rationales, consistent with a norm contestation framework, to explain civilian targeting. That is, these narratives did not conform to the logic of consequences. Furthermore, the context in which belligerent-respondents operated influenced where they drew the line between protected and unprotected civilians. Different contexts, in this case, the conflict dynamics, differently constituted the categories of protected and unprotected civilians. Furthermore, analysis of these accounts revealed that belligerent conceptualizations of immunity differed from those offered by IHL experts. This was partially due to the fact that belligerent-respondents had limited exposure to the ICRC, thus weakening its interpretive power. This intersubjective disagreement on who is protected from lethal targeting is not completely lost on norm enforcers which they recognize may play a role in perceived civilian immunity norm violations, as indicated by the following excerpt from an ICRC delegate:

[a]rmed groups may define civilian in a way we don't like... Palestinian groups would have considered Jewish settlers as legitimate targets... all people have an idea of what's fair in war... [These ideas] may not fly with the international system... (Personal Interview 2009).

Yet the ICRC, much like the extant literature on norm violations, pays insufficient attention to the relationship between lack of intersubjective agreement, norm contestation, and norm violation. According to the ICRC,

While ICRC delegates are certainly of the opinion that the distinction is often less than clear-cut, they believe that violations of IHL are more often the result of a deliberate intention to attack the civilian population rather than of any objective difficulty in distinguishing the one from the other (Munoz-Rojas and Fresard 2005:13).

Instead, as the quote indicates, more weight is placed on other explanations based on the logic of consequences. Thus, the findings from this study will help enrich our understandings of some of the variations in norm governed behavior.

### *Non-intervention Norm Case Study*

As is the case with the civilian immunity norm study, this case study also found that the norm contestation framework can helpfully explain some of Russia's rhetorical actions around the Crimean intervention. Here, we see not only that intersubjective agreement is lacking on the norm's parameters, but that Russia's normative understandings seemed to be informed by its history and ideational factors significant in its relations with former Soviet republics. This case study also demonstrates how the logic of appropriateness, informed by the logic of practicality and the logic of contestedness, provides meaning to Russia's behavior in ways the logic of consequences does not. Additionally, Russia's perception of the UNSC's Western bias, namely its limited acceptance of NATO intervention in Kosovo and its rejection of the Russian intervention, likely diminished its interpretive power over Russia, contributing to contestation. These insights provide greater lucidity to Russia's actions, alternatively surmised in the following way by other analysts:

Russia's invasion/incursion/aggression/staycation in Ukraine isn't quite Maskirovka,<sup>6</sup> and it's not an entirely new breed of warfare. It is, perhaps, new tactics in the service of an old strategy. It's a "total system of measures designed to deceive and confuse the enemy," as one U.S. military study described Maskirovka in 1981 (Friedman 2014).

These insights also provide additional color to our understanding of the relation between the non-intervention norm and global political behavior more generally.

## **Contributions to the Literature**

Through its investigation of norm contestation, this study advances the literature on how norms operate in the global arena in several ways. First, it explores how fluidity characterizes the operation of norms, even well after they are internalized. Much of the norm contestation literature appreciates the dynamic nature of norms but this

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<sup>6</sup>Uri Friedman (2014) describes *Maskirovka* (masking) as the 'Soviet strategy... which was developed in the 1920s and defined by the Soviet Military Encyclopedia as "complex measures to mislead the enemy regarding the presence and disposition of forces, military objectives, combat readiness and plans.'



appreciation has generally been focused on relatively new ideas as they progress through the early stages of the norm life cycle. Scholarly attention has centered on contestation in the pre-emergence and emergence phases of the life cycle, while there is a general assumption that consensus exists on various components of established norms (Liese 2009; Panke and Petersohn 2012). This study sheds more light on contestation in the post-internalized stages of the life cycle.

Second, this study unpacks our understanding of intersubjective agreement. Intersubjective agreement is typically treated as a monolithic concept: once it is established, it exists uniformly across the various elements of a norm. Yet, a single norm has multiple components, including prescriptions (what the norm enables and prohibits) and parameters (the situations in which the norm applies). Thus, while actors may intersubjectively agree on the norm's general purposes, they may contest a norm's specific parameters or prescriptions. Consequently, there can be different types of norm contestation. In noting this distinction, the study utilizes Nicole Deitelhoff and Lisbeth Zimmerman's (2013) concept of applicatory contestation. Applicatory contestation, to be discussed in more detail in the next chapter, is "contestation [which] regularly provokes specifications with regard to the type of situation to which a norm applies and how it needs to be applied" (Deitelhoff and Zimmerman 2013:5). By acknowledging the different types of contestation that can occur, this study will enrich our understanding of how norms operate in the global arena. Further enriching our understanding of norms is the book's detailed discussion of how the logic of practicality and the logic of contestedness together help actors determine what a norm's logic of appropriateness requires.

Third, this book brings much needed attention to illiberal normative content, as well as non-Western and non-democratic normative actors. The literature has been criticized for its focus on "good" norms such as norms that promote civil and political rights and democracy (Deibert and Crete-Nishihata 2012). However, this literature also emphasizes norms' perceived legitimacy by a group rather than the kind of behaviour they regulate. A sense of "oughtness" defines a norm. However, this sense of oughtness does not speak to the valence of normative content (Klotz 1995; Bernstein 2000). As Martha Finnemore and Kathryn Sikkink argue,

One logical corollary to the prescriptive quality of norms is that, by definition, there are no bad norms from the vantage point of those who promote the norm. Norms most of us would consider "bad"—norms about racial superiority, divine right, imperialism—were once powerful because some groups believed in the appropriateness (that is, the "goodness") of the norm, and others either accepted it as obvious or inevitable or had no choice but to accept it. Slaveholders and many nonslaveholders believed that slavery was appropriate behavior; without that belief, the institution of slavery would not have been possible (1998: 892).

Thus, ideas that reflect non-liberal values, like the idea of unilateral humanitarian intervention espoused by Russia, can be considered "norm-worthy." By probing this type of normative content, this study broadens norm contestation's lens to explain the full panoply of normative understandings.

Furthermore, scholars have criticized extant norms scholarship for over-representing Western actors as norm entrepreneurs and diffusers and the rest of the global community as objects of these diffusion efforts. In other words, it has been

accused of a directional bias and a neglect of non-Western actors' agency. It has inadequately examined the non-Western world as sources of norms or sites of resistance (direct and indirect): "The relationship between global and regional norms and the role of regions (especially outside of Western Europe) as sites of global norm making [and in the present case, norm contestation] remains undertheorized" (Acharya 2014: 405). This book, by focusing on contestation by African soldiers and Russia, motivated by local norms, helps to fill in this gap in the norms literature by illustrating these actors as adherents of localized versions of common norms rather than merely as objects of diffusion efforts.

Relatedly, by exploring contestation by these particular actors, this study expands our understanding of the influence of power and agency when it comes to norms. While the norms literature has produced evidence that norm generation may be a product of particular power arrangements in the global arena, the influence of power on determinations of normative content remains under-scrutinized. As Milja Kurki and Adriana Sinclair (2010: 7) note, constructivism is "inadequate in pointing out that some actors have power over what is considered legitimate in the system." They further state, "the language of 'mutual constitution' assumes conceptually an equality of actors constructing the social world, which can inadvertently gloss over the deep structural hierarchies between them" (2010:7). While Kurki and Sinclair referred to material power, a similar point can be made about the type of productive power discussed here, interpretive power. Actors with more productive power are better positioned to advocate for their preferred interpretation of normative obligations than those with less power. Additionally, we need to better understand when norm enforcers' interpretation of normative content influences to a lesser degree the understandings and behaviors of actors who subscribe to those norms and who are motivated by the logic of appropriateness.

Fifth, this study expands norm contestation's repertoire. For one thing, this framework has not been applied to the civilian immunity norm, particularly on narratives gathered from belligerents. Antje Wiener (2004) has used this framework to explore the non-intervention norm. Yet, despite the fact that this book also explores this norm, it still enriches this literature because of its focus on the contestation efforts of a non-Western, non-democratic state as mentioned above. Additionally, this study includes an examination of unintentional norm contestation as illustrated in the civilian immunity norm case study. Much of existing norm contestation analyses have investigated intentional contestation as seen in the non-intervention norm case study.

Sixth, it engaged innovative methodological approaches in norm contestation research. More specifically, the civilian immunity norm case study uses interview data collected from actors occupying different roles in its normative regimes, and it employs qualitative coding software to code those narratives. This methodology differs from much of norm contestation research that utilizes secondary textual data, and few use software in their analysis. This can be seen in the non-intervention norm case study. Some reasons researchers may employ this approach, which is also rigorous, include lack of access to informants and lack of access to time and resources to conduct field research, purchase expensive software, or hire coders. As such, the book also highlights how amenable this framework is to diverse research designs.

## **Overview of the Book**

### ***Chapter Two: Norm Contestation: A Theoretical Framework***

This chapter illustrates how departures from expected normative behavior may not necessarily be tied to materialist motivations or the norm diffusion process, but to the absence of intersubjective agreement on a norm's parameters or prescriptions. As such, it reveals how actors can possess differing understanding of what norm compliance entails while endorsing the general purposes of the norm itself. It accomplishes this by discussing in more detail the concept of intersubjective agreement and discussing more deeply the logics of consequences, appropriateness, practicality, and contestedness. This exploration also delves into the relation between norm ambiguity and various types of norm contestation. Additionally, it elaborates on the differences between legal and social norms, as well as the concept of interpretive power.

### ***Chapter Three: Contestation in the Civilian Immunity Norm***

This chapter applies the norm contestation model to the civilian immunity norm. Much scholarly and practitioner attention has been devoted to understanding why civilians are impermissibly targeted during armed conflict. Much of this effort has concentrated on the influence that material incentive structures play on intentional civilian deaths. Through the analysis of semi-structured interviews with former belligerents and IHL experts, the chapter reveals the absence of intersubjective agreement between these sets of actors regarding the norm's prescriptions. Additionally, it discusses how belligerents comply with their particular understandings of norm compliance in ways that are inconsistent with materialist explanations.

### ***Chapter Four: Contestation in the Non-intervention Norm***

This chapter explores norm contestation within the non-intervention norm through a case study of Russian justifications for its actions in Crimea. Roy Allison (2013) argues that while a materialist approach persuasively explains Russia's violation of this norm in its 2008 war with Georgia, "it leaves some ambiguity over Moscow's forceful use of Russian humanitarian claims" to justify its actions there (169). This chapter argues that the norm contestation framework can remove some of that ambiguity through its application of this model to similar Russian discourse in the Crimean case. In doing so, this application illustrates how contestation on a norm's parameters operates. Particular emphasis is placed on how Russian contestation of the permissible exceptions to the non-intervention norm actually undermined its material interests, suggesting that it undertook this rhetorical action for non-material reasons. Russian contestation also illustrates its continued general support for the norm.

## ***Chapter Five: Conclusion: Lessons Drawn from Norm Contestation's Insights***

This chapter reconnects the norm contestation framework to the case studies and describes how it can be applied to norms other than those regulating armed conflict. It also discusses some of the policy implications of the study's arguments. It also provides avenues for research possibilities for scholars, students, and practitioners. For instance, exploring how much norm contestation accounts for normative variation is noteworthy theoretically and methodologically. Additionally, investigating whether applicatory contestation leads to justificatory contestation and the conditions under which this occurs is extremely enriching. Finally, this chapter highlights the importance of uncovering whether norm contestation is at play for policy-makers as it would require a different response than behavioral variations better explained by a materialist or norm diffusion framework. For instance, if these variations are due to rational calculations in the pursuit of material interests, altering those calculations so that norm violation becomes more costly can improve compliance. However, if norm variation is due to different understanding of what the norm requires (norm contestation), remedies aimed at affecting cost-benefit calculations may be less effective in altering behavior. Instead, efforts focused on arriving at shared understandings, such as allowing all relevant normative actors to participate in discussions of what norms should require, might be more effective. Jutta Brunnée and Stephen J. Toope's interactional law framework helps structure this discussion.

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## Chapter 2

# Norm Contestation: A Theoretical Framework

*An important aspect of engagement with legal pluralism is to understand the fault lines between different legal orders in order to avoid any overlap likely to be marred by ambiguity and contestation (Dinnen 2010: 329).*

### Introduction

This chapter demonstrates how a norm contestation framework can helpfully explain behavioral variation within norms. This approach explores how actors' interpretations of a norm's logic of appropriateness, as informed by the logic of practicality and the logic of contestedness, may impact intersubjective agreement between norm enforcers and norm users. In doing so, it elucidates aspects of norms not captured by useful explanations rooted in the norm diffusion process or materialist motivations. These frameworks tend to focus on behavioral variation in instances where actors have not yet subscribed to a norm or intentionally violate it to further material interests. Rather than solely seeking to explain actor behavior, a norm contestation framework scrutinizes actors' *understandings* of their normative obligations. It concentrates on ambiguous normative environments in which various actors may differently interpret those obligations and norm enforcers' powers are weakened. In these instances, intersubjective agreement is fluid and shaped by background information and local contexts, concepts incorporated into the logic of practicality (Brunnée and Toope 2010) and the logic of contestedness (Wiener 2007).

This is the case for the two norms studied here, the civilian immunity norm and the non-intervention norm. These norms' prescriptions and parameters remain ambiguous, despite their long history and their diffusion. In such scenarios, actors exercise their agency when drawing upon their particular sociocultural environments to instruct them on what types of behavioral responses the logic of appropriateness permits. Yet these localized understandings of norm compliance might differ from those held by norm enforcers like the ICRC or the UNSC. Norm enforcers wield comparatively greater interpretive power within a normative regime, yet the case studies indicate that this power can be weakened or challenged. When a norm enforcer's power is diminished in an ambiguous normative environment, it sows the seeds for norm contestation. In this way, a norm contestation framework helps us

understand contestation which does not necessarily advance material interests, but which is situated within the ideational realm.

Despite its ability to enhance our understandings of how norms operate, a norm contestation framework had been utilized less frequently in the early norms literature. More recent work appreciates that norms can be contested (Ben-Josef Hirsch 2013; Welsh 2013). However, many of these studies focus on contestation that occurs in the early stages of the norm life cycle of fairly new ideas. For example, Sabine Saurugger (2010) examines contestation during the emergence phase of a norm of participatory decision-making in the European Union; David Capie (2008) discusses contestation during the diffusion of a taboo against the use of small arms; and Mona Lena Krook and Jacqui True (2012) analyze the diffusion of contested gender equality norms.

This focus on contestation in the pre-emergence, emergence, and diffusion stages of the norm life cycle is informative, yet surprising. Nothing in the conceptualization of norms suggests that their content ever stabilizes or becomes less ambiguous. Norm contestation over a norm's prescriptions and parameters can occur even for more established norms like the torture taboo (Liese 2009) and norms of combatancy (Venzke 2009).

This chapter provides a more detailed discussion of how norm contestation can shed light on deviations from even deeply rooted normative expectations. In order to better appreciate its explanatory value, it is necessary to lay down a conceptual foundation. This chapter does so by first describing the concept of norms and the logic of appropriateness and the logic of consequences. Since this study's explanatory framework hinges on the logic of appropriateness, it is important to understand how this mechanism influences normative behavior differently than the logic of consequences.

This discussion is followed by a discussion of intersubjective agreement. Intersubjective agreement not only plays an important role in producing norm compliance and norm violation, it is a central component of a norm contestation approach. Since this book examines both legal norms and social norms, a discussion of the similarities and distinctions of these two types of norms then follows. The chapter continues with a detailed presentation of the concept of norm ambiguity and norms' constitutive effects, additional important components in the book's theoretical argument.

With this foundation laid, the chapter presents the materialist and norm diffusion frameworks and then critiques their explanations for perceived norm violations. The main argument in this critique is that these frameworks cannot explain norm violations that are inconsistent with the logic of consequences committed by actors claiming norm compliance. It then delves into a deeper discussion of norm contestation that is based on the logic of appropriateness informed by the logic of practicality and the logic of contestedness with a significant role for local contexts and actor agency. It then discusses how contexts and differences in interpretive power affect norm contestation, along with the different types of norm contestation. Expected predictions offered by each framework follow next. The chapter concludes by setting the stage for the case studies of the civilian immunity norm and the non-intervention norm contained in the two subsequent chapters.



## Norms

Norms are “standard[s] of appropriate behaviour for actors with a given identity” (Finnemore and Sikkink 1998: 891). They are perceived as legitimate by a collective (Klotz 1999) and possess a sense of “oughtness.” This sense of oughtness determines when the associated behaviour is permissible and regulates how that behavior should be conducted for actors who choose to engage in it.

Antje Wiener (2007: 184) categorizes norms into three distinct types. Of most relevance here are fundamental norms, such as “‘basic procedural norms’ that are most commonly applied in international relations theory” and include rule of law, the torture ban, and the long established norms discussed here. Another category of norms includes organizing principles that guide policy formulations (2007: 84). They include norms like transparency, accountability, and legitimacy. The third category of norms is standardized procedures (2007: 84). These include clearly defined rules and regulations such as electoral rules or assembly regulations (2007: 84–85).

The emergence of constructivism in the field of international relations placed norms on center stage. While older theories acknowledged the existence of norms, it was really constructivism that sought to explore the independent role of norms in influencing global political behavior (Klotz 1995, Katzenstein 1996). So successful was this effort that many international relations scholars, realists among them, now readily accept the significance of norms in the global arena (Van Kersbergen and Verbeek 2007). Rather than taking actor interests as givens, constructivist scholars have shown how the norms actors create can shape not only their interests, but their identities as well (Lantis 2016). Constructivism’s initial wave of scholarship conceptualized norms as objects whose content remained fairly static (Wiener 2004). Subsequent studies better captured the complexity and nuance of norms, envisioning them also as processes in which their content is not fixed, but subject to repeated contestation (Krook and True 2012).

## Logic of Consequences and the Logic of Appropriateness

International relations theories explaining norm-related behavior fall into several camps. Of these many camps, the two discussed here are: those that stress the importance of the logic of consequences and those that focus on the logic of appropriateness.<sup>1</sup> James G. March and Johan P. Olsen (1998: 949) explain the logic of consequences in this way:

Those who see actions as driven by expectations of consequences imagine that human actors choose among alternatives by evaluating their likely consequences for personal or collective objectives, conscious that other actors are doing likewise.

Regarding the logic of appropriateness, March and Olsen (1998:949) argue,

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<sup>1</sup> International relations theories, especially constructivist theories, also discuss other types of logics. For example, Thomas Risse (2000: 1-2) advances the logic of arguing where “human actors engage in truth seeking with the aim of reaching a mutual understanding based on a reasoned consensus... challenging the validity claims involved in any communication.”

Human actors are imagined to follow rules that associate particular identities to particular situations, approaching individual opportunities for action by assessing similarities between current identities and choice dilemmas and more general concepts of self and situations... The pursuit of purpose is associated with identities more than with interests, and with the selection of rules more than with individual rational expectations...

The logic of consequences tends to undergird theories focused on material motivations for actor behavior. These theories argue that rational, cost-benefit calculations (long-term or short-term) related to material interests drive actor behavior, and that actors are individualistic in orientation (Mearsheimer 1995; Schweller and Preiss 1997; Jervis 1978; Snidal 2003). These theories do not deny the contribution of norms; however, this recognition is often limited to norms' ability to support or enable materialist motivations (Kratochwil 1989).

Constructivism focuses on the logic of appropriateness (Onuf 1989). Constructivism argues that the logic of consequences and the logic of appropriateness can work in tandem to explain norm-related behavior (March and Olsen 1998). But it departs from materialism by emphasizing how norms can also independently explain outcomes since actors are more socially conscious than materialists claim (even if they remain individualistic in orientation) (Wendt 1992; Checkel 1998; Ruggie 1998). Constructivism claims the logic of appropriateness can explain behavior in cases where the logic of consequences would predict otherwise; that is, ideational factors like norms are "responsible for producing effects" (Yee 1996:70).

## Intersubjective Agreement

One way norms produce effects is through norm compliant behavior.<sup>2</sup> One mechanism driving norm compliance is intersubjective agreement. Actors comply with norms,

for many reasons, among them being that norms define what and who they are, what they want, and how they view international politics. Compliance is therefore seen not only in terms of narrowly defined incentives but also in terms of *shared normative understandings* that provide matrices of meaning for national or supranational cultures (emphasis added) (Thomas 2001:17).

Intersubjective agreement captures this notion of shared understandings and is an essential element of norms.<sup>3</sup> Norms cannot exist if they do not contain some minimal level of intersubjective agreement (Widemaier and Glanville 2015: 370).

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<sup>2</sup>Compliance occurs "when the actual behavior of a given subject conforms to prescribed behavior..." (Young 1979). A question raised later in this chapter as under-scrutinized in norms research regards the power dynamics in determinations of whether a particular action is norm-compliant.

<sup>3</sup>Intersubjective agreement on a norm's general purpose enables it to emerge (Finnemore and Sikkink 1998). That is, actors agree that the norm should belong in the global normative structure. It continues to exist as long as this base level of intersubjective agreement persists. If intersubjective disagreement erupts over the continued necessity of the norm, actors may be engaged in justificatory contestation whereas disagreements over specific elements while maintaining agreement on the overall purposes of the norm may be evidence of applicatory contestation, the subject of this book. Both types of contestation are discussed below.

The key concept in intersubjective agreement is the idea that actors know and *accept* similar conceptions of what the logic of appropriateness requires in a given situation. This is a crucial element for socially oriented theories like constructivism. Even for materialist theories, the notion of intersubjective agreement plays a subtle and less acknowledged role in accounting for international behavior. Peter J. Katzenstein explains that according to materialists, "...behavior is related to the constraining conditions in which these actors, with their assumed interests, find themselves" (Katzenstein 1996:14; see also Barkin 2003). Among materialists, intersubjective agreement takes the form of collective understandings that interest-driven action is expected and even appropriate.

## Social Norms and Legal Norms

Global norms affect all manner of activity in the global arena, including international law. Some norms scholars consider legal norms, norms that have undergone the process of legalization, as distinct. As Wiener (2007: 5) notes, "[n]orms may entail validity via a legal framework that stipulates them (constitution, treaty) and have achieved social facticity (appearing as appropriate to a group)." Others wonder whether such a distinction is warranted. For instance, Martha Finnemore asks,

do legal norms, as a type, operate differently from any other kinds of norms in world politics? There are, after all, many kinds of norms in the world - social, cultural, professional, moral, religious, and familial. What makes compliance with legal norms different from compliance with non-legal ones? Does being "legal" add any kind of weight to a norm? If so, why and how (1999: 701)?

These questions are important for this book to consider since legal norms and social norms both regulate the behaviors at the heart of its inquiry. Thus, it is worth investigating whether legalization differently influences how actors understand and justify their normative obligations.

Those who have tackled this issue offer a range of responses. While some claim there is no distinction between legal norms and social norms (Reus-Smit 2004; Percy 2007), others argue these two types of norms are different. Kenneth W. Abbott (1998: 59) posits that legalization involves varying levels of obligation, delegation, and precision. Legal norms that rank higher on these elements are considered hard law and those that rank lower are considered soft law (Abbott and Snidal 2000). According to the enchanted view of law, which sees laws and legal institutions as superior to purely political interactions, legalization provides "rationality, procedure, fairness or accountability to a pre-legal antecedent condition" (Hurd 2016: 2). Jutta Brunnée and Stephen J. Toope (2010) utilize an interactional law framework to illustrate the distinctive types of legitimacy, processes, and practices that characterize legal norms and legal obligations, revolving around the criteria and practice

of legality.<sup>4</sup> Others focus on the notion that legal norms are codified and more likely to be enforced by states (Reus-Smit 2004).

Implicit in these distinctions is that legal norms are somehow more effective in regulating behavior than social norms. More specifically, they are thought to be more effective in inducing compliance partly because scholars assume they possess intersubjective agreement. For instance, scholars focusing on the precision of codified legal texts claim it reduces interpretive wiggle room and thus enables better compliance. Yet, as Sarah Percy (2007) argues, legal norms may not always be more precise because states intentionally use ambiguous language in the law (see also Finnemore and Toope 2001). Furthermore, uncodified customary international law is not often very precise. Thus, precision and intersubjective agreement do not delineate legal norms from social norms.

Legal norms' heightened legitimacy is another reason claimed for their greater effectiveness (Franck 1990; Ratner 2000; Bower 2015: 352). Legal norms acquire their legitimacy from the perceived collective nature of their generative processes and institutions (Franck 1990; Abbott, et al. 2000). An inclusive process of norm generation, when it does occur, also enables these legal norms to create intersubjective agreement. Yet, social norms can also possess a great deal of legitimacy and intersubjective agreement to produce high levels of compliance, sometimes more so than their legal counterparts. Thus, enhanced effectiveness may not necessarily distinguish legal norms from social norms (Percy 2007).

Neither is it the case that legal norms are somehow immunized from the influence of power, unlike their social counterparts (Sinclair 2011). Legal norms are also touched by power dynamics, which is the reason the disenchanting view of law "encourages the study of power in the making, interpretation and application of law" (Hurd 2016: 3). This book illustrates these dynamics affect both legal and social norms as is the case with legal treaties (the Additional Protocols and the UN Charter), customary international law, and social norms related to the civilian immunity norm and the non-intervention norm.

It seems the most relevant explanation to the current study for the difference between legal and social norms is the justificatory rhetoric for actor behavior. Actors aiming to comply with legal norms will refer to legal texts and legal language to explain their behavior. According to Friedrich Kratochwil, "the legal character of rules and norms can be established when we are able to show that these norms are used in a distinct fashion in making decisions and in communicating the basis of those choices to a wider audience" (Kratochwil 1989: 42.). Christian Reus-Smit (2004:41) explains further,

international law 'lives' in the way in which [actors] reason argumentatively about the form of [sic] rules, what they prescribe or proscribe, what their jurisdictional reach is, what new rules should be enacted, how these relate to established rules, and about whether a certain action or inaction is covered by a given rule.

As such, legal argumentation employs distinct reference points, minimizes the role of self-interest, and employs the use of analogies (Reus-Smit 2004:41). We can see this type of argumentation in the rhetoric used by the IHL experts in the civilian

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<sup>4</sup>Chapter 6 discusses how this interactional framework can serve as a useful guide to practitioners for how to create intersubjective agreement within norms.

immunity norm case study and the actors involved in the non-intervention norm case study.

Those operating within a social norm, both norm users and norm enforcers, will more likely use non-legal arguments. In the case of the ICRC, these include humanitarian, political, economic, pragmatic, moral, and customary arguments (Ratner 2011: 478). These arguments are used to persuade belligerents to alter their behavior in some fashion. Because the ICRC does not follow a one-size-fits-all approach when interacting with belligerents, it allows its delegates discretion to determine which of these types of arguments may be more persuasive with the armed groups with which they interact (Ratner 2011: 478). In practice, these delegates are more likely to employ non-legal arguments than ICRC staff in headquarters (Ratner 2011: 478), possibly in recognition that social rather than legal norms likely govern belligerent behavior. As such, belligerents are also likely to use non-legal arguments in their justifications, as evidenced in the narratives contained in the Chap. 3. Thus, while contestation could occur in both legal and social norms, the rhetorical action taken in that contestation may differ depending on the norm subjected to contestation and the actors involved. This in turn may influence how likely those arguments may be persuasive.

## Norm Ambiguity

As the above discussion detailed, both legal norms and social norms can be ambiguous. Ambiguity “underscores the polysemic character of meaning: the potential for a plurality of meanings and thus for more than one interpretation” (Best 2012a: 88; see also Krook and True 2012; Widmaier and Glanville 2015). Susanne Therese Hansen offers a congruent definition in the context of codified law: ambiguity means “multiple meanings in that the same term or legal provision can mean different things to different people” (2015:3). When normative elements are more specific, the space for interpretation narrows or is eliminated. The landmines ban would fall into this category (Price 1998). When space for interpretation widens, a norm falls closer to the ambiguity end of the spectrum (Abbott, et al. 2000:401). Kenneth W. Abbott, et al. (2000: 415) depict such a spectrum, including indicators for determining where to place a given norm:

**Table 3** *Indicators of precision*

<b>High</b>
Determinate rules: only narrow issues of interpretation
Substantial but limited issues of interpretation
Broad areas of discretion
“Standards”: only meaningful with reference to specific situations
Impossible to determine whether conduct complies
<b>Low</b>

For Jeffrey W. Legro, ambiguity can undermine a norm's strength because robust norms possess durability, specificity, and concordance (1997: 34). Durability refers to the length of a norm's existence and how well it has withstood its violations during this period. Concordance speaks to how widely endorsed is the norm. Specificity means "how well the guidelines for restraint and use are defined and understood" (1997: 35).

There is a close connection between norm ambiguity, lack of intersubjective agreement, and norm contestation. If an element of normative content actually yields multiple interpretations, and is hence ambiguous, it can contribute to intersubjective disagreement. That does not mean ambiguity will automatically produce contestation. Contestation in ambiguous norms is more likely to occur if the norm enforcer's power is weakened (discussed further below). If actors then comply with their particular normative interpretation consistently with the logic of appropriateness as informed by the logic of practicality and the logic of contestedness, we are likely to witness norm contestation. Yet, just because some part of the norm is ambiguous does not mean it is ambiguous in its entirety. It may still retain intersubjective agreement on its other elements (a matter further discussed in the section on types of norm contestation). If it no longer possesses intersubjective agreement on any of its element, it ceases to be a norm.<sup>5</sup>

## Norms' Constitutive Effects

Norms exert regulative effects by providing actors guidance on how to act in a given situation (Carpenter 2006: 11). Materialist and norm diffusion analyses of normative transgressions generally center on a norm's regulative effects. They seek to explain why actors diverge from collective expectations of appropriate behavior in a given situation that has been commonly recognized as falling within a norm's jurisdiction. The questions presented in this study center on a norm's constitutive components, the triggers that help inform an actor on how to behave (Hopf 1998:173). In this case, norm deviations may occur not because actors disagree on what is collectively considered appropriate behavior, but whether the norm applies to the situation in which they find themselves. In this book, these triggers deal with normative exceptions around identity (for the civilian immunity norm) or condition (for the non-intervention norm). For instance, while states may subscribe to the non-intervention norm, they may disagree on whether a particular humanitarian crisis qualifies for its permissible exceptions or the appropriate decision-making processes for making these determinations. Ambiguity in a norm's constitutive elements, its prescriptions and parameters, helps enable these disagreements to manifest.

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<sup>5</sup>There is a growing literature exploring norm death (for example, see McKeown 2009).

## Materialist Framework

Yet, as already mentioned, while ambiguity can affect norm compliance because it can generate intersubjective disagreement, this relationship has been inadequately explored by studies emphasizing a materialist framework for norm deviations. Instead, these studies assume that intersubjective agreement on normative parameters and prescriptions exist. Norm violations occur intentionally for the pursuit of material interests. For instance, in discussing Russia's violation of the non-intervention norm in Georgia, Andrei O. Tsygankov and Matthew Tarver-Wahlquist argue that, "Russian area studies scholars, conscientiously or not, reasoned about the motives of Russia's foreign policy using the offensive realist logic" in which power and material interests played prominent roles (2009: 315). Such studies do not undertake an examination of the nature of intersubjective agreement in the empirical puzzles they try to unravel.

## Norm Diffusion

Mainstream constructivism also inadequately interrogates the impact of norm ambiguity on intersubjective agreement. Take for instance its norm diffusion model. This framework explains norm violations as resulting from faulty dissemination processes, inadequate internationalization, incapacity, or actions by actors unaware of their normative obligations. According to Martha Finnemore and Kathryn Sikkink (1998:895), norms spread through the international arena once norm entrepreneurs convince a critical mass of actors to adopt a new norm and become norm leaders. These leaders then diffuse the norm by socializing other actors to become followers, a process known as norm cascade. Socialization is "the process of inducting individuals [or states] into the norms and rules of a given community" (Hooghe 2005: 865). This socialization is usually done by states, networks of norm entrepreneurs, or international organizations (Finnemore and Sikkink 1998: 901). Generally, for norm cascade to occur, the norm has to be institutionalized in specific rules and international organizations (Finnemore and Sikkink 1998:901). Institutionalization eases norm cascade because it specifies to a normative regime's potential new members the norm's contents and its obligations (Finnemore and Sikkink 1998:895).

Through this socialization process, state identity and interests are shaped to align with the diffused norm's obligations (Checkel 2001: 561). This international socialization can occur via both coercion and persuasion (Landolt 2004: 584). It is through these activities that the norm diffusion process strives to harmonize actors' calculations based on the logic of consequence and the logic of appropriateness to facilitate norm compliance. Once the norm is fully internalized, actor "interests will shift to comply with the norm. Interests are constituted by normative standards, and full compliance is expected" (Lantis 2016: 392). Deviations from normatively expected behavior are then attributed to lack of diffusion, incapacity, or inadequate internalization.

Critiques of mainstream constructivist approaches to norm diffusion focus on their neglect of the possibility that norms endorsed by Western actors may already exist within local contexts (Grovoqui 2011). These localized versions may share commonalities with the norms at the center of diffusion efforts, but may also differ in significant ways. As such, norms promoted by norm enforcers may not necessarily be “new,” and variations in behavior may not be due to lack of, or faulty, socialization, but differences in interpretation. As such, mainstream constructivism is faulted for containing a bias in which “norms that are perceived to be good and widely accepted in the West are analyzed as global norms... the history of their emergence and change as well as their contestation remain hidden” (Engelkamp et al. 2014: 68; see also Acharya 2014). In other words, local actors may not be empty vessels as the norm diffusion literature portrays them (Epstein 2012: 140–143). The case studies here demonstrate this scenario describes the civilian immunity norm and the non-intervention norm.

For instance, in this book’s case study of the civilian immunity norm, while the ICRC did not have contact with all the belligerent-respondents, the civilian immunity norm had still been diffused to them. For them, the diffusion process for what constitutes appropriate behavior was much more localized. Local norm enforcers socialized many of the belligerent-respondents into restrained warfare practices using norms that circulated locally for centuries. These local norms generally overlapped with the version promoted by international norm enforcers (Popovski et al. 2009), but also differed on the norm’s prescriptions in significant ways.

Consequently, critical constructivists argue that if norm enforcers want similarity in norm-related behavior, it is not enough to ensure that a particular interpretation of norm compliance is shared if it is not also accepted. Whether or not individual actors are aware of the norm enforcer’s specific position on compliance, they may come to a different conclusion about what the norm requires, especially when the norm is ambiguous.

## **Critiques of Materialist and Mainstream Constructivist Explanations**

Vaughn P. Shannon also voices some of these critiques of materialist and mainstream constructivist accounts. He faults materialist explanations for failing to reliably predict instances of departures from normatively expected behavior or account for norm compliance in the face of a threat to interests (2000: 293). His critique of constructivism is that it presents more persuasive arguments for norm compliance than unexpected norm behavior because of its focus on structure and obligatory action (2000: 293).

Due to these limitations, Shannon offers a hybrid model of constructivist and materialist frameworks to explain normative departures. Using a political psychology approach, Shannon argues that norm violation occurs when a conflict between interests and norm obligations erupts (2000: 294). The conflict reflects the hybrid



nature of the model: actors want to pursue their interests (materialist model) but still comply with the norm (constructivist model). However, because actors prioritize advancing their interests over meeting their normative obligations, they are forced to search for a socially acceptable way to violate the norm (2000: 294). This is a much easier task if the norm in question is ambiguous enough to allow them to interpret their desired action as norm consistent (2000: 294). The result is the use of “accounts” like apologies, denials, excuses, or justifications to explain this violation in a socially acceptable manner.<sup>6</sup> The norm’s ambiguity allows violators to offer an interpretation that, at least marginally, fits within the parameters of the norm while simultaneously permitting them to pursue material interests (2000: 294). The interest-motivated interpretations generally do not conform to norm enforcers’ interpretations of compliance. These differences in interpretation signal a momentary lack of intersubjective agreement on the norm’s application.

The model Shannon lays out is quite powerful in explaining normative deviations by actors intending to violate ambiguous norms for materialist reasons. Lack of intersubjective agreement in Shannon’s model is opportunistic. For example, Shannon explains that while the United States had been intending to violate the norm of non-intervention by invading Panama for quite some time, it had to wait until events emerged that could plausibly fall within the permissible exceptions to the norm (e.g., threats to national interests). Shannon’s case study demonstrates that ambiguity enables the manipulation of the norm’s parameters when material interests are threatened. What differentiates Shannon’s model from a materialist account of norm violation is the timing and, importantly, the account of a norm violation. These rhetorical acts suggest that norms do still matter, even when they are violated (Kratochwil and Ruggie 1986). For instance, the Bush Administration initially felt compelled, in the face of global and domestic outrage to its refusal to provide Geneva Conventions rights to Guantanamo Bay detainees, to argue that these detainees would be treated humanely in accordance with the spirit of the Conventions and international humanitarian law (Mills 2005).<sup>7</sup> Secretary of Defense Donald Rumsfeld stated, “we plan, for the most part, to treat them in a manner reasonably consistent with the Geneva Conventions, to the extent that they are appropriate” (Kinsella 2005: 172).

Luke Glanville (2006) effectively uses Shannon’s framework to explain U.S. adherence to the non-intervention norm during the Rwandan genocide. He explains U.S. unwillingness to label the killings as genocide because it felt that such a label carried an obligation to launch a humanitarian intervention (Glanville 2006).<sup>8</sup> One reason for U.S. reluctance to intervene in Rwanda was the absence of material interests. Glanville offers the instructions given to the Defense Department’s Deputy-Secretary for African Affairs James Wood at the start of his term as evidence:

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<sup>6</sup>These accounts are discussed in further detail on page 33.

<sup>7</sup>To view the argument that these acts were patently norm violations, see Paust 2005.

<sup>8</sup>While Glanville classifies humanitarian intervention as a norm, there is no scholarly consensus on its normative status.

Look, if something happens in Rwanda-Burundi, we don't care. Take it off the list. US national interest is not involved and we can't put all these silly humanitarian issues on lists, like important problems like the Middle East, North Korea and so on. Just make it go away (2006: 190).

This absence of interest, coupled with the aftermath of Somalia, provided the impetus for the United States to deny genocide status to the horrific events in Rwanda. Since there was disagreement on what was happening on the ground in Rwanda, in this ambiguous normative environment the United States tried to influence deliberations on the international community's obligations via its use of the term "acts of genocide" rather than "genocide" (Glanville 2006: 193). The United States did this to prevent the call for humanitarian intervention it felt a classification of genocide compelled, despite the fact that many in the international community were already using that term (Glanville 2006: 193). That way, the United States would not have to commit resources to an intervention not in its interests while at the same time, appearing not to violate prevailing notions of obligatory action (Glanville 2006: 198).

## **Differentiating Norm Contestation from a Materialist Framework**

Yet, what of situations in which transgressions from a norm enforcer's understanding of compliance with an ambiguous norm occur, not because actors intended to violate the norm for materialist reasons, but because they complied with their own interpretation of it? In other words, an absence of intersubjective agreement might lead to acts governed by the logic of appropriateness rather than the logic of consequences. The strongest case for norm contestation, as with any argument underpinned by the logic of appropriateness, is when compliant behavior does not further any apparent material interest. Yet, according to a materialist framework, actors may follow an alternative interpretation of the norm only to abandon it at the point it no longer furthers their material interests.

This contestation argument differs from Shannon's explanation of norm variation because it is not material interests that produce the interpretative difference, but compliance with a version of the norm that diverges from the norm enforcer's. In this case, compliance with this alternative interpretation may occur even when the pursuit of material interests would demand otherwise. For example, medieval Christian and Islamic soldiers violated contemporary norms by killing women and child noncombatants of different faiths for ideational reasons, despite the material benefits these noncombatants could offer their own societies as slaves (Jose 2015). Here, a critical component of Shannon's model of norm violation, the intent to violate for material interests, is missing. So, while Shannon's model effectively explains how lack of intersubjective agreement on an ambiguous norm, produced by materialist motivations, leads to normative transgressions, it does not explain how lack of intersubjective agreement leads to behavior which may undermine these interests.

It should be noted here that whether norm contesters are aware of the norm enforcer's understanding of the norm does not significantly impact norm contestation's explanatory framework. Norm contesters may be aware or ignorant of the norm enforcer's position on specific elements of a norm, yet intersubjective agreement may still be absent. If norm contesters are aware of the norm enforcer's understanding of a norm (as in the case study of the non-intervention norm), they may not share this understanding. Even when norm contesters are aware of this lack of intersubjective agreement, they may still comply with their normative understandings consistently with the logic of appropriateness. Where the ability to engage in an intentional and direct dialectic with norm enforcers may have an impact is on whether norm contestation can strengthen the norm. As Antje Wiener (2008) points out, norm contestation does not necessarily weaken the norm. Enabling contestation between all those subject to the norm reflects a more democratic process and provides an opportunity for the norm to be more reflective of the values of those it obligates (Wiener 2008; Risse 2000). As Jutta Brunnée and Stephen J. Toope claim (2010: 68), "law-makers can create conditions in which reasoned communication and decision-making can take place, nurturing either deeper agreement or fidelity to law, even in the face of disagreement with the values or policies it enshrines." These issues will be discussed further in the concluding chapter.

## Local Context and Norm Contestation

It is under these conditions that the norm contestation framework can play a useful explanatory role. It is useful because, unlike the materialist and norm diffusion frameworks, it acknowledges that ambiguous norms operate in generalities that can lead to differing interpretations of compliance (Hoffman 2004; Krook and True 2012; Sandholtz 2008). As Ian Hurd (2005: 501) argues, "[t]he contestation over, and ambiguity of, norms is an important aspect of world politics that is often overlooked in IR, even among constructivists.... constructivists have often overstated the consensus that exists over norms."

Rather than just focusing on actor behavior as a means to understanding how norms operate, the contestation framework also inquires into their social meaning (Wiener 2004). A contestation framework argues that norms derive their meaning from "historical and cultural circumstances" (Harre and Gillet 1994:33). It posits that these different interpretations of permissible behavior may be motivated by ideational influences shaped by particular contexts (Barnett 1999; Joachim 2007). Accordingly, perceived norm violations may occur because actors comply with an interpretation of the norm, consistent with the logic of appropriateness, which diverges from that held by norm enforcers. This differs from a materialist framework that attributes variation in norm-related behavior to materialist motivations driven by the logic of consequences. This reflexive approach to understanding norms appreciates norm flexibility (Wiener 2008), which differentiates it from older constructivist work. The fluidity in normative content can create contestation

(intentional or unintentional) because differing interpretations of compliance may be incongruent (Hoffman 2004:4). Consequently, investigations into a norm's meaning-in-use offer insights into a norm's constitutive effects that can then shed light on its regulative effects.

A norm contestation framework not only recognizes a norm's fluidity, but it also recognizes actors' contributions in producing that fluidity more emphatically than other accounts of norm-based behavior. First wave constructivism tended to emphasize structure over agency. As Michael Barnett (1999: 7) notes, "constructivism has tended to operate with an oversocialized view of actors, treating them as near-bearers of structures, and at the extreme, as cultural dupes. The real danger here is the failure to recognize that actors have agency..." Actors exercise their agency when they digest ambiguous norms and actively try to uncover their meanings (Hoffberth and Weber 2014: 8). The result of this agentic energy is the production of multiple understandings of a norm's obligations (Wiener 2009). The logic of contestedness captures this process, the idea that "normative meaning is considered to evolve from different cultural backgrounds" (Wiener 2007:52). It appreciates that norms can be interpreted differently in distinct political arenas (Wiener 2007: 55). Interpretations that are shaped by the local norms contained within a particular milieu will resonate more with actors operating in those contexts than with interpretations derived externally. As such, when considering the normative structure, "[a]gents can shape and reshape the structure in which they find themselves" (Bano 2015: 13).

Actors with more material or ideational power (the distinction is discussed in more detail below), have a heightened capacity to advance their interpretation of normative content (Lantis 2016: 2). These actors are the norm-enforcers for their respective norms. But recognizing that increased power might translate to increased normative agency does not mean that less powerful actors do not exercise agency when it comes to a norm's meaning. Regardless of how much power they possess, material or otherwise, all actors do exercise their agency when they actively interpret a norm's requirements.

Thus, compared to mainstream constructivism, critical constructivism sheds more light on the interaction between agency, reflexive action, and local contexts and its impact on intersubjective disagreement. In doing so, it builds upon the earlier, exemplary efforts of scholars that showcased the relevance of norms to understanding global political behavior. It also recognizes unreflexive thinking in the form of the logic of practicality. The logic of practicality can be considered akin to intuition because it is background knowledge that is hard to grasp, articulate, or be fully cognizant of, yet plays an influential role in an agent's understanding of the situation in which she finds herself. Vincent Pouliot (2008:270) informs us this background knowledge, or *metis*, consists of local knowledge derived from concrete experiences that is in constant flux. And unlike the logic of contestedness, the logic of practicality is unreflexive; it is "so implicit and automatic that its bearer is at a loss to explain to explain it" (2008:270). It unconsciously helps actors determine whether a situation requires them to act consistently with the logic of appropriateness as informed by the logic of contestedness or whether to follow the logic of consequences. As Pouliot (2008: 277) explains,

Even when the logic of appropriateness requires reflexivity, prior to intentional deliberation the agent must feel from practical sense that rule-based reasoning is the way to go... If agents feel from practical sense that the way to go is to comply with a norm, they may be able to verbalize what that norm is, but they probably cannot explain why they figured they had to follow a norm in the first place.

In this way, the logic of practice, the logic of contestedness, and the logic of appropriateness work together to help actors, unreflexively and reflexively, decide what course of action they should take in a given situation.

This dynamic also helps us understand how actors in different contexts can arrive at different interpretations of a shared norm. As stated above, the logic of practicality is very much rooted in local contexts. Within these local contexts lies the collection of individual and social histories (Pouliot 2008: 273). These histories differ within each context and help explain the varied ways in which the logic of practicality operates across diverse contexts. Actors who share a common sense of practice, such as the ICRC, belligerent respondents, or members of the UNSC opposing Russia, can be considered a community of practice. A community of practice “is a configuration of a *domain of knowledge* that constitutes like-mindedness, a *community of people* that ‘creates the social fabric of learning’, and a *shared practice* that embodies ‘the knowledge the community develops, shares, and maintains’” (emphasis in original, Adler 2008: 199). It is both structure and agents. Yet, membership in a community of practice does not guarantee agreement on what normative obligations entail: “‘the joint enterprise of members of a community of practice does not necessarily mean a common goal or vision,’ but that members ‘must share collective understandings that tell [them] what they are doing and why’...” (Brunnée and Toope 2010: 45). The case studies here illustrate this point.

Background knowledge unreflexively helps communities of practice determine if they should follow the logic of appropriateness in a given situation. The logic of contestedness guides them on what appropriate action is in their given context. The combination of ambiguous norms and varying contexts then reflexively produces the multiple interpretations of compliance at the heart of norm contestation, even as actors may agree on those norms’ validity. According to Wiener, “[a]ll individuals carry specific normative baggage, and all interpretations of meaning are expected to vary according to their context of emergence” (2008: 57; see also Contessi 2010: 325). In the case of the civilian immunity norm, Hugo Slim finds,

the extent of civilian suffering shows, this identity is often genuinely difficult for enemies to accept within a war when they see the views and roles of some of the enemy population and perceive- quite rightly from one angle- that many civilians do have a very ambiguous identity in war (2008:187).

Different, actively-derived interpretations of the scope of the civilian immunity norm’s prescriptions (who is immune from intentional lethal targeting) may be influenced by the context, in this case armed conflict, in which belligerents find themselves. Variations in these interpretations correlate to a norm’s constitutive effects. Alexander Wendt offers some illumination:

...meanings depend on the practices, skills and tests that connect the community to the object represented in discourse... what counts as a lawyer or a state is equally not reducible to what is in people’s minds, but out there in public practices (1999:176).

For example, Colin H. Kahl notes that U.S. troops fired upon Iraqi civilians using cell phones in a bomb blast's aftermath because cell phones were often used to trigger improvised explosive devices (2007: 25). In this specific conflict, because opposition fighters often deployed cell phones as detonators, U.S. troops regarded individuals using a cell phone after a bomb blast as permissible targets.<sup>9</sup> Emanuel Adler critiques existing constructivist research for inadequately showing "how enemies and military threats are socially constructed by both material and social facts" (1997: 347).

A reason contexts might contribute to the absence of intersubjective agreement is because they contain various ideas about how to implement the norm which the norm diffusion process did not eradicate. Recall in the above discussion, the purpose of norm diffusion is to introduce the norm and generate intersubjective agreement via social learning. However, local understandings of the norm may predate the version being diffused, especially if the norm is an older norm. For instance, both the civilian immunity norm and the non-intervention norm are considered some of the oldest norms in the global arena. In Southeast Asia, the norm of non-intervention holds a long history of firm adherence, along with shared understandings of when the norm could be suspended which significantly differed from the ideas of humanitarian intervention promoted by Western states in the 1990s (Acharya 2004).

Thus, localized understandings of these norms likely preexisted their international legal codification, from which derived the version diffused by their respective norm enforcers (Jose 2015). Consequently, while the general norms have long-held resonance on the ground, the interpretations of their prescriptions and parameters promoted by norm enforcers may not. This situation then creates conditions ripe for norm contestation.

That is why a middle-ground approach can be useful when studying these types of norms. The broad principles of these norms and the standards of appropriateness they contain have been stable and structuring over time and space. But the ambiguity contained in these broad principles causes norm-users to seek interpretive guidance in their local contexts and experiences to determine what compliance with the norm's general principles and logic of appropriateness entail. The contexts in which actors operate carry localized standards of appropriate action that may differ from those of norm enforcers operating in different contexts. Norm-users may, reflexively and unreflexively, draw upon these more localized guidelines over externally imposed ones because they resonate more deeply (Wiener 2008; Lewis 2012; Zwingel 2012; Zimmermann 2014).

## Interpretive Power and Norm Contestation

A norm contestation framework offers the opportunity to further enrich the important insights into how norms operate in the global arena provided by the extant norms literature by calling our attention to norm fluidity, actor agency, and the importance of local contexts. The norm contestation framework also sheds light on the other set of actors vital to a norm's operation, namely norm enforcers. In order

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<sup>9</sup>A discussion of permissible and impermissible civilian targets can be found in Chap. 3.

to understand normative departures, it is not enough to solely examine those who are accused of violating norms. It is also important that we understand the role of the accusers. A norm contestation framework affords us a glimpse into the role of power in a normative regime, concentrated in the hands of norm enforcers, and how such concentrated power may encourage norm contestation. Yet, an under-explored issue in norms research is how power impacts every facet of a norm's existence. From determining who successfully lobbies for new norms to providing the opportunities for norm emergence to enabling norm diffusion to defining what constitutes compliant behavior, power has a pervasive presence in the normative enterprise. It is "integral to the processes of social construction, determining what can and cannot be said — and, as a result, who can and cannot speak" (Krook and True 2012: 108; see also MacKenzie and Sesay 2012 and Reinold 2013).

The interaction of power and intersubjective agreement in legal norms is particularly interesting for the current study. It affects both treaties and customary international law (Brunnée and Toope 2010). As Ian Hurd (2016: 3) explains,

Differences in power and differences in interests, desires and opinions shape the legal institutions of society just as they shape other institutions, and international law is consequently inseparable from international power – though not *as the same thing as power* (emphasis in the original).

Norm enforcers have an enormous amount of influence in the game of legal norms. They decide the boundaries of a norm and when those boundaries have been violated. In other words, the rhetoric space in which these deliberations occur is rather exclusive; it is not an open or inclusive process (Wiener 2008).

This interpretive power is a type of productive power which "concerns discourse, the social processes and the systems of knowledge through which meaning is produced, fixed, lived, experienced, and transformed" (Barnett and Duvall 2005:55). Michael Barnett and Raymond Duvall (2005:57) note,

The gendered categories of "civilian" and "combatant" in international humanitarian law have real consequences for those on the ground, protecting some while putting others at the risk of death. Thus to attend to the analysis of productive power is to focus on how diffuse and contingent social processes produce particular kinds of subjects, fix meanings and categories, and create what is taken for granted and the ordinary of world politics.

Interpretive power is held by institutions like the UNSC and the ICRC and stems from a perceived sense of authority, namely cognitive authority, "the ability to endow material objects with lasting socially legitimate meanings" (Adler 2008: 203). Thus, while it is not derived from material sources, the power to determine what is appropriate action is consequential (Bower 2015: 353). It is why norm enforcers can remain relevant alongside materially more powerful actors in global politics.

In the case of the civilian immunity norm, it is fairly clear that the international community has conferred this authority to the ICRC. According to Article 5 of the Statutes of the International Red Cross and Red Crescent Movement (adopted by all states party to the Geneva Conventions), the ICRC's role regarding the laws of war is,

"to undertake the tasks incumbent upon it under the Geneva Conventions, to work for the faithful application of international humanitarian law applicable in armed conflicts and to take cognizance of any complaints based on alleged breaches of that law" (Article 5.2c),

and also “to work for the understanding and dissemination of knowledge of international humanitarian law applicable in armed conflicts and to prepare any development thereof” (Yandoz 1998).

For the non-intervention norm, it is the UNSC:

When states sign the UN Charter, they pledge not to use or threaten force “against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations.” The Charter delegates significant authority to the [UNSC] to decide whether particular uses of force meet these purposes (Voeten 2005: 529–530).

The source of such authority is the norm enforcer’s perceived neutrality and expertise (Barnett and Finnemore 2004:33–34). For example, with the ICRC,

its close ties to Switzerland – its location, the nationality of Committee members and senior staff, and frequent contacts with the Swiss Foreign Ministry – give it a profile unique among international organizations and NGOs; and the ICRC clearly benefits from Switzerland’s reputation of neutrality in international affairs” (Ratner 2011:464).

These dual bases for authority provide the norms which norm enforcers promote legitimacy (Hurd 1999: 400); specifically regarding the UNSC, “[g]iven its lack of enforcement capabilities, the SC’s leverage resides almost entirely in the perceived legitimacy its decisions grant to forceful actions” (Voeten 2005: 528). As such, there is an intimate relation between authority, power, and legitimacy (Ruggie 1982). Legitimacy in turn enhances compliance as it is, “the normative belief by an actor that a rule or institution ought to be obeyed” (Hurd 1999: 381). This sense of legitimacy also lays the foundation for intersubjective agreement. Even if actors may have independently interpreted a norm differently, a norm enforcer’s legitimacy helps an individual actor to accept its interpretation as authoritative, producing intersubjective agreement. A strong sense of legitimacy can induce compliance with the norm enforcer’s interpretation even in cases of intersubjective disagreement.

As such, actors situated in different contexts may not agree with a norm enforcer’s interpretation of the relevant norm. This disagreement may persist when the interpretive power of a norm enforcer is weakened. While the UN Charter vests the UNSC with interpretive power regarding the non-intervention norm, it has not discouraged actors from challenging this authority. They have challenged the UNSC’s power on the grounds that it is a biased actor. Some rebel groups have made similar accusations of the ICRC, accusing it of being a Western tool (Ratner 2011). The ICRC’s power is also weakened when it does not interact with belligerents, reducing its influence over them:

you know like they talk about the Red Cross and so on but where I was working I never saw the Red Cross. I never saw any, any organization there other than the fighting portions, our... personnel army only (Interview 09052500, Dukwi: 2009).

As Jacqueline Best (2012b: 679) points out, “[s]omething that undermines an organization’s claim to apolitical expertise can thus pose a challenge to its legitimacy.” This “something” (for example, the norm enforcer’s perceived identity as an



“outsider,” its selective determination of norm violation, or lack of engagement) can affect the norm enforcer’s interpretive power. Regardless of the reason for weakened interpretive power, it opens the space for contestation (intentional or unintentional) as the norm enforcer’s ability to push its normative interpretation is undermined. That is not to say that contestation is inevitable when norm enforcers’ power is weakened, but that is more likely to occur.

However, it is not always the case that challengers will secure support for their normative positions or that their challenges will have lasting effect. The UNSC’s confrontation with the United States before its war with Iraq illustrates this dynamic. The United States’ treatment of the UNSC before its war with Iraq and its attempt to legitimate the war absent UNSC approval was widely criticized (Dombrowski and Payne 2006:115). As Nicholas Wheeler and Justin Morris (2007) put it, “[in the eyes of the majority of international lawyers and UN member states], the circumvention of the Council’s authority over Iraq represented the flouting of the key principle of the post-1945 collective security system.” While the UNSC’s reputation did suffer during this period, it managed to subsequently recover some of its legitimacy and power (Binder and Heupel 2015). If norm enforcers are able to maintain the perception of their neutrality and expertise, they can preserve their interpretive power. When they cannot, they risk losing their power.

Preserving this authority and interpretive power is important because they enable norm enforcers to control what constitutes norm compliance and determine norm violation. This serves to reduce the occurrence of norm contestation and promotes uniformity in actor behavior. Norm contestation is more likely when this structure is challenged, which in turn can introduce unpredictability and instability within the concerned normative regime. Yet, these challenges can also strengthen the norm if they lead to intersubjective agreement (Wiener 2008).

Preserving this interpretive hierarchy also assists norm enforcers with enforcement by making their calls to change individual, subjective understandings or behavior, or their calls for assistance in addressing norm violations, more persuasive and credible (Donno 2010). As noted above, while norm enforcers may be flush with interpretive power, they do not necessarily possess the material power necessary for norm enforcement purposes. Yet, the power they do possess, and the authority and legitimacy that underpin it, enables them to tap into other actors’ material power if needed. As Renee de Nevers (2007:70) determines, “UN condemnation does indicate a broader acceptance that these [outsider] states had broken critical international rules and norms,” making it easier for a materially powerful country like the United States to address these violations. This interpretive power also directly influences the actions of perceived norm violators: “the ICRC’s infrastructure and the remarkable respect that even the murderous [Hutu] militias showed for its installations allowed it to save the lives of thousands of victims that had been wounded or, as Gaillard puts it, ‘not finished off’” (Lamp 2011: 257). Yet, when their neutrality and/or expertise are questioned, norm enforcers’ ability to acquire assistance to maintain or create intersubjective agreement and compel compliance is diminished.

What these issues suggest for the present case is that norm enforcers and norm users may not necessarily be equal members of a community of practice in which learning occurs, whether it is the ICRC and belligerents (the civilian immunity norm) or the UNSC and Russia (non-intervention norm). In this context, learning is a process in which “participation in and engagement with the meanings, identities, and language of communities of practice and their members” occur (Adler 2008: 201). Learning “requires not only the internalization of new knowledge by individuals but also the institutionalization of dispositions and expectations in and by means of practice” (Adler 2008: 201). For instance, NATO was unable to convince Middle Eastern countries to adopt its cooperative security practices because many “have no or little ground for identification and negotiating meanings with Westerners; thus no learning can take place” (Adler 2008:215). The findings in this book suggest that the differential in interpretive power enable norm enforcers to more effectively exercise their agency, and impose their interpretations, than norm users. This situation makes it difficult for meaningful learning to take place. Perhaps meaningful learning through Brunnée and Toope’s interactional law framework can help create intersubjective agreement within a norm, a matter taken up in the concluding chapter. Additionally, and importantly, these issues draw our attention not only to a norm’s meaning, but to normative behavior as well: what is considered norm compliance and norm violation depends on where one stands.

## Different Kinds of Contestation

The above discussion should not lead to the conclusion that all contestation is alike. Norms scholars have identified various forms of contestation. This book focuses on two: applicatory and justificatory contestation. Applicatory contestation is “contestation [which] regularly provokes specifications with regard to the type of situation to which a norm applies and how it needs to be applied” (Deitelhoff and Zimmerman 2013:5). Applicatory contestation centers on a norm’s prescriptions and parameters. This type of contestation does not challenge actors’ commitment to the norm, as would be the case with justificatory contestation where actors question why they should follow the norm at all and hence, question the norm’s validity (Deitelhoff and Zimmerman 2013:5). Rather, with applicatory contestation, contesters may dispute to whom a norm applies and when it applies while simultaneously affirming their general fealty to it. Thus, even while engaging in applicatory contestation, actors do not relinquish their obligation to execute the norm’s basic elements in good faith, even regarding social norms. That is, they still maintain a “mutual intent of faithful performance” (Van Alstine 2005: 1908) to not lethally target protected civilians or violate another state’s sovereignty outside of permitted exceptions. They just disagree on who is protected or what those exceptions to the non-intervention norm may be. In this way, norm contestation can produce normative content that is both constant and changing (Wiener 2008: 42; Bano 2015: 8).

## Predictions of Norm Diffusion, Materialist, and Norm Contestation Frameworks

To better illustrate how a norm contestation framework contributes to our understandings of how norms operate, this section discusses potential predictions that the norm diffusion, materialist, and norm contestation frameworks would provide for perceived norm inconsistent behavior. The norm diffusion framework might explain intentional attacks on protected civilians or Russia's intervention in Ukraine in a number of ways. First, it might suggest that the relevant norms had not been diffused to the norm users. This would be the case if the actors claim ignorance of the norm in question.

It would predict that a diffused and fully internalized norm would lead actors to conform with the logic of appropriateness for the issue area it governs. When actors contravene this logic for a diffused norm, the norm diffusion framework might suggest that the norm has been inadequately internalized. Evidence of adequate and inadequate internalization would manifest in the accounts actors offered of their behavior. On this issue, Shannon's typology of accounts is helpful. Accounts are explanations for "unanticipated or untoward behavior" (Shannon 2000:304). Shannon defines apologies as recognition of "fault for an inappropriate act, leading to a plea for forgiveness" (304). Thus, soldiers might admit to impermissibly killing protected civilians and accept punishment for it. Denials acknowledge "neither the untoward act nor responsibility for it, and is limited to actions about which nobody... finds out" (304). Russia might deny accusations it impermissibly violated Ukraine's sovereignty, which it actually did early on in the conflict. "Excuses attempt to mitigate or relieve responsibility for the conduct in question" (304). Soldiers may claim they were forced to intentionally kill protected civilians because they were human shields protecting a militarily significant target. Justifications involve acceptance of "responsibility for an act but deny the pejorative quality associated with it" (304).

Apologies indicate norm internalization and a willingness to accept the consequences of norm violation. Excuses also indicate norm internalization but an attempt to avoid punishment. Denials and justifications indicate inadequate norm internalization and an attempt to avoid punishment. Justifications differ from denials because they claim compliance with an alternative interpretation of the governing norm.

Insufficient norm internalization suggests that the logic of consequences influenced actor behavior rather than the logic of appropriateness. This is where the materialist framework shines. In these instances, actors pursue a course of action to further material interests. And as Shannon informs us, they may even deploy normative rhetoric to offset any potential penalties for intentionally violating a norm. As such, a materialist framework would expect actors to alter their behavior if it no longer furthers their material interests. This includes behavioral change but also rhetorical change. Belligerents may protect or kill civilians if doing so furthers their individual or group needs, or Russia may cease justifying its actions on humanitarian grounds if those claims of norm compliance fail to deter punitive action.

In both the norm diffusion and materialist frameworks, there lies an assumption of a single, authoritative interpretation of norm compliance advocated by the relevant norm enforcer. This hegemonic interpretation is used to judge actor behavior, and deviations are typically attributed to ignorance, insufficient internalization, or material interests. The exception is when actors deploy justifications, which hinge on a divergent interpretation of norm compliance. But as discussed earlier in this chapter, what differentiates justifications from norm contestation is that they are motivated by the logic of consequences whereas contestation is motivated by the logic of appropriateness. This is the reason why a materialist framework would expect Russia to abandon the humanitarian justification when it no longer furthers its material needs.

The norm contestation framework holds out the possibility that alternative interpretations of norm compliance, generated by norm ambiguity and norm enforcer's weakened power, might be responsible for the observed behavior. Furthermore, it suggests that actors will comply with these interpretations even when such behavior or rhetoric might negatively affect their material interests. Thus, soldiers may claim to take a protective posture when first encountering female civilians to comply with local gender norms, even if doing so might expose them to harm from ununiformed female soldiers. These claims and actions suggest these belligerents have internalized some version of the civilian immunity norm, albeit one which differs from the version espoused by some members of the ICRC. Russia would continue to contest the humanitarian exceptions to the non-intervention norm, despite the damage to its economy for its contestation.

Comparing these different predictions illuminates when norm contestation may helpfully contribute to our understandings of norms. Norm diffusion is helpful in situations where a norm has not been diffused. It can also be useful when a norm has been diffused but inadequately internalized. The materialist framework can be used in tandem with norm diffusion in such circumstances when it appears actors are guided by the logic of consequences. For those instances where actor behavior appears consistent with the logic of appropriateness, we can explore whether the norm contestation framework can elucidate. What is clear from this discussion is that both rhetoric and action help differentiate these different frameworks.

## Conclusion

This chapter argues that a norm contestation framework can deepen what we already know about norms. It does so by taking a different approach to studying norms than much of the dominant constructivist and materialist literatures. Rather than viewing norms as stable regulatory mechanisms embedded in the fabric of global politics, a norm contestation framework acknowledges the fluidity of normative content. Furthermore, instead of primarily investigating the behavioral responses to norms, a norm contestation framework also inquires into the meanings actors attach to them.

By acknowledging that norms are often ambiguous, and that this ambiguity spawns varied interpretations of norm compliance (manifesting in an absence of intersubjective agreement), a norm contestation framework reveals norms' dynamic nature. Add to the mix the influence of agency, local context, and power, and one quickly derives a more realistic appreciation of the complexity of norms, particularly their constitutive effects. While a norm contestation framework cannot explain all norm-related activities, it can offer insights unavailable with other explanatory frameworks. This study expands norm contestation's scholarly inventory by demonstrating that long-established norms can be contested for reasons other than the logic of consequences. This study also enhances our understanding of norms by investigating the intentional and unintentional contestation of both the parameters and prescriptions of deeply rooted norms in a common issue area, armed conflict. Specifically, Chaps. 3 and 4 illustrate the richness of a norm contestation account through explorations of the civilian immunity norm and the non-intervention norm, respectively.

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## Chapter 3

# Contestation in the Civilian Immunity Norm

*“The category of those who are involved in hostilities is so fluid and diverse... that it is perhaps not surprising that the international community has been unable to establish “bright line” rules in this area” (Boehland 2015: 9).*

### Introduction

Efforts to mitigate the harms of war-fighting have a long history in many societies around the world. A common element in these diverse protective efforts is the idea that those uninvolved in war should be shielded from its ill effects, an idea captured in the civilian immunity norm. One of the norm’s prescriptions,<sup>1</sup> the distinction principle, obligates belligerents to distinguish between permissible and impermissible targets and to refrain from intentionally targeting the latter group with lethal force. Civilians fall within this protected group. However, the civilian immunity norm is not absolute: custom and international law do permit soldiers to kill civilians who threaten them. Yet the norm directs actors to temper its exceptions with its primary goal of protecting the maximum number of civilians from the horrors of war.

The International Court of Justice cites the distinction principle as one of the “cardinal principles contained in texts constituting the fabric of [international] humanitarian law [IHL],” the body of law which regulates armed conflict. Yet in examining the long history of the civilian immunity norm and its exceptions, one discovers their critical concepts are riddled with ambiguity. This chapter argues that this ambiguity continues into the current period, leaving the norm devoid of inter-subjective agreement over its specific obligations, even while its general principles enjoy wide-ranging support. This chapter also argues that in this ambiguous environment, actors may rely on the logics of appropriateness, practicality, and contest-edness to help them determine their normative obligations, which in turn leads to contestation. It does so by first illustrating some of the ambiguity contained in efforts to limit warfare and the exceptions to those limitations. It continues by noting that despite this normative ambiguity, much of the mainstream constructivist

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<sup>1</sup>As discussed in the previous chapter, prescriptions are “the part of the norm informing actors within an identity what to do (or what not to do)” (Shannon 2000: 295).

literature has paid insufficient attention to it when explaining intentional civilian deaths. The chapter then illustrates how the norm contestation framework can helpfully be used to understand departures from expected behavior under the civilian immunity norm. Following this discussion, it then explores lacking intersubjective agreement and contestation as illustrated in narratives collected from belligerents and IHL experts, including legal advisors from the International Committee for the Red Cross (ICRC), the norm enforcers in this case. It does so by demonstrating how the logic of consequences cannot fully account for some of the rationales provided by belligerent respondents. Instead, the logic of appropriateness combined with the logic of contestedness and the logic of practicality provides a richer understanding of belligerent justifications which seemingly are not compelled by materialist motivations.

## Civilian Immunity Norm Prior to IHL Codification

Norms protecting people in war have a long history in diverse martial traditions. For example, in the pre-Christian era, Celtic tribes forbade the killing of poets to ensure a record of the battles fought (McKeogh 2002). In 300 B.C.E. belligerents in India were instructed to spare those who laid down their arms (Van der Wolf and Van der Wolf 2004: 10). Honore Bouvet, prior of a Benedictine monastery and trained in canon law pleaded,

Valiant men and wise, however, who follow arms should take pains, so far as they can, not to bear hard on simple and innocent folk, but only on those who make and continue war, and flee peace (Allmand 1999: 268).

Michael Walzer, a noted scholar on the laws of war, confirms the long-standing and universal importance of the distinction principle,

the tendency [is] to set certain classes of people outside the permissible range of warfare, so that the killing of any of their members is not a legitimate act of war but a crime. Though their details vary from place to place, these rules point toward the general conception of war as a combat between combatants, a conception that turns up again and again in anthropological and historical accounts (1977: 42).

In 1929 the ICRC began using the term “civilian” to denote those categories of noncombatants who received protective status (Slim 2008: 19).

Many areas of these disparate protective regimes overlapped. Yet, they also differed in significant ways, particularly regarding exceptions to the civilian immunity norm. Additionally, the norm’s prescriptions never stayed constant within these traditions. Even if they were written down, they were prone to varying interpretations. As those who held the power of interpretation changed, so did the meaning of these vague normative elements. Furthermore, these normative understandings oscillated based on conflict dynamics, shifting global patterns, and interests. Consider the issue of gender in early African rules of war. These rules were more lax on the targeting of adult males because many gender norms equated maleness with belligerency. Yet, these rules were modified as the slave trade changed its focus to North and

South America (Bello 1980). Slave owners there preferred male slaves over female slaves because they were more likely to survive the torturous trans-Atlantic journey. Around the same time, some battlefield practices evolved so that men, who previously were more likely to be killed than women because of their assumed belligerency, were increasingly captured alive to be sold in the slave markets. In this way, materialist interests sometimes influenced the distinction principle's conceptualization of permissible and impermissible targets.

However, non-materialist motivations also impacted the distinction principle. Killing civilians on ideational grounds who could have provided the forced labor many societies depended on serves as an example. During the Crusades, Christian soldiers killed many Muslim civilians for religious reasons. A similar dynamic played out with Islamic war norms. The prophet Mohammed instructed his soldiers to “never commit breach of trust nor treachery nor mutilate anybody nor kill any minor or woman” (Bennounne 1993–1994: 624). While some Islamic scholars argued this meant that all women should be spared, others advocated that polytheistic women could be considered permissible targets while women of the Book (Jews and Christians) were not (Kelsay 2003:201).

The differences within and between norms of war emerged partially because those norms were vague. And as a consequence of these variations, a clash between armies could mean a clash between divergent normative understandings. While one tradition may sanction the killing of a particular individual, another may require her protection. For many armies and governments, this situation was unacceptable as it made their soldiers and civilians susceptible to unequal treatment and death. In response, the global community embarked on an effort to codify a single body of law that regulated armed conflict around the world.

## Civilian Immunity Norm After IHL Codification

The nineteenth century marked an era of intense IHL codification. Many jurists, activists, and political leaders felt that ambiguity in customary international law contributed to the atrocities that occurred during wartime (Kalshoven 1987: 7). They argued that to minimize this ambiguity, laws needed to be written down in treaty form, with states publicly acknowledging their commitment to them (Kalshoven 1987: 7). Furthermore, they posited that codifying IHL would also allow fighters to operate under a common framework rather than the differing rules that circulated at the time. In other words, codifying the civilian immunity norm would enhance its robustness.

The ICRC was at the forefront of this codification effort. The ICRC organized the diplomatic conferences that would later produce the first Geneva Conventions in 1864. It took it upon itself to identify gaps in IHL and initiate efforts to address these gaps. As a result of its steadfast commitment to the development of IHL, along with its reputation as a credible and neutral actor with extensive networks, the international community designated it as IHL's guardian (Provost 2007: 642–643) and enforcer of *jus in bello* norms.

Consistent with its role as a norm enforcer, the ICRC convened a diplomatic conference on April 21, 1949 to address the massive number of atrocities committed during World War II (Bugnion 2003: 314). Two hundred seventy-seven delegates representing 59 countries attended. The conference led to the 1949 Geneva Conventions that recognized civilians as a distinct category under IHL with rights and obligations (Nabulsi 2001; Gregory 2006; Slaughter and White 2002). It defined civilians in the following way:

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria (Common Article 3 of the Geneva Conventions).

Distinction now centered on whether a person actively participated in hostilities. If she did not, the civilian immunity norm protected her. If she did, she could be killed. These Geneva Conventions would also expand the jurisdictional reach of IHL to non-international conflicts.

Groundbreaking as the 1949 Geneva Conventions may have been, they still left many elements of the civilian immunity norm ambiguous (Hayashi 2005:108). For example, Common Article 3 did not offer further guidance as to how to interpret the pivotal phrase, "active part in hostilities." Early attempts to give it more concrete meaning reflected global political dynamics. For instance, the victors of World War II dominated many of these interpretive efforts (Best 1994: 115). Consequently, interpretive guidance on the distinction principle focused on civilian treatment under enemy occupation and enemy detainment, rather than the civilian experience of aerial bombardment (Best 1994: 115). This is despite the fact that many decried the bombardment of enemy population centers to break morale as impermissible targeting (Best 1980: 264–265).

Global events continued to influence the interpretation of the distinction principle in codified IHL. As a result of the tremendous loss of life during the Vietnam War, as well as liberation struggles that began after World War II, the ICRC recognized the need to revisit the laws of war (Hayashi 2005: 112). Consequently, in 1968 the ICRC commenced a new effort to reaffirm the distinction principle (Wilson 1988). This desired reaffirmation possessed particular importance to the ICRC since the community of states had expanded significantly in the post-1949 Geneva Conventions era (Greenwood 1999). The ICRC wanted to ensure these new states bound themselves to IHL (Greenwood 1999: 6). Furthermore, atrocities committed during the wars that erupted after World War II cast doubt on whether the civilian immunity norm had teeth. In response, the ICRC initiated efforts to create new IHL treaties that focused more heavily on civilians in armed conflict.

The Additional Protocols of 1977 (APs) were a product of such activities. The rather unprecedented number of countries present during this convention allowed a wider presentation of, and debate over, the constitution of the permissible and impermissible target categories.<sup>2</sup> Yet disagreements over the purposes and the means for achieving those purposes produced a treaty, which according to Cassese,

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<sup>2</sup>For example, AP I included an article addressing mercenaries, a recurring issue in post-colonial wars. For further discussion of this issue, see Viljoen 2001.

... is replete with general or ambiguous clauses designed to please both the States hostile to the development of international legislation on the matter and those which desired to create an international instrument of considerable substance (Cassese 1981: 418).

Thus, as Chap. 2 noted, codified law is not necessarily less ambiguous than uncoded norms.

As stated earlier, the primary purpose of the APs was to reaffirm the applicability of the distinction principle in all conflicts (Greenwood 1991) and is encapsulated in Article 48, AP I:

the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives (Article 48, Additional Protocol I of 1977).

Article 50.1, AP I defines a civilian for the first time in codified IHL as “any person who does not belong to one of the categories of persons referred to in Article 4A (1), (2), (3), and (6) of the Third Convention and in Article 43 of this Protocol” (Article 50.1, Additional Protocol I). According to Article 51, §3, AP I civilians lose the protections afforded by the civilian immunity norm “unless and for such time as they take a direct part in hostilities.”

AP II, which applies to both state and non-state armed forces in non-interstate armed conflicts, is much less developed than AP I (Gasser 1991). While using the term “civilian,” AP II does not offer a definition of it. For instance, Article 13(2) states that “the civilian population as such, as well as individual civilians, shall not be the object of attack,” but does not define who is considered a civilian. Neither is there a definition of combatant. Consequently, AP II fails to clearly lay out the core elements of the distinction principle. It does echo the distinction principle as expressed in AP I; Article 13, AP II mirrors Article 51, §3, AP I by stating civilians lose immunity from attack for “such time as they take a direct part in hostilities.” However, the less developed nature of AP II led Fritz Kalshoven to conclude that, “provisions on the protection of the civilian population... hang somewhat in the air” (1987: 143).

This brief overview illustrates that while actors maintained a steadfast commitment to the civilian immunity norm, the depth of that commitment and interpretations of normative obligations oscillated significantly. As wartime practices shifted, so did understandings of the norm. Furthermore, the composition of the society of states also affected interpretations of the norm. Not even the ICRC maintained a consistent normative interpretation. Ambiguity fueled these various understandings and developments in IHL. The ICRC attempted to clarify the norm, to no avail. With each new treaty, either old ambiguities remained or new ones emerged. This in turn contributed to contrasting ideas of who could be targeted and who must be protected during a war. The resultant lack of intersubjective agreement not only occurred within the norm, but was also the case with its exceptions. As the next discussion reveals, ambiguity in the norm’s exceptions spurred intersubjective disagreement over which civilians the norm did not protect.

## A Historical Overview of the Norm's Exceptions: Targetable Civilians

As this chapter already alluded to, as long as is the history of the civilian immunity norm in offering protections to civilians, so is the case for the exceptions to those protections. For instance, in its early days in Europe, the Catholic Church obligated soldiers to comply with the civilian immunity norm when they confronted Christian civilians. It released them from this obligation when they traveled to the Middle East during the Crusades. Christian soldiers were permitted to kill Muslim civilians they encountered without penalty (Johnson 1997: 106).

Later, Francisco de Vitoria tried to secularize the norm's exceptions by arguing that only those bearing arms could be killed because they are "obviously dangerous" (Hartigan 1983: 84). For Vitoria, a civilian's religious affiliation should not determine whether she lived or died. Vitoria may have been influenced by the battlefield behavior of knights who complied with chivalric codes. When determining who these knights could permissibly kill, chivalric codes focused on an opponent's capability to fight a knight (Johnson 2000: 429). These codes compelled knights to spar with only those trained in the art of warfare or those physically able to fight (Johnson 2000: 429). While at first blush it may appear this distinction method was act-based, it was, in fact, also identity-based. First, there was a gendered element to these codes as knights only assessed whether male civilians possessed adequate fighting ability. Chivalric codes offered immunity to women, children, the injured, and the elderly (Johnson 2000: 429). Second, these protections only applied to Christians (Johnson 1997: 107). Vitoria tried to extend these protections to non-Christians in order to minimize the number of people killed during the wars of that period. However, Vitoria's appeal only had limited effect at the time. Consequently, both religious and non-religious distinction methods co-existed in Christendom.

While the act-based distinction methods enabled individual determinations of which Christians could be killed, the French Revolution legitimized large-scale attacks against Christian populations as a result of the *levee en masse* which took place during that conflict. *Levee en masse* describes situations in which large segments of a population participate in conflict, making it difficult to distinguish between belligerents from organized groups and civilians who spontaneously joined the fight (Horne 2002: 484). In that conflict, armed groups argued that those disloyal to the sovereign could be attacked (Hartigan 1983: 108), effectively broadening the category of permissible civilian targets.

The civilian immunity norm continued to permit civilian targeting after its codification. For instance, the 1907 Hague Convention and its predecessors limited the application of the norm to conflicts fought in Europe. Legal scholar John Westlake articulated prevailing views for how colonial wars should be fought: "savages of half-civilized tribes' should be treated quite differently in combat" (Kinsella 2005: 180). During the World Wars, scholars, military leaders, and policy-makers argued to broaden the norm's exceptions such that civilian workers in military

installations and even voters in democracies could be permissibly targeted (Hayashi 2005: 110). William Ford explains:

Hardly a century ago war was a matter involving but small numbers of people. The situation changed when national consciousness and democracy began to develop... Sir Winston Churchill said, 'When democracy forced itself upon the battlefield, war ceased to be a gentlemen's game.' (Quoted in Nabulsi 2001: 11).

The Additional Protocols (APs) retained the Geneva Conventions' stipulation that civilians could be killed under certain circumstances. According to the APs, once a civilian takes a "direct part in hostilities," she forfeits the protections of the civilian immunity norm and can be subject to direct, intentional and lethal attack. Only civilians who do not directly participate in hostilities are immune from such attacks. As such, there are essentially two levels of distinction in the APs: a distinction between civilians and combatants (of which the latter can be targeted at any-time unless rendered *hors de combat*), and between civilians who directly participate in hostilities and civilians who do not directly participate in hostilities.

## Ambiguity

If the purpose of IHL codification was to reduce ambiguity and generate intersubjective agreement on the norm's prescriptions, the end product fell far from its mark, even while actors continued to pledge their fidelity to the norm generally. For instance, A.P.V. Rogers found that military air planners during World War II,

would not have found a list of legitimate targets or a definition of the distinction between combatant and non-combatant; at best, they 'would have found considerable disagreement and confusion among scholars' (Rogers 2004: 12–13).

The Geneva Conventions' and their APs' DPH standard did not improve matters. The Israeli Supreme Court stated in its landmark decision in *The Public Committee against Torture v. The Government of Israel*,

...it seems to the Court that according to the international literature, there is no customary agreed-upon definition of the term "direct" in the context under discussion. Hence, it reaches the conclusion that 'there is no escaping going case-by-case, while narrowing the area of disagreement' (Even-Khen 2007:22).

Norm ambiguity was so considerable that the ICRC initiated a multi-year investigation into how best to clarify this critical phrase.<sup>3</sup> The result of this investigation is the 2009 *Interpretive Guidance on Direct Participation in Hostilities under International Humanitarian Law* (Guidance). Yet, despite this laudable effort, the Guidance did not, and does not, eradicate the ambiguity in the norm's exceptions. Those who participated in the ICRC workshops could not agree on who constituted a permissible civilian target. The contentious nature of the expert meetings led some scholars to conclude,

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<sup>3</sup>For more information about this endeavor, please visit <http://www.icrc.org/Web/eng/siteeng0.nsf/html/participation-hostilities-ihl-311205>

To some extent, the process ended in failure. The experts were unable to agree on several key issues though there was a considerable degree of common ground... Nevertheless, the ICRC, encouraged by the amount of agreement there was, decided to publish their own 'Interpretative Guidance' based on the process. As Section 1 states, the Guidance 'is widely informed by the discussions held during these expert meetings but does not necessarily reflect a unanimous view or majority opinion of the experts. The ICRC have therefore expressed their own views 'informed by' but not necessarily reflective of the views of the experts. This is an important factor to bear in mind when considering the Guidance (Garraway 2010: 505).

That the ICRC decided to publish the Interpretive Guidance, despite the discord, was an exercise of its interpretive power.

"Direct participation in hostilities" is not the only ambiguous language in the Additional Protocols handicapping intersubjective agreement in the distinction principle. There is also much uncertainty as to what "unless and for such time" means in API (Kalshoven 1987: 91). The Commentaries to the APs state that loss of immunity is confined to this time period. However, even if actors agreed upon an interpretation of direct participation, international law is unclear on how to determine the start and end time for a civilian's loss of immunity. The APs' Commentaries advise that participation is not limited to the actual attack, but also includes the period involving the preparation or return from attack. However, they offer no further instruction as to what acts fall under the umbrella of preparation. For instance, would "unless and for such time" extend to the entire period of membership in a terrorist group, inclusive of rest periods between acts of preparation for an attack, or just the period of actual implementation of the attack (Fenrick 2007: 336–337)? Many argue that this phrase gives rise to the "revolving door" problem whereby a civilian who directly participates in hostilities through the use of a weapon can reclaim his or her immunity simply by dropping it (Queguiner 2003).

The above discussion pertains to ambiguity in the codified norm. The situation with uncoded versions of the norm, those circulating in local contexts, is also replete with missing intersubjective agreement. Civilians themselves varyingly conceptualize who is protected and unprotected in war. The Center for Civilians in Conflict (CIVIC), an NGO that advocates on behalf of civilians in conflict, interviewed civilians who experienced conflict in Bosnia, Libya, Gaza, and Somalia about the ways in which civilians participate in armed conflict. It found that,

for people who have lived through conflict, there is no fixed, universal definition of the 'civilian.' Instead, interviewees offered many different interpretations of what it means to be a civilian, and these interpretations varied by conflict and interviewee (Boehland 2015: 25).

Civilians in this study differed on which acts crossed the line between involvement and non-involvement in a conflict. As the discussion below reveals, some belligerents also confront a similar situation in which intersubjective disagreement permeates an environment in which uncoded norms circulate. Thus, as Chap. 2 noted, lower levels of ambiguity do not necessarily differentiate legal norms from social norms.



The ambiguity tied to uncodified versions of norm contributes to their own areas of intersubjective disagreement. One area centers on questions of guilt and innocence. Anthony Hartle explains:

In most cases people who are not engaged in or guilty of morally or legally indefensible activities would satisfy the condition of innocence. That condition would cover most people in the category we frequently use when we refer to noncombatants (2002: 974).

In some conflicts, these guilt/innocence determinations overlap with monist classifications. That is, civilians possessing particular identities were considered “guilty” and permissible targets (Fenrick 2007). These reductionist classifications include gender, age, religion, and ethnicity, among others. Laura Sjöberg explains how gender interacts with this guilt/innocence version of the distinction principle: gender “requires men to be combatants and women to be passive victims” (2006: 895). The interaction between ethnicity/religion and the guilt/innocence binary also helps explain the deliberate killing of Muslim civilians in Bosnia; the deliberate killing of Hema, Lendu, and Ngitu civilians in the Democratic Republic of Congo; and the deliberate killing of civilians during genocides that often occur during armed conflict.

Another area of intersubjective disagreement revolves around which specific acts render a civilian a permissible target. These acts vary considerably and include acts in which the link between the civilian’s actions and the harm posed to the belligerent are short and those with more extended links. In addition to the acts already mentioned, in more recent conflicts they include: voluntarily acting as a human shield (Schmitt 2005); taking up arms (Kaufman 2003); gathering intelligence (McDonald 2004); working on a military base during armed conflict on “mission-essential” tasks (Schmitt 1999); and approaching a military checkpoint in a fast moving vehicle (Carter 2003; Kahl 2007).

The above discussion reveals how local context helps shape how actors interpret the codified and uncodified versions of ambiguous norms. And since local context differs from one conflict to the next, normative interpretations of a commonly accepted norm differ accordingly. For instance, CIVIC found that,

civilians have many different interpretations of what it means to be a civilian, and these interpretations are informed by various, often local frameworks, including clan law, religious law, and international humanitarian law (Boehland 2015: 30).

Local context, in the form of conflict characteristics, also influences normative interpretations. How a war is waged and who participates in that war influence how actors interpret the civilian immunity norm. For example, the United States effectively classifies all military age men as legitimate targets in its war with al Qaeda “unless there is explicit intelligence posthumously proving them innocent” (Becker and Shane 2012). The reason for this classification is because,

people in an area of known terrorist activity, or found with a top Qaeda operative, are probably up to no good. “Al Qaeda is an insular, paranoid organization — innocent neighbors don’t hitchhike rides in the back of trucks headed for the border with guns and bombs”... (Becker and Shane 2012).

In this case, specific attributes of the conflict and its belligerents (related to sex, age, and location) affect this particular conceptualization of the norm's exceptions. In this way, ambiguous norms enable both structure (the nature of armed conflict and background information) and agency (belligerents' determinations of their normative obligations) to affect intersubjective agreement.

Furthermore, since the interpretive endeavor is a subjective one, multiple understandings of an ambiguous norm can co-occur in the same conflict, producing another source of intersubjective disagreement. For some belligerents with experience fighting child soldiers, the sway of the logic of practicality and local norms urging the protection of children may be less powerful than for other belligerents with similar experiences who may be more hesitant to kill children who appear threatening. This is the case even for belligerents fighting for the same armed group.

Yet despite the possibility that norm ambiguity and lacking intersubjective agreement may have a hand in behavioral variation, this interplay has received less attention in scholarly analyses than other explanatory frameworks. This is so despite the widespread acknowledgement that the civilian immunity norm's prescriptions are ambiguous. This is the case even for the norm enforcer. The ICRC has publicly acknowledged how ambiguous the norm is, rationalizing its 2009 Workshops:

In examining the notion of direct participation in hostilities the ICRC not only had to face longstanding dilemmas that had surrounded its practical application. . . . but also had to grapple with more recent trends that further underlined the need for clarity (Kellenberger 2009: 5).

Yet, in attempting to reduce civilian casualties, it has concentrated its efforts on intentional violations of the norm, implicitly assuming intersubjective agreement:

While ICRC delegates are certainly of the opinion that the distinction is often less than clear-cut, they believe that violations of IHL are more often the result of a deliberate intention to attack the civilian population rather than of any objective difficulty in distinguishing the one from the other (Munoz-Rojas and Fresard 2005: 13).

This matter is discussed in further detail in the following section.

## Materialist Reasons for Norm Violation

Many studies focusing specifically on the civilian immunity norm attribute associated behavioral variation to motivations consistent with the logic of consequences.<sup>4</sup> One such reason for violations of the distinction principle is belligerents' attempts to undermine opponents' sources of support (Humphreys and Weinstein 2006). Benjamin Valentino, et al., posit that government forces intentionally kill civilian backers of popularly supported guerillas insurgencies on a massive scale in order to eliminate this vital resource (Valentino et al. 2004). Stathis Kalyvas (1999) found

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<sup>4</sup>For example, see Schneider et al. 2012; Wood and Kathman 2014; Chesterman 2001; Jones 2004; Humphreys and Weinstein 2006; Kalyvas 1999; Pape 2003; Weinstein 2007; Azam and Hoeffler 2002; Boyle 2009; and Wood and Kathman 2014.

that similar motivations drove Islamist guerilla groups to target civilians in Algeria during the 1990s.

Another manner in which the logic of consequences has been implicated in civilian deaths is with attempts to more quickly end hostilities. Alexander B. Downes argues that the susceptibility of democratic institutions and leaders to public opinion makes them prone to targeting civilians to quicken the termination of hostilities. This is done in order to prevent heavy losses of their own troops in armed conflict (Downes 2006). This was also the reason for France's targeting of Algerian civilians during its conflict with Algeria (Nielsen 1981).

Finally, civilians are intentionally targeted as a means of securing credibility (Azam and Hoeffler 2002). According to rebel fighters in Sierra Leone, deliberately targeting civilians is "the best way to be taken seriously" by the UN and other (wealthy) international agencies willing to contribute resources to ending such practices" (Ferme and Hoffman 2004: 89).

While these studies have made great strides in our understanding of norm-related behavior, they share in common the assumption of intersubjective agreement on permissible civilian targets. Many of these studies do not question whether a relationship exists between a lack of consensus on who is a permissible civilian target and impermissible civilian targeting. This is the case even though these studies examined perceived norm violations against the backdrop of norm ambiguity. For example, Valentino et al. (2004) utilize their own understanding of "noncombatant" in their exploration of the relationship between resource extraction and intentional civilian deaths. They define a noncombatant as "any unarmed person who is not a member of a professional or guerilla military group and who does not actively participate in hostilities by intending to cause physical harm to enemy personnel or property" (Valentino et al. 2004, 378–379). This is the definition of civilian as understood by the authors; how belligerents define the term and how their understanding of it might result in impermissible civilian targeting is not addressed. Downes articulates his bewilderment that "civilian victimization" occurs despite the fact that global public opinion condemns such practices and the widespread belief that doing so is ineffective (Downes 2006: 156). Rather than exploring whether the lack of intersubjective agreement on civilian targeting is a factor, he attributes a state's desperation to win protracted conflicts and territorial ambitions as explanations for civilian victimization. This is despite the fact that Downes appreciates that vague conceptualizations make distinguishing between civilians and combatants difficult (Downes 2006: 157).

## **Norm Contestation, Logic of Appropriateness, Logic of Practicality, and Logic of Contestedness**

Indeed, materialist motivations serve as extremely powerful explanatory tools in understanding norm non-compliance. It is no wonder scholars and policy-makers rely heavily on them. However, other explanatory frameworks can enhance our understanding of normative behavior, particularly when the norm in question is

riddled with ambiguity. In such instances, a norm contestation framework, built upon the logics of appropriateness, contestedness, and practicality can be useful.

As discussed above, the ambiguity contained in the civilian immunity norm, in its codified and uncoded forms, and its exceptions makes determining what constitutes norm compliant behavior difficult. These ambiguities encourage individual actors to self-determine norm compliance. These actors include those committed to norm compliance, even if compliance may undermine certain material interests, as long as ideational commitments are satisfied. In other words, the logic of consequences may not help us understand actor behavior in these instances. Instead, if the logic of practicality dictates norm compliance, actors rely on the logic of contestedness to determine what the logic of appropriateness requires. The logic of contestedness directs actors to look to their local contexts, and the historical experiences embedded in them, to help them navigate norm ambiguity and uncover their ideational preferences. There may be significant variation within these contexts so that actors operating in different conditions may derive divergent interpretations of how to implement the distinction principle. Adler Emanuel (1997: 347) critiques constructivist research for inadequately showing “how enemies and military threats are socially constructed by both material and social facts.” These social constructions become c interpretations of the distinction principle they espouse, as seen below. It is through these interrogations that we discover the norm’s contested quality.

Yet, unlike the non-intervention norm, the discussion below reveals that contestation in this case study is indirect or unintentional. Belligerents and IHL experts are not in direct dialogue with each other. Many of the belligerents interviewed for this study did not interact with the ICRC nor had they received any of its resources on IHL. Yet, the absence of interaction does not negate the norm’s lack of intersubjective agreement and that the logic of appropriateness can guide actor behavior, elements included the conceptualization of contestation as discussed in Chaps. 1 and 2.

## **IHL Experts**

IHL experts interviewed in this study almost unanimously stated that the method for distinguishing between permissible and impermissible civilians targets hinged on direct participation in hostilities (DPH): civilians who engaged in DPH were permissible targets. Unsurprisingly, there was no justificatory contestation within this respondent group: they agreed that the civilian immunity applied in armed conflict. They even seemed to rhetorically agree that the APs’ version of the distinction principle (the DPH standard) held. However, this agreement dissipated when respondents were asked what specific acts constitute DPH. In other words, they disagreed on which acts caused a civilian to lose his or her immunity. Consider the act of bomb making. Some IHL experts thought the entire process of bomb making should be considered DPH, while several others disagreed. Those who disagreed felt there

is not a direct enough connection between the act of bomb making, particularly the early stages of the process, and the harm caused by the bomb to meet the DPH standard as set out by the Guidance:

For a specific act to qualify as ‘direct’ rather than ‘indirect’ participation in hostilities there must be a sufficiently close causal relation between the act and the resulting harm... direct causation should be understood as meaning that the harm in question must be brought about in one causal step. Therefore, individual conduct that merely builds up or maintains the capacity of a party to harm its adversary, or which otherwise only indirectly causes harm, is excluded from the concept of direct participation in hostilities (Melzer 2009: 52-53).

Instead, these respondents felt that the act of placing the bomb in its detonation site would satisfy the direct link element for the DPH standard, making a civilian targetable.

IHL experts not only disagreed on which acts constitute DPH, they also could not agree on how certain categories of people should be viewed for distinction purposes. Children serve as a prime example. Not only could respondents not agree on a common definition of a child, they could not agree on how children should be treated in war. Some respondents suggested that all children should be immune from intentional lethal attacks. This point is noteworthy because IHL allows fighters to use lethal force against child soldiers. That this issue came up is significant because the Guidance and IHL assert that it is the commission of specific acts which cause a civilian to lose normative protections. It suggests that respondents do not exclusively rely on a distinction principle based on a civilian’s actions. Instead, by questioning whether all children should be protected, respondents were essentially also employing identity-based criteria to determine who received normative protections. This observation illustrates another dimension to the lack of intersubjective agreement among IHL experts on who is considered a permissible civilian target during armed conflict: disagreement on whether the distinction principle should center on act-based or actor-based criteria.

The lack of agreement is not lost upon these respondents. Several respondents I spoke to readily admitted that the legal, military, and humanitarian practitioner communities disagree on DPH’s prescriptions, particularly as they are articulated in the Guidance. According to one respondent, these disagreements appeared in the associated workshops as well (Author Interview, Geneva: November 2009). According to this respondent, state representatives wanted to leave the concept of DPH vague; they had an interest in keeping “the definition from being too precise” (Author Interview, Geneva: November 2009). Another IHL respondent corroborated this sentiment: “the military does not think [the Guidance directives] are wide enough and the NGOs think it’s too wide” (Author Interview, Geneva: November 2009). Another respondent offered more specificity: it was the invited air force representatives who particularly lobbied for a wide interpretation of DPH while the army representatives were content with a more restrictive interpretation (Author Interview, Geneva: November 2009).

What these interviews reveal is that IHL respondents rhetorically support the codified civilian immunity norm and a particular interpretation of how to

conceptualize it (the DPH standard). However, the consensus dissipates when these respondents had to specify which acts constitute DPH. While IHL respondents did agree that some acts rendered a civilian targetable, they also disagreed on whether other acts had the same effect. They expressed this disagreement not only to me, but during the ICRC workshops organized to clarify the distinction principle. This disagreement serves as one indicator of the lack of intersubjective agreement on permissible civilian targets and as an indicator of the influence of the logic of practicality and the logic of contestedness. Furthermore, while the Guidance declares that the distinction principle should be based on act-based criteria, respondents also indicated that categorical immunity should be available to actors with a particular identity (children). As such, not only were respondents lacking consensus on which acts would render a civilian a permissible target, but whether a civilian's identity should matter as well and if it should, how it should matter.

## Former Belligerents

Much like the IHL respondents, nearly all the former belligerents I interviewed acknowledged the obligation to distinguish between permissible and impermissible civilian targets.<sup>5</sup> For instance, none of the respondents spoke of total war; they claimed to make an effort to be selective about which civilians they targeted. Thus, they were aware of, and acknowledged, the civilian immunity norm's obligations. This would be unexpected in norm diffusion explanations for norm deviations that claim unexpected normative behavior is due to absent or ineffective dissemination. This finding corroborates a statement made by an IHL respondent who worked with rebel groups: "I never met anyone who said all is fair in war" (Author Interview, Geneva: November 2009). Consequently, it appears that respondents subscribed to the civilian immunity norm and its application in armed conflict. In other words, respondents did not engage in justificatory contestation. In terms of how respondents determined their targets, they proffered myriad methods of distinction, both actor-based and act-based, which were informed by local contexts and background information. The discussion here focuses on how age, gender, and notions of threat factored into the distinction methods articulated by belligerent respondents.

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<sup>5</sup>There is a vast literature exploring norm violations due to actors' unawareness of their normative obligations (for example, see Acharya 2004; Hooghe 2005; Kollman 2007). However, the norm diffusion framework is not examined in more detail here because ignorance of the obligation to distinguish between permissible and impermissible civilian targets did not play a significant role in belligerent narratives considered in this paper.

## *Age*

Localized ideas about age played a role in belligerent articulations of the civilian immunity norm. For example, elders residing in villages known to support an armed group's opponents were targeted because they had valuable information:

Usually they are targets [of the Movimento Popular de Libertação de Angola or MPLA] because they work together to control that village and to have some other important information (Interview 09060801, Dukwi: 2009).

Another respondent indicated that UNITA (União Nacional para a Independência Total de Angola) fighters also targeted older civilians because they possessed information that could be important or dangerous to it:

Interviewer: Were [UNITA fighters] ever concerned about spies or informers in the villages?

Respondent: ...those things did not happen with the young ones. It used to happen with grown up people.

Interviewer: The older people would be spies?

Respondent: Yes.

Interviewer: Why were the older people more likely to be spies than the younger people?

Respondent: When they were still there, young ones were not given secretive information or private information about the war or politics which the adults know. So most of the information were with the grown up people.

Interviewer: Why would they not give that information to the younger people? Were they not trusted?

Respondent: With the young ones, in that kind of environment, war, they are considered to not have much experience in life. So they are less likely to receive information. They are not clever enough. They can't keep that information to themselves (Interview 09060400, Dukwi: 2009).

The perception of elders as valuable or potentially harmful was also the reason why they might be offered special protection:

...any information communicated to the community comes through the chief. The chief tells the community what is happening, what are the plans of the government. He is even told some secrets which he cannot tell the village. That may be at a certain point of time it can be released, maybe to a few people or some. So he will be keeping some secrets. Now, [the UNITA fighters] will make sure that they save him, so that those secrets are not revealed to their enemies. They protect the information (Interview 09060400, Dukwi: 2009).

These excerpts suggest that respondents assumed elderly civilians held an important place in society. This assumption formed the basis both for the articulated explanations for targeting decisions and protective behavior. In other words, respondents expressed a particularized understanding of the civilian immunity norm and its exceptions which reflected the circumstances in which they fought.

## *Gender*

Local gender norms also seemed to influence respondent conceptions of the distinction principle. These gender norms not only influenced who respondents claimed would be targeted but also who would be protected. For instance, a respondent who fought for the army acknowledged that soldiers would inquire about the whereabouts of both young men and women because women also fought for rebel groups during Zimbabwe's civil war:

Interviewer: When the Rhodesian army came to the village and asks, where are your sons, would they only ask about the sons, or they asked about the daughters as well?

Respondent: They used to ask both women and men because also women were going for some training (Interview 0906110, Dukwi: 2009).

The following exchange provides another example:

Interviewer: Do [UNITA fighters] only examine men for these [physical wounds from fighting]?<sup>6</sup> Would they examine women and children as well?

Respondent: ...UNITA side also, they will look at women and children, the way she walks, the cleverness, they way someone looks. They will tell that, 'Look, this is not just the cleverness of a civilian.' The way this person behaves, she knows something, she is not a civilian. They will tell, they will know (Interview 09062402, Dukwi: 2009).

While a gender-neutral sense of belligerency compelled some fighters to inquire about and scrutinize both men and women, gender norms seemed to influence how respondents identified soldiers:

Respondent: ...it was not very easy to identify a woman [fighter] but there was one thing which was common. You see, during our African culture and tradition, during that time, women were not recommended, were not even allowed, to wear some trousers. But those who were from training, you could see them that this one is from training by wearing a trouser, maybe a jean.

Interviewer: So women who were wearing trousers were suspected of being soldiers?

Respondent: They were because most of the common women in the village would not wear a trouser or a short. So this one who is trained now, she knows what a trouser is. You cannot run away with a dress or you cannot fight with a dress. You need a trouser. So it was easy. You find a woman with a trouser or with a jean, automatically you know that this one is different from the others, she is trained and is ready to fight.

Interviewer: So if [Rhodesian soldiers] came across a village and found a woman who was wearing trousers, what would they do?

Respondent: ...when the soldiers come across a woman like that, automatically a fight starts because that woman also won't be alone. She would be having her people. When they move, the way they move, maybe there will be twenty. They will move in small groups of two's or three's, even someone will be alone but someone maybe twenty to fifteen meters away. Others are around. So once they see that woman, they come to her, they confront the woman. Those will be watching...a fight, they start fighting. Whenever they meet, they start fighting (Interview 09061101, Dukwi: 2009).

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<sup>6</sup>Physical characteristics also serve as a mode of distinction among respondents. Respondents observed that fighters tended to have certain marks on their body resulting from carrying their backpacks and wearing combat boots for lengthy periods of time. Opponents would search suspected fighters for these signs of belligerency.



Gender norms also seemed to impact the immunity respondents offered civilians. Even when belligerents had combat experience with female fighters, some did not always scrutinize the female villagers they encountered as intently as they did male villagers. The narrative of a Namibian soldier, who fought for the South African Defense Force (SADF), illustrates this point:

Respondent: ...yes it can be that [SADF soldiers] can observe much on men but even with women and children they can observe because the enemies can use the women to attack them. So they will carefully look at them, but usually with women they were not a threat. But when they come, if [SADF soldiers] observe that there is no danger in those people, even with men, what they will do, they will provide them with food.

Interviewer: Even though the enemy has used women in the past to attack them... they are not as afraid of the women as they are the men. Why is that?

Respondent: ...a woman is someone who is kind, who is having mercy compared to a man (Interview 09060803, Dukwi: 2009).

UNITA fighters also allegedly provided heightened protection to women:

Interviewer: Earlier [you] said [UNITA fighters] were limited in who they could protect when fleeing a village under attack. If they had to choose, they would have a preference for women and children and old people. Why would they prefer those groups of people?

Respondent: ...And with women, they are the mothers of the nation. Without women, you will not have soldiers for tomorrow. So they will protect them for that (Interview 09062402, Dukwi: 2009).

Contrast these examples with the following excerpt which illustrates how gender norms influenced UNITA's association of maleness with belligerency:

Interviewer: Among the villagers, who was most likely to be tortured or killed?

Respondent: Usually when they are fighting, when they attack, one cannot tell easily who the enemy is to target. But young men who are likely to join the army will be targeted.

...

Interviewer: So is it the case that these men always join the opponent's forces, or are some just unwilling to fight?

Respondent: Usually with the young ones, energetic men, what they would do is, if they are attacking a village, if they have a chance to run away, they will run away and go to other countries. But if there's nowhere to run, then they are forced to surrender and hand themselves over to the opponents. They will get these men. The men have no option, they will do as their opponents wish them to do (Interview 09062400, Dukwi: 2009).

### ***Threatening Behavior***

Not only did belligerent respondents use identity to distinguish between targetable and untargetable civilians, they also based this distinction on how threatening they perceived particular acts to be. By far the most commonly offered example of threatening behavior was collecting intelligence. Respondents who fought for both

state and non-state armed groups claimed the act of spying, even the suspicion of spying, could get a civilian killed. A soldier for the Zimbabwean government explained:

Yes, and then for the civilian people, is like usually, they are so unlucky that so many things happen in war like information spying and so on.... You find that some die because they are suspected that they are passing on information. Some might actually be caught in the cross fire; they might not be able to run away. But mostly is about... being suspected of, you know, passing on information from one group to the other. It was very common for us in [the Democratic Republic of Congo]. Yes, you would find that once we suspected or we got information that some civilian people were going to the rebel guys, we will take them for investigation and sometimes... you know how it ends up... (Interview 09052500, Dukwi: 2009).

An interview excerpt from another Zimbabwean soldier reiterates this point:

... if it is a person that is sent to come and get news about us to go and report to the rebels, you will see with his walking: he looks around and he is very attentive. He wants to see nearly everything. Then you know that one, that one has been sent by the rebels. Ok, let me watch him. He goes there, he reaches there, he comes back again. Within two minutes he comes back... yes, yes, yes, come. You give him one good "mama" [a beating], and he will tell you I have been sent by the rebels (Interview 09052800, Dukwi: 2009).

This interpretation of the distinction method was not limited to Zimbabwean soldiers fighting for the government. A soldier fighting for a Zimbabwean non-state armed group offered a similar explanation:

Respondent: The guiding principle was, each person has the right of his opinion, but at the end of the day, you find that some guerillas, sometimes, would kill someone suspected of... collaborating with the enemy. The rationale being that if we don't, we are going to be killed.

Interviewer: What kinds of activities would be considered collaboration with the enemy?

...

Respondent: People are called spies, sell outs. Sell out is a very common name, a very common word. Once they call you a sell out, you are in trouble. Once you are labeled a sell out, then the guerrilla will say we can't take chances. Because if the enemy gets information, they will just come and kill us. We are dead. They will say that we would rather kill those we suspect (Interview 09062901, Dukwi: 2009).

## Lack of Intersubjective Agreement

Belligerent narratives suggest that respondents engaged in selective targeting, ostensibly subscribing to some version of the civilian immunity norm and the exceptions to its prescriptions: those uninvolved in conflict cannot be harmed, but those who pose a threat can be targeted. Several themes are contained in these articulated methods of distinction. First, belligerents seemed to defer to local gender norms to help them determine whom they could target. For instance, women wearing clothes that were inconsistent with these norms were treated with suspicion. Gender norms also seemed to explain why maleness was conflated with belligerency, similarly to

U.S. policy described earlier in this chapter. Armed groups assumed that young, healthy men who refused to enlist with them were fighting for their opponents:

Those who accept to go [to become a UNITA fighter]...., they carry them, they go with them. Those who refuse, [UNITA soldiers] kill them. [UNITA fighters] say, 'why they are refusing, there is something which they know. Why they are remaining?' (Interview 09060202, Dukwi: 2009).

Additionally, localized social roles of older community members seemed to interact with the distinction principle. Belligerent narratives perceived elders as holding important positions in village life. This perception contributed to their identification as permissible targets but also contributed to their protection. Thirdly, belligerents also employed distinction methods that were act-based. In the case of spying, armed conflict practices dictated how belligerents determined whether civilians were engaged in intelligence-gathering activities. Those who engaged in these activities were considered permissible targets.

These interview excerpts also illustrate the lack of intersubjective agreement within the civilian immunity norm among and between belligerent respondents and the IHL experts. The lack of agreement here manifests in several ways. One difference centers on the use of identity-based criteria to implement the norm's prescriptions. While some IHL experts did consider identity-based criteria when discussing children in armed conflict, they generally focused much more on act-based criteria to determine permissible targets than belligerent respondents who articulated factors like gender and age.

Another difference relates to the specific acts that render civilians permissible targets. Take spying, for example. Normative articulations offered by both IHL experts and former belligerents differed on whether and what kinds of intelligence-gathering activities allowed permissible civilian targeting. Former belligerents stated that mere suspicion of spying or past acts of spying removed civilian immunity. IHL experts claimed civilians could be targeted while engaged in the act of spying.

Furthermore, the above discussion reveals that lack of intersubjective agreement manifested within the groups of IHL experts and former belligerents. Neither group possessed complete in-group agreement on the content and boundaries of the distinction principle. As discussed above, IHL experts did not agree on when a civilian's direct participation began and ended. Belligerent respondents differed on whether and how to use gender when determining permissible targets.

## Costs

If the lack of intersubjective agreement coincided with the pursuit or preservation of material interests, a materialist framework would be validated. Recall that this framework would argue that belligerent respondents offered the above narratives in order to excuse actions which furthered some interest consistently with the logic of

consequences.<sup>7</sup> Yet, some of these narratives suggest that adhering to particular distinction methods did not necessarily advance or protect an armed group's material interests. Instead, such narratives imply that belligerents implemented the distinction principle consistently with the logic of appropriateness as informed by the logic of practicality and the logic of contestedness.

One example is the extension of immunity to civilians who might pose a threat to these respondents, and whom some IHL experts might claim are not protected by IHL. For instance, some belligerents claimed to not target children even though these children, as child soldiers, could potentially undermine the respondent's physical security:

[y]ou try by all means to capture that child because you will never know, maybe the enemy is hiding behind. Or maybe [the child] just only picked the gun from the home; he doesn't know how to use that gun (Interview 09052702: Dukwi, 2009).

Another soldier's narrative suggests that opponents exploited this articulated immunity to their advantage by using young children to gather intelligence:

Respondent: [Opponents] send young boys like that one (points to a very young boy nearby). You see this one and above this one. These are the boys they send to go and check how many [Rhodesian soldiers] are and how they are positioned.

Interviewer: Why would they send the young boys?

Respondent: War is all about information. That's the point number one. War is about information. You have to know the opponent of your friend, his strength, his maneuvers and his position.

Interviewer: Why would they send the young boys rather than grown ones?

Respondent: Young boys are less suspected (Interview 09052800: Dukwi 2009).

Consequently, complying with this distinction method, which differentiates between children of different ages, might not always work in the belligerent's favor.

There may also be costs to killing civilians consistently with one of the articulated distinction methods. Upon first glance, killing civilians might appear consistent with the logic of consequences because doing so eliminates an opponent's vital resources:

[MPLA] thought was that in those villages where civilians stayed is where the soldiers, the young ones who will grow up to become soldiers. They will come from those villages. So

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<sup>7</sup>Some narratives I collected were consistent with this framework. For instance, in the following excerpt, a former soldier with a Zimbabwean rebel group explains that civilians were sometimes targeted because it would lead to heightened media attention, which would in turn help the group attain needed resources:

Respondent: Unfortunately in a guerrilla situation, especially in Africa, if you are not well known or well connected, no one is going to write about you. There is no publicity about that, you see. So they will kill you.

Interviewer: Why does it matter if there's publicity?

Respondent: Image. The guerillas are so worried about their image. The international community. That was important because they got their support from the international community.

it was better to destroy them so that Savimbi, the leader of UNITA, will not have enough human resource (Interview 09060202, Dukwi: 2009).

However, upon closer inspection, one could argue that killing these civilians is inconsistent with the logic of consequences. As this UNITA soldier explained, UNITA could forcibly recruit villagers to help it wage war:

Interviewer: Did [UNITA fighters] force those young people to be soldiers on their side?

Respondent: There were situations like that whereby the young ones are forced, even older men, they are forced to join (Interview 09060202, Dukwi: 2009).

These young men could be used to fill in the ranks, and also fight on the front lines in order to preserve the more valued fighters. These fighters enable an armed group to continue fighting, prolonging its existence. Another UNITA fighter makes a similar point: “But what [UNITA fighters] used to do is to take young men and instead of killing them, they would make them join the military” (Interview 09062402, Dukwi: 2009).

A Namibian soldier offers additional reasons for not killing civilians:

Interviewer: Would South African fighters get any benefit if they didn't kill these civilians who were supporting SWAPO?

Respondent: ...they can use the civilians on both sides: South African can use the civilians which they get from the SWAPO side to provide them with information and they will not even bother to, to...at other times to kill them... they will get them, train them and maybe put them aside for other things. Maybe if this person is trained or is kept maybe for a year, sometimes they can use them. Both sides, even SWAPO, even South Africans, they will use them to be the people to provide them some information, some directions where to get to the camps of their enemies on both sides (Interview 0906080: Dukwi 2009).

Additionally, female civilians could also be kept alive to act as wives and cooks.

Furthermore, some respondents acknowledged that keeping civilians alive (even those supporting the enemy) could promote good will toward a group by demonstrating its kindness, mercy and power:

See, there are situations whereby something can happen, you will try to find a way that maybe you don't just fight anyhow. You try to make sure that this person who is trying to attack you, or to take you to be very bad, will see you to be a good person. That is what you want, to liberate, not just to kill. These people will leave your side, go, maybe to that MPLA side, and tell them that those people are just okay. I was with them like “this, this,” and they didn't fight me (Interview 09060202, Dukwi: 2009).

Such acts of kindness and mercy would increase the chances of converting these civilians to supporters, providing an armed group with much needed necessities such as food, lodging, intelligence, and protection. Yet, belligerents may perceive it to be appropriate to kill civilians identified with the opposition for non-material reasons (e.g., ideology, ethnic identity, and retribution), even if the armed group might benefit from not using lethal force against these very civilians. For instance, a Zimbabwean soldier explains that civilians were killed because they belonged to the opposing side: “That was a tribal war now. Who is going to lead? The Ndebeles or the Shonas? So it became a tribal war, so even the civilians were harassed; they

were killed” (Interview 0906083, Zimbabwe). An UNITA soldier explains that civilians from southern Angola were killed because the MPLA, its opponent, was from the north of the country:

“[they] hated people from the south. They wanted that the country should belong to them, those who are from the north. Yes, which is the MPLAs that side, they hated these ones. They didn’t want women, children of this side...

[T]he MPLA will want to force some people from the south to go and work in roads, in farms and all the heavy works like building, labour work. And if you are there, maybe you are employed, you are from the South and you are employed in northern side. If [sic] you are not paid, if you complain or you demand your payment, they can arrest you and punish you severely. Is like they hated them naturally” (Interview Respondent #09060202).

These narratives suggest that belligerents are even willing to forego immediate material interests for long-term ideational goals. An UNITA soldier’s explanation for protecting female civilians further illustrates this dynamic; women were protected because of gendered ideas about their identity (as mothers) even as it meant risking injury or death: “And with women, they are the mothers of the nation. Without women, you will not have soldiers for tomorrow. So they will protect them for that” (Interview Respondent #09062402). Additionally, soldiers would kill the children of their opponent’s supporters in order to minimize ideational opposition in the future. The following quote from an UNITA soldier about why he thought his opponent, the MPLA, killed children makes this point:

The idea with the MPLA to kill the civilians was that, these mothers and the fathers who were in the villages there were taken to be the supporters of Savimbi, the leader of UNITA who use to...they give birth to children, they grow up and they are...training to support Savimbi. So they were destroying them that Savimbi should not get support from the civilians (Interview Respondent #09052800).

These killings would negate belligerents’ short-term gains from appearing humane by sparing these children who were not an immediate threat, leading to much needed support from the civilian population. Actually, killing these children could even amplify the rebels’ war-fighting challenges by driving civilians more strongly to the opposition. Yet, instead of focusing on this short-term material goals, the narrative indicates a focus on long-term ideological goals. And the reason belligerents may consider such acts as compliant with standards of appropriateness may be based on the logic contestedness and the logic of practicality informed by their battlefield experiences.

## Norm Contestation

Belligerent narratives strongly suggest that the logic of contestedness, via local conflict dynamics and experience (the logic of practicality), shaped considerations of appropriate behavior within the civilian immunity norm. As discussed above, all belligerent respondents offered some articulation of the civilian immunity norm and claimed to abide by it, an observation corroborated by one of the IHL respondents

interviewed for this study. The distinction principle has a long history in indigenous martial traditions in Africa, influencing warfare practices well before European colonizers implemented their rules of war on the continent. For instance, women, children, the elderly, slaves, laborers, and emissaries were generally considered impermissible targets (Provost 2007: 624). The Zulu spared women, and young girls in particular, because of the material benefit they offered Zulu society: they more easily assimilated into society than males, could bear children, or could be sold as slaves (Laband 2007). Thus, it makes sense that belligerent respondents have familiarity with the civilian immunity norm and its distinction principle.

And much as is the case with the above discussion of the norm's codification, it also makes sense that normative understandings articulated by belligerents are shaped by context and combat experience. Several IHL respondents acknowledged as much. For instance, one stated that Nepal has five different ways of expressing childhood, compared to a more monolithic conceptualization in other societies (Author Interview: Geneva 2009). This reflects a more complex understanding of childhood, enabling some of the armed groups within Nepal to sanction the use of child soldiers. Not only does the concept of civilian vary by geographic context, it also varies temporally in the same conflict. According to one IHL respondent, the constitution of permissible targets changed over time for the U.S. military during the Vietnam War (Author Interview: Geneva 2009). A certain perception of which civilians could be targeted influenced U.S. action prior to My Lai; it changed after military officials became aware of the massacre.

That the logic of contestedness varyingly shapes the norm's logic of appropriateness may be tied to the norm's ambiguity. For IHL respondents, norm ambiguity centered on the phrase "direct participation in hostilities" which was intended to help belligerents discern between permissible and impermissible civilian targets. However, instead of providing clarity and standardizing the application of the distinction principle, it created so much confusion that the ICRC had to convene workshops to provide clarity. Yet, these workshops could not achieve their goal. Instead, workshop participants continued to interpret the distinction principle according to their experiences with armed conflict. Those representing armed forces felt the phrase sanctioned more targets than human rights activists preferred. IHL respondents who witnessed the use of bombs in war argued the phrase included a wider range of activities than those who did not have this experience.

Similarly, local normative understandings are vague enough to enable belligerents to verbalize distinction principles which reflect their particular combat experiences as norm consistent. For instance, belligerent narratives demonstrate that soldiers from wars in which women fought treated female civilians differently than soldiers who did not fight women. Respondents who lacked this experience even had difficulty contemplating women as fighters, as illustrated in this interview excerpt:

Interviewer: Do [the opponents] use women also as soldiers?

Respondent: Ahh... in the Great Lake region I didn't see that. In Zimbabwe, soon after independence, women were involved as soldiers but they were not going in the war front. They were working.

Interviewer: What about on the rebel side?

Respondent: Uhh, there was no woman... soldier's life? (Laughs) (Respondent Interview 09052800, Dukwi: 2009).

Yet, unlike the case study on the non-intervention norm, belligerents did not engage in direct, or even intentional, contestation with IHL experts over the meaning of an ambiguous norm. There were not many opportunities to do so. In the case of the ICRC workshops, non-state armed groups were not invited to participate. Their absence is likely due to states' reluctance to confer any sense of legitimacy to their cause by treating them as equals in warfare-related discussions. Furthermore, the ICRC did not have a meaningful presence in belligerent-respondents' contexts as indicated in Chap. 2. Thus, its interpretive power was weakened and enabled belligerents to retain their localized interpretations of the civilian immunity norm. These findings suggest these different sets of actors are not members of a community of practice in which meaningful learning can take place. Yet, the fact that these divergent interpretations exist and actors claim to follow them, even when doing so may negatively affect material interests, indicates missing intersubjective understanding and norm contestation. In other words, the norm enforcer's position that the norm must be respected during armed conflict is shared, but neither all IHL respondents nor all belligerent respondents accept the ICRC's particular understanding of the norm's prescriptions.

## Conclusion

This chapter attempts to show how a norm contestation framework can help shed light on what lies behind some types of articulated normative variation. It reveals that the conditions suitable for norm contestation exist within the civilian immunity norm. First, the norm is generally subscribed to yet ambiguity pervades its content. This chapter's focus has been on the lack of clarity in the norm's prescriptions, both historically and currently. The civilian immunity norm has been a deeply-rooted fixture in the normative structure of individual societies and the international community. Yet the ambiguity of its prescriptions in their diverse manifestations has also been one of its enduring traits.

Second, this ambiguity, coupled with the ICRC's weakened interpretive power, contribute to differing interpretations of what compliance entails among and within different groups of actors in this protection regime, leading to a lack of intersubjective agreement within the norm. Neither IHL respondents nor belligerent respondents held a consensus on the meaning of the norm's exceptions. Nor was there complete inter-group agreement on when civilians could be targeted. What these different actors did agree on is that the norm applied during armed conflict. Thus, the contestation described here is consistent with applicatory contestation rather than justificatory contestation. Furthermore, the differences in rationales used by the two groups reveal how legal norms and social norms are distinct.



Third, the logic of appropriateness, as informed by the logic of contestedness and the logic of practicality, helps us understand this lack of intersubjective agreement in ways that the logic of consequences cannot. Narratives collected from belligerent respondents did not always conform with the tenets of a materialist framework (although some did as seen in footnote 8). Those narratives that were consistent with a norm contestation framework suggested behavior which did not always further material interests and which may have even undermined them. That is not to say that the logic of consequences does not play a role in behavior related to the civilian immunity norm, or other norms for that matter. Instead, the discussion here elucidates the complex ways in which norms operate, underscoring the need for a range of explanatory tools in appreciation of that complexity.

Furthermore, the discussion here, in conjunction with the next chapter, also demonstrates the versatility of the norm contestation framework. This framework helps to illuminate normative behavior even in cases of indirect, unintentional contestation, as seen here. Yet, it can also help us understand instances of direct and intentional contestation, as described in the next chapter on the non-intervention norm.

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# Chapter 4

## Contestation in the Non-intervention Norm

*“in international law there are only a few issues as complicated as those concerning the legality of interventions”  
(as quoted in Zajadlo 2005: 665).*

### Introduction

As declared by the International Court of Justice, the non-intervention norm is one of the most foundational norms in international relations today (International Court of Justice 1969). The non-intervention norm governs a variety of inter-state behavior, from official public statements to the use of force, which can intrude on a state's domestic affairs. It is widely accepted among the global community of states. This chapter focuses specifically on how the norm regulates the use of inter-state force and its exceptions. One exception in particular permits states to use force against another state for humanitarian purposes. This exception has yet to be codified in international law, yet, historically and currently, state practice suggests a general acceptance that the parameters<sup>1</sup> of the non-intervention norm allow for these humanitarian exceptions. However, much as is the case with the civilian immunity norm, ambiguity has plagued the non-intervention norm, impeding intersubjective agreement and generating contestation. This chapter illustrates these dynamics by first providing a historical overview of the norm and its humanitarian exceptions as well as the ambiguity contained within them. It then discusses dominant explanations for non-compliance with the norm, highlighting their assumption of intersubjective agreement among normative actors. The chapter continues with a discussion of how the logics of appropriateness, practicality, and contestedness within the norm contestation framework utilized here apply to the non-intervention norm and humanitarian intervention. This discussion is then followed by an exploration of how the norm contestation framework contributes to our understanding of the global discussion on Russia's actions in Crimea as captured by the global media and official statements. It does so by illustrating how despite its long-held embrace of the

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<sup>1</sup>Recall that norms have prescriptions and parameters. This chapter addresses the non-intervention norm's parameters which “indicate under which situation the norm's prescriptions apply [or do not apply]” (Shannon 2000: 295).

norm and the idea of humanitarian intervention, Russia's attempts to justify the Crimean intervention revealed an understanding of the norm which greatly differed from those held by the norm enforcer. The chapter continues by arguing that Russia's willingness to maintain a commitment to this particular normative understanding was more indicative of the logic of appropriateness informed by the logic of contestation and the logic of practicality than the logic of consequences.

## Non-intervention Norm in Pre-charter Era

According to conventional accounts, an early version of the non-intervention norm emerged out of Western Europe shortly after the signing of the Treaty of Westphalia (Philpott 2001; Vincent 1974; Osiander 2001; Beaulac 2004). Common understandings of the norm of non-intervention reflected the idea that sovereigns possessed an exclusive right to govern territories under their domain, a right which came from God (Zacher 2001). Thus, sovereigns were entitled to freedom from intervention in their domestic affairs from external actors. European sovereigns were considered equal so that they comparably enjoyed the rights associated with the norm of non-intervention. However, European sovereigns did not extend these rights to sovereigns outside of Europe.

According to Glanville (2013a) and others (Havercroft 2012; Finnemore 2003), this conventional post-Westphalian linkage between sovereignty and the norm of non-intervention is inaccurate. Instead, the association of non-intervention with sovereignty did not occur until the eighteenth century. Prior to that time, a ruler's rights included the right to wage just war (discussed further below). Then during the eighteenth century, Vattel began writing about the sovereign's right to non-intervention (Glanville 2013a: 82). According to Vattel,

It is an evident consequence of the liberty and independence of nations, that all have a right to be governed as they think proper, and that no state has the smallest right to interfere in the government of another (quoted in Glanville 2013a: 82).

Yet, despite articulating this right to non-intervention, Vattel also continued to accept a sovereign's right to just war in cases of extreme suffering. He,

invoked the law of nature and the idea of nature's intentions for humanity to theorize a society of humanity with rigorous duties of assistance, including... duties to aid others 'to advance their own perfection and that of their condition' (Pitts 2013: 143).

This sentiment was also shared among jurists and political leaders in the nineteenth century when the link between non-intervention and sovereignty gained increasing popularity (Glanville 2013a: 83). Thus, a tense relation existed between the norm of non-intervention and the idea of just war, making unclear the norm's parameters, similar to the situation that characterizes today's normative environment.

In the aftermath of World War I, the Covenant of the League of Nations would formally establish a sovereign's freedom from external intervention. This formalization of the non-intervention norm incorporated the concepts of territoriality and autonomy:

Territoriality means that political authority is exercised over a defined geographic space rather than, for instance, over people, as would be the case in a tribal form of political order. Autonomy means that no external actor enjoys authority within the borders of the state (Krasner 1995/1996: 115–116).

It was also codified in the Kellogg-Briand Pact of 1928 as a prohibition on the use of warfare to address disputes that received nearly universal ratification (Glassman 2011: 348).

Even after its codification, the norm of non-intervention continued to be riddled with inequality, nuance, and vagueness. Keene (2013: 1078) notes that a hierarchy of state power undermined the association of the non-intervention norm with sovereign equality. In other words, norm enforcement was partially determined by the whims of the great powers. For instance, Zacher (2001) notes that the great powers acted inconsistently regarding how strongly the non-intervention norm should be upheld; Britain, France, and the United States condoned multiple normative violations in the 1930s. Tolerance was particularly higher if the site of intervention occurred within the territory of a non-Western entity (Kahler 2011). However, great power support for the non-intervention norm strengthened by the end of World War II. For instance, many did not seize territory as victors' spoils in the same manner as had been customary in the past. The same could not be said of the Soviet Union which forcibly absorbed swathes of land in Eastern Europe and Asia.

## Non-intervention Norm in the Charter Era

The mind-numbing devastation of the two world wars convinced the global community to eliminate the practice of waging wars to further national interests. Consequently, in the aftermath of World War II, the international community pledged to produce an international organization that would reduce, if not eradicate, the practice of states resorting to war to pursue interest-based foreign policy goals (Mohamad 2009). In other words, there was a collective sense that the non-intervention norm needed to be clarified and strengthened. The United Nations, and more specifically the Security Council (UNSC), was created with this as its central purpose: to ensure peace and stability in a state-centric global system by having the power to determine when the norm was violated and calling on members to enforce the norm (D'Aspremont 2014).

The UN's Charter, in a bid to strengthen the norm by clearly articulating its obligations (as was the case with the civilian immunity norm), codifies it in Article 2(7):

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter...

The particular aspect of the non-intervention norm discussed here, namely the ban on armed interventions, is codified in Article 2(4) which states "All members shall refrain in their international relations from the threat or use of force against the

territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” Article 2(4) expanded the prohibition contained in the Kellogg-Briand Pact to include threats of the use of force. Yet, as seen in the civilian immunity norm case study, the discussion below reveals that international legal codification did not necessarily produce clarity or intersubjective agreement on what the non-intervention norm permits.

During the Cold War that commenced shortly after the drafting of the UN Charter, the UNSC exercised its interpretive power by regularly condemning perceived violations of the non-intervention norm (Kardaş 2001). Not only did fears of the outbreak of another, perhaps deadlier, global war and the dynamics of geopolitics contribute to this outcome, so did the sentiments of myriad newly formed states which were keen to protect their hard fought independence from their former colonizers (Evans 2006). The UNSC chided some states that engaged in armed interventions, like India, Tanzania, and Vietnam, for violating the non-intervention norm, even if their violations yielded positive humanitarian results (Kreß 2014). As Evans put it, during the Cold War, “non-interference in domestic affairs still led the list of unbreakable commandments so far as international discourse was concerned” (2006: 706). This steadfast normative fidelity began to weaken when the Cold War ended.

As this brief historical overview suggests, the non-intervention norm’s robustness waxed and waned over its long history. Much of those fluctuations can be attributed to changes in the overall normative structure in the international arena. Glanville (2013a: 80) claims that “there were no rights intrinsic to sovereignty; all rights were historically contingent...” What constituted norm compliance and norm violation shifted over time and space, and even in the same time and space. This normative indeterminacy enabled diverse interpretations of those obligations to emerge, hindering the development of intersubjective agreement. The same can be said about the norm’s humanitarian exceptions. Humanitarian interventions have a long history both before and after the creation of the UN Charter, even though they never possessed the legal formality of codification (Hurd 2011). Yet the basis for their permissibility varied over time. As the following discussion illustrates, these shifts correlate with corresponding shifts in what is considered a political authority’s internal affairs (Paust 2011). Much as is the case with the non-intervention norm, these changing ideas about appropriate humanitarian uses of force corresponded with normative ambiguity and a weakened norm enforcer, setting the stage for norm contestation.

## **A Historical Overview of Humanitarian Intervention**

A plethora of definitions exist for the concept of humanitarian intervention. One definition which contains commonly held elements is “the threat or use of force by a State, group of States, or international organization primarily for the purpose of protecting the nationals of the target state from widespread deprivations of internationally recognized human rights” (Murphy, 1996: 11–12). Since this discussion

utilizes a historical lens in examining contestation over the humanitarian exceptions to the non-intervention norm, it will use a different definition of humanitarian intervention. This is due in part because definitions like Murphy's, which rely on a time-specific understanding of concepts like the "state", may not be applicable for humanitarian interventions which took place when the global community was not organized along state-centric lines. Thus, this chapter adopts Christian Reus-Smit's definition of intervention, slightly modified to suit the current discussion: "international intervention is the transgression of a unit's realm of jurisdiction, conducted by other units in an order, acting singly or collectively [for the protection of individuals present in that jurisdiction]" (2013: 1058).

As noted already, the historical record suggests a long-standing acceptance for non-consensual humanitarian interventions (Valek 2005). Grotius, considered by many as the father of international law, early on advanced the position that rulers (in his case) could use force to stop other rulers from killing their citizens (Bundegaard 2010: 8):

We must also know, that Kings, and those who are invested with a power equal to that of Kings, have a Right to exact Punishments, not only for Injuries committed against themselves, or their subjects, but likewise, for those which do not peculiarly concern them, but which are, in any Persons whatsoever, grievous Violations of the Law of Nature or Nations (Glanville 2013a: 81).

Grotius may have been influenced by the writings of Francisco Suárez. Suárez strove to prevent war against non-Christians but made an exception for humanitarian uses of force: "this ground for war should rarely or never be approved, except in circumstances in which the slaughter of innocent people and similar wrongs take place" (cited in Knudsen 2009: 5). As such, some scholars argue that humanitarian uses of force were a manifestation of traditional sovereign rights, not a violation of them (Glanville 2013a). This right was rooted in just war theory which, in a nutshell, permits the use of force if the cause for that force is just, it is deployed with the right intent by a legitimate authority, and is a measure of last resort (Crawford 2003; Fixdal and Smith 1998; see also Walzer 2006 for a much more detailed discussion). Many jurists like Grotius considered the sovereign as the right authority for determining when to wage a just humanitarian war (Mohamed 2009). This was the case even with the rise of the non-intervention norm as part of the bundle of rights entitled to sovereigns in the eighteenth century; it was also the case even if the intervention was conducted unilaterally (Scheffer 1992; Fonteyne 1973).

However, not all interested parties recognized the permissibility of humanitarian interventions. Prominent scholars like Ian Brownlie, while acknowledging that states did engage in humanitarian intervention, argued that state practice did not necessarily confer a right under international law to engage in such activities (Knudsen 2009: 10–11). In other words, diverging opinions existed regarding the normative status of humanitarian uses of inter-jurisdictional force.

Additionally, while some members of the international community permitted humanitarian interventions even when they linked the non-intervention norm with sovereign rights, what qualified as acceptable humanitarian action varied over time and even during the same time period (Finnemore 1996). Determining the permissibility of



humanitarian interventions occurred on a case by case basis, as described by nineteenth century jurist Henry Wheaton: ““Noninterference is the general rule, to which cases of justifiable interference form exceptions limited by the necessity of each particular case”” (cited in Knudsen 2009: 7). This was also the case for humanitarian interventions occurring in the twentieth century. The factors Martha Finnemore identified as significant in these changes include the efforts to end slavery and the commencement of decolonization. Prior to these global developments, states primarily justified their humanitarian violations of the non-intervention norm on the grounds of protecting their own nationals. With these developments, the basis for humanitarian interventions expanded to include citizens of other states. However, not all persecuted citizens received humanitarian interventions. During the nineteenth century, the targets of such actions tended to be religious minorities (Christians) under attack in the Ottoman Empire; far fewer humanitarian interventions were launched on behalf of religious minorities suffering similarly within Western Europe, especially if they lived within the territory of a great power (Knudsen 2009: 32).

The development of the practice of humanitarian intervention in the post-Charter era occurred in fits and starts. The international community devoted considerable effort to limiting the practice of forcible humanitarian intervention during the early days of the Cold War. For instance, in the 1960s only consensual intervention was considered legitimate (Kegley, et al. 1998: 88). Yet, forcible humanitarian interventions started re-gaining wider acceptance during the waning days of the Cold War, as long they occurred under the auspices of the UNSC. Arguments made by human rights activists increasingly pierced the shield of the non-intervention norm. They did so partially by effectively presenting human rights violations as concerns that warranted the international community’s attention rather than strictly domestic affairs subject to the non-intervention norm, particularly in the 1990s (Mohamed 2012). These changes in normative understandings also translated into action, as was the case when the UNSC classified Iraq’s brutality toward its Kurdish and Shiite population as a threat to international peace (Wheeler 2003:33). This was the first time since the drafting of the UN Charter that humanitarian principles justified the use of force to violate the non-intervention norm (Wheeler 2003: 34). This classification converted what previously would have been considered a domestic affair into an international issue. Additional examples during this time include humanitarian interventions in Liberia (1990), Somalia (1992), and Bosnia and Herzegovina (1992–1995) (Cassese 1999). Reflecting this shift in the balance away from prioritizing the non-intervention norm and toward human rights norms, the UN Development Program’s 1994 Human Development Report promoted a new concept of security known as human security (Panke and Petersohn 2012: 15). These developments, including the “illegal but legitimate” NATO intervention in Kosovo, would lead to the emergence of the Responsibility to Protect (R2P) doctrine, which re-conceptualized sovereignty as responsibility. The R2P doctrine stipulated that if the sovereign could not ensure the human security of those within its borders, the international community could do so under the auspices of the UNSC, forcibly if necessary as a measure of last resort. Cassese explains the widely held conviction undergirding R2P’s support at the time of its adoption:

the idea is emerging in the international community that large-scale and systematic atrocities may give rise to an aggravated form of state responsibility, to which other states or international organizations may be entitled to respond by resorting to countermeasures other than those contemplated for delictual responsibility (1999: 26).

The widespread embrace of R2P belies the fact that the acceptance of forcible humanitarian intervention was neither linear nor universal. Nor was there consensus around its parameters. As norm entrepreneurs, like the United States, advocated for a norm of humanitarian intervention, opponents also occasionally managed to limit its scope, attack its acceptance, or prevent its execution (Sayapin 2014: 130). For instance, India backed away from justifying its intervention in Pakistan's civil war on humanitarian grounds once the UNSC rejected those arguments. It then resorted to a self-defense rationale that the UNSC accepted. Lack of support for unilateral humanitarian interventions was also likely a reason Tanzania and Vietnam deployed self-defense arguments for their interventions in Uganda and Cambodia, respectively (Finnemore 1996). In the case of Kosovo, NATO members were careful to claim that its actions did not set a precedent for launching a humanitarian intervention outside the UNSC.<sup>2</sup> And while Libya was notable as the first instance of R2P military intervention sanctioned by the UNSC, many scholars and political actors fault its implementation, and the resultant diminished support for R2P, for the lack of humanitarian intervention in Syria (Zifcak 2012; Morris 2013; Thakur 2013).<sup>3</sup>

## Ambiguity

Based on this cursory discussion, we can see that while the general concept of humanitarian intervention enjoyed long-held support, its parameters and its normative status varied across space and time, and even within the same space and time period (Reus-Smit 2013: 1075). Even the meaning of the term "humanitarian" has changed over time. In the eighteenth century, the term generally possessed a theological flavor, referencing Jesus Christ; its meaning then morphed secularly in the nineteenth century to reference humanity or human rights as a primary concern (Trim and Simms 2011: 3). And as mentioned above, scholars also varyingly and simultaneously define "humanitarian intervention" themselves. These developments

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<sup>2</sup>As noted in Chapter 1, the UNSC's acceptance of NATO's argument served the basis for Russia's allegations of bias, weakening its interpretive power through its perception of selectivity.

<sup>3</sup>The lack of a humanitarian intervention in Rwanda is not discussed here because the opposition to an intervention did not couch their arguments in the language of violation of the non-intervention norm. This differs from the case of the Indian intervention mentioned above in which the humanitarian justifications India made were rejected as unsuitable grounds for violating the non-intervention norm. Rather, the opposition in the Rwandan case mainly centered on questioning whether a genocide was occurring and whether an intervention would be successful. Thus, it is likely that any intervention that would have been launched would not have been considered an impermissible violation of the norm of non-intervention (Wheeler 2003:36).

in semantics and state practice contributed to, and continue to contribute to, ambiguity regarding the norm of non-intervention and its humanitarian exceptions. As Wheaton observed about the practice of humanitarian intervention,

it was impossible to lay down an absolute rule on this subject, and every rule that wants that quality must necessarily be vague, and subject to the abuses to which human passions will give rise, in its practical application (cited in Knudsen 2009: 12).

This ambiguity, the existence of multiple interpretations, plagues a number of facets of the non-intervention norm's parameters, despite its codification. First, it has become unclear what kinds of humanitarian concerns qualify as grounds for permitted norm violations (Bellamy 2005). For instance, varying conceptualizations of victim identity have formed the basis of accepted humanitarian interventions. When Russia, France, and Britain intervened in Greece in the 1820s, the persecution of Christians there played a crucial role in their humanitarian justifications, but not the persecutions of Muslims in the same crisis (Finnemore 1996). Christian persecution also formed the basis for humanitarian justifications offered by Russia, France, England, Austria, Turkey, and Prussia in their military action in Lebanon/Syria in 1860 (Finnemore 1996). Yet Armenian Christians massacred in Turkey did not receive similar assistance despite the widespread condemnation of these atrocities by Russia and the other states which engaged in intervention on behalf of Christians elsewhere.

In the post-Charter era, the international community also grappled with questions like what kinds of humanitarian situations enable permissible armed intervention. While some find any loss of life troubling, the International Commission for Intervention and State Sovereignty (ICISS, which laid the foundation for the R2P doctrine) felt "a higher threshold of human suffering must be crossed: acts of such a magnitude that they shock the conscience and elicit a fundamental humanitarian impulse" (Weiss 2007: 10). Yet despite ICISS's public stance on which humanitarian needs qualify for R2P action, "controversy continues over conflicting principles that produce normative incoherence, inconsistency, and contestation" (Weiss 2007: 17). Additionally, the international community has debated whether humanitarian intervention is permissible only when a state actively commits human rights violations or if state incapacity that contributes to violations also qualifies. Additional questions center on whether permissible humanitarian interventions should solely be reactive or whether they can also be preemptive (Weiss 2007). Changing perceptions of the boundary between a sovereign's internal affairs and the concerns of the international community contribute to this uncertainty. As Jordan Paust (2011: 2) notes, "general patterns of practice and legal expectation over time have shifted the focus slightly to save from intervention that which is the affair of merely of one state as opposed to that of the international community."

Another source of ambiguity stems from how humanitarian interventions should be conducted. State practice in the nineteenth century indicated that both multilateral and unilateral humanitarian interventions were permissible (Finnemore 1996). For instance, while Russia engaged in multilateral interventions as discussed above, it also engaged in unilateral interventions without reproach. Russia went to war with

Bulgaria in 1877 partially because of the massacres of Christians by Ottoman troops. Thus, as Mohammed Ayoob notes, it was unclear then what right authority could legitimize such interventions (2002: 85).

In the post-Charter era, the ambiguity centers on whether humanitarian interventions can occur without UNSC authorization and if so, what is the right authority that can legitimize such interventions. The UN Charter designates the UNSC as the primary decision-maker on the legitimate use of force (Hurd 2011:295), similarly to an individual sovereign being considered the right authority to wage a humanitarian war under just war theory. It has the interpretive power to determine when the non-intervention norm can be breached. In other words, unlike the case in the 18th and 19th centuries, systemic units could not permissibly violate the non-intervention norm for humanitarian purposes unilaterally after World War II. As Mohamed observes,

By entrusting the collective with the use of nondefensive force, the drafters of the Charter sought to ensure that war would be undertaken only for the common good; a use of force that did not further the community interest would presumably not be authorized by the Council. In accepting the Charter framework, the international community expressed its support for the idea that a state may not wage war to “defend its own parochial understanding of justice”; instead, “states must persuade others of their just cause.” (2002: 1318–1319).

Some scholars argue that customary international law enables humanitarian interventions in response to large-scale loss of life, even without UNSC authorization (Badescu 2007; Krisch 2002; Valek 2005). Evidence for such assessments partially comes from the rejection of Russia’s UNSC resolution by a vote of 12–3 condemning NATO’s Kosovo intervention as illegal since the UNSC did not authorize it (Badescu 2007:61; Glassman 2011). Alex J. Bellamy (2005) also notes that several liberal states have accepted humanitarian interventions committed outside the UNSC as permissible, even if they are technically illegal. As Mohamed writes,

To many commentators, the central problem of humanitarian intervention is that when the Security Council fails to authorize states to use military force to stop mass atrocities, the law requires a result-to do nothing at all—that is illegitimate and morally abhorrent. One solution to this predicament has been to subordinate considerations of legality to those of legitimacy or morality (2009:1278; see also Mohamed (2009) for a comparable so-called “criminal law approach”).

Other states express a similar view, albeit that regional organizations must be consulted on intervention-related issues, absent UNSC authorization. The argument here is that regional actors know best whether an armed humanitarian intervention can be effective and can appropriately legitimize any coercive action which violates sovereignty. When discussing military intervention in Darfur, Russia argued that the UNSC needed to defer to the African Union (Glanville 2013b: 331). Russia again lobbied for regional consent and cooperation absent sovereign consent during discussions on the Libyan intervention (Glanville 2013b: 336), echoing sphere-of-influence arguments it would make in the case of Crimea. Some scholars also argue that unilateral humanitarian intervention could be permitted (Franck 2002). For instance, when Rwanda unilaterally gave its peacekeepers deployed in Darfur a mandate to protect civilians without UNSC backing, few objected (Bellamy 2005: 51). In making their case, Elise Leclerc-Gagne and Michael Byers state,

Unilateral humanitarian interventions [UHI] have been condemned as generally illegal by over 130 countries through unilateral or joint statements such as the Declaration of the South Summit of Havana and the final document of the Movement of the Non-Aligned Countries in Cartagena. Nevertheless, NATO's intervention in Kosovo was widely tolerated—even by those countries most opposed to the war—in the sense that no economic or military actions were taken against the intervening states... international reaction to the Kosovo intervention raises the possibility that UHI could be regarded as legitimate (rather than legal) in certain limited and exceptional circumstances (2009:385–386).

Even the ICISS, charged with examining the legal and normative parameters of legitimate humanitarian intervention, and the UN's High Level Panel on Threats, Challenges, and Change both acknowledged that humanitarian interventions could normatively occur unilaterally under certain circumstances (Brunnée and Toope, 2010:197). This debate about who can authorize a humanitarian intervention not only serves as an indicator of another source of ambiguity, but also undermines the UNSC's interpretive power by questioning its exclusive ability to make these determinations.

The debate around when humanitarian interventions can take place has also gone unresolved. Should humanitarian interventions be reactive or preventive, as was the case in Kosovo and Libya? Some argue that the intervener does not have to wait “for the killings to start if there is clear evidence of an impending massacre” (Bazyler 1987: 600). Others argue that a less easily manipulated standard must govern such a vitally important issue. Furthermore, opponents of acting too quickly cite both just war theory's and the R2P doctrine's (which borrows from it) insistence that military force be a measure of last resort in order to exhaust more peaceful avenues which may save more lives in the end (Wheeler 2003: 34–35).

Another point of contention revolves around how the concept of humanitarian intervention relates to the norm of non-intervention (Petty 2009; Bundegaard 2010). Some argue that humanitarian interventions are violations of the non-intervention norm, albeit permissible ones under the right conditions (Wheeler 1985). Those right conditions tend to center on mass human rights violations (Glanville 2013b). Others argue that humanitarian interventions do not violate the non-intervention norm because mass human rights violations diminish or even remove sovereignty and its associated norms like non-intervention (Ayooob 2002; Weiss 2007). International law offers insufficient direction on this issue as it is unclear on the matter (Petty 2009).

We can see norm ambiguity and a norm enforcer's weakened status allow structural and agentic factors to induce intersubjective disagreement (Kahler 2011: 21). In particular, changes in the global political structure include the global power distribution and relationship between norms (like between the norms of non-intervention and human rights protection). In terms of the impacts of fluctuating power dynamics,

Observation of the changes in the prevailing normative consensus... suggests that they have not been random; rather, redirections appear to have co-varied systematically with some salient transformations in world politics (Kelgey et al. 1998: 90).

The salience of norms fluctuates depending on those who occupy the upper echelons of material power in the global arena. For instance, when England, a leading global power at the time, embraced the anti-slavery cause, norms prohibiting slavery gained greater prominence (Finnemore and Sikkink 1998<sup>4</sup>).

Regarding inter-norm relations, as civilian casualties mounted with the increase in the outbreak of civil wars in the post Cold War era, the international community began to change how it conceptualized the non-intervention norm, namely its humanitarian exceptions (Kahler 2011). The end of the Cold War not only contributed to the increase in civil wars, but also opened up space for the rise of human rights protection in the global agenda. As the international community began to increasingly become active in human rights protection, it needed to reconsider how to harmonize this mission with prevailing understandings of the non-intervention norm.

Agent-level factors relate to how context and history varyingly influenced how different actors navigated the ambiguities within the non-intervention norm and its exceptions. Different institutional perspectives include not only shifting understandings within a single institution like the UNSC, but also the differences in perspective between the UN and regional organizations like NATO. States in different regions and at different points in time also possessed divergent interpretations of when norm compliance could be suspended. India offered humanitarian justifications for its intervention in East Pakistan at a time when the normative climate was more receptive to self-defense arguments while rejecting similar justifications for NATO's intervention in Kosovo in a more intervention-friendly climate (Bellamy 2003). Secretary-General Ban Ki Moon seemed to recognize this point when he said about the R2P doctrine,

Context matters. The responsibility to protect is a universal principle. Its implementation, however, should respect institutional and cultural differences from region to region. Each region will operationalize this principle at its own pace and in its own way (United Nations 2011).

This changing nature of understandings regarding permissible humanitarian intervention ultimately produced an environment filled with inconsistent, and sometimes contradictory, standards of normatively accepted behavior that served as ineffective guides on norm compliance. As Ian Hurd (2011: 310) notes,

[Compliance] requires that we be able to differentiate between behavior that is compliant and behavior that is not, and in the case of humanitarian intervention this is clearly not possible. Interpretive challenges here mean that the definition of compliance is itself contested, and disputes over the meaning of the law are best understood as proxies for fights over the underlying substance of the case in question.

In other words, the norm of non-intervention lacks intersubjective agreement.

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<sup>4</sup>The focus on structure in this example remains applicable even though Finnemore and Sikkink (1998) emphasized the role of agents in their explanation. This is because the structure of the international system (power distribution) allowed agents (norm entrepreneurs) within Britain to have more influence in the salience of this norm compared to norm entrepreneurs from countries with less global power. In this way, I apply Kim and Sharman (2014)'s theorization approach which appreciates the role of both agency and structure in understanding how norms emerge.

Interestingly, while both structural and agentic factors have contributed to the various instances of intersubjective disagreement within the non-intervention norm, particularly around which crises qualify for acceptable normative departures and how to conduct the interventions, some scholars claim growing support for the general notion of humanitarian intervention (Bellamy 2003:4). Yet despite this apparent overall concordance, much about the practice of humanitarian intervention remains unclear. However, when investigating noncompliance with the non-intervention norm, the literature tends to focus on materialist motivations, rather than lack of intersubjective agreement, as explanations for these acts.

## Materialist Reasons for Norm Violation

A whole host of reasons may contribute to perceived norm non-compliance. As Mark W. Zacher notes, “[s]tates’ motivations for accepting the territorial integrity norm have been both instrumental and ideational, and the importance of the different motivations have varied among groups of states” (2001: 216). Yet, the materialist catalysts for norm-related behavior seemingly attract more scholarly attention than their ideational counterparts (Zacher 2001: 237), such as lack of intersubjective agreement.

Articulating a materialist perspective, a specifically realist one, Martin Binder (2009: 330) posits that the,

materialist–realist thinking... maintains that material forces, not norms, largely determine state behavior. As rational actors, states struggle for power and interests. More specifically, under conditions of international anarchy, states strive for either maximizing security, maximizing power, or minimizing threats to security. From this perspective, military intervention is an ‘instrument of foreign policy used to promote the interests of individual nations’... (See also Sayapin 2014; Weiss 2007; MacFarlane and Weiss 2000; Fordham 2008).

Seung-Whan Choi (2013: 124) offers a pithier version of this perspective: “The expression ‘what’s in it for us?’ captures the rationale used by realists to explain why nation-states use humanitarianism as a pretext for military intervention.” To demonstrate this orientation, Ryan Goodman (2006: 113) offers the humanitarian justifications (based on German nationals’ self-determination rights) Hitler deployed when explaining Germany’s military actions in Austria and Czechoslovakia. More recently, U.S. humanitarian arguments for its 2003 war with Iraq were seen as a mask for security-related concerns (Weiss 2007).

Illustrating the liberal perspective, Thomas M. Franck states,

In the absence of a reliable international police to enforce the law, much depends on a commonly shared belief... that state conduct will definitely be constrained by the commitments states have accepted, either by specific consent or by virtue of their membership in a rule regime such as the United Nations.... Most would agree that the freedom of states to bargain away short-term benefits in the expectation of longer-term rewards- a very useful device for realizing mutual advantage- is kept aloft by the perception that law is not merely a coincidence of self-interest... compliance is almost always the rational choice, in every state’s self-interest, because every state has a stake in actualizing the belief that the law, habitually, obligates compliance” (2006: 92; see also Kelley 2007).

Alex J. Bellamy (2003) claims that pluralists makes a similar point, arguing that states engage in humanitarian interventions selectively and that long-term national interests greatly influence that selectivity.

Noam Chomsky offers a Marxist perspective on the materialist motivations behind humanitarian interventions. This approach claims that powerful states like the United States deploy ideational arguments to more effectively justify the wars they launch to maintain their military and economic hegemony. During the Cold War, these ideational justifications focused on the battle against Communism. In the post-Cold War, the rhetorical strategy shifted to human rights protection. Yet the underlying purposes for the use of force remained the same. According to Chomsky, “With the Soviet deterrent in decline, the cold war victors are more free to exercise their will under the cloak of good intentions but in pursuit of interests that have a very familiar ring outside the realm of enlightenment” (Chomsky 1999: 11).

## **Norm Contestation, Logic of Appropriateness, Logic of Practicality, and Logic of Contestedness**

As this book argues, a norm contestation framework offers distinct advantages in trying to understand behavior in a normatively ambiguous environment. When obligations are unclear, actors may not exclusively rely on the logic of consequences to determine their actions: “The available evidence shows that states are significantly more inclined to fight [i.e. wage war] over particular types of issues, even in the face of likely overall material and strategic losses” (Goodman 2006: 118). Instead, actors may be willing to follow the logic of appropriateness, informed by the logic of practicality and the logic of contestedness, when interpreting the obligations of an ambiguous norm like the non-intervention and its exceptions. Thus, the logic of consequences cannot always explain the interpretations actors use to justify their positions both for and against humanitarian interventions, as materialists suggest. For instance, Luke Glanville (2013b: 329) links Russia’s abstention on UNSC Resolution 1706 authorizing humanitarian intervention in Darfur to non-materialist motivations:

Even though Resolution 1706 invited Sudanese consent, Russia, China, and Qatar still abstained in the vote on principled grounds. Russia did so because the Sudanese government had not yet given its consent to the proposed peacekeeping mission.

Once actors utilize these logics to derive their interpretation of normative obligations, they justify any resulting actions consistently with these interpretations. States’ efforts to justify their actions are routinized in the practice of international relations: “International relations are conducted in large part through ‘diplomatic conversation-explanation and justification, persuasion and dissuasion, approval and condemnation” (Chayes and Chayes quoted in Johnstone 2003:440). And states are more likely to hold on to their particular interpretations when the norm enforcer’s interpretive power is weakened.



While contestation in the non-intervention norm shares some similarities with contestation in the civilian immunity norm, it also differs in some important respects. Of particular importance is that the contestation in this particular instance occurs intentionally, directly and publicly, unlike contestation in the civilian immunity norm. This type of contestation informs various actors subject to the normative regime that a multitude of interpretations regarding permissive behavior exists (Wiener 2004). As Antje Wiener (2004:44) notes, “normative meaning is considered to evolve from different cultural backgrounds; arguing about norms hence brings different and potentially conflicting preferences... to light.” For Wiener (2004), such direct contestation often occurs in transnational and supranational settings. In addition to informing relevant actors that lack of intersubjective agreement exists, it also serves to persuade others of one’s position: “The shared validity of norms is established through communicative action during which different socioculturally determined preferences are adapted and changed based on the willingness to be persuaded by the better argument” (Wiener 2004: 45). The ultimate purpose of such contestation is to enhance norm compliance by developing intersubjective agreement. The following section illustrates how these mechanics of norm contestation enhance our understanding of Russia’s actions regarding Crimea.

## **Russian Intervention in Crimea**

### ***Background***

Shortly after Ukrainian President Viktor Yanukovich was ousted from power on February 22, 2014, Russia put 150,000 of its troops on high alert as the new government in Ukraine began to fill cabinet positions. On March 1, the Russian parliament, the Duma, authorized Vladimir Putin to enter Crimea. Just over 2 weeks later, Crimea held a referendum to determine whether it should join Russia. Crimeans voted overwhelmingly to secede and in a matter days, Crimea left Ukraine to join the Russian Federation.

### ***Russian Humanitarian Justifications***

Russia offered a number of justifications for its actions in Crimea. Since this chapter focuses on contestation around the practice of humanitarian intervention, this discussion centers on Russian rationales that possessed an air of humanitarianism. Russia made these appeals early on in the conflict and continued to do so even after economic sanctions and other punitive measures were threatened and implemented, which would be unexpected by both a norm diffusion and a materialist framework.

Putin laid out the concern for Russians and Russian speakers in Ukraine to a group of journalists on March 4, 2014:

What is our biggest concern? We see the rampage of reactionary forces, nationalist and anti-Semitic forces going on in certain parts of Ukraine, including Kiev... When we see this we understand what worries the citizens of Ukraine, both Russian and Ukrainian, and the Russian-speaking population in the eastern and southern regions of Ukraine. It is this uncontrolled crime that worries them. Therefore, if we see such uncontrolled crime spreading to the eastern regions of the country, and if the people ask us for help, while we already have the official request from the legitimate President, we retain the right to use all available means to protect those people. We believe this would be absolutely legitimate. This is our last resort (Kremlin 2014b).

In a speech<sup>5</sup> to the Duma on March 18, 2014, Putin contended,

Those who opposed the coup were immediately threatened with repression. Naturally, the first in line here was Crimea, the Russian-speaking Crimea. In view of this, the residents of Crimea and Sevastopol turned to Russia for help in defending their rights and lives, in preventing the events that were unfolding and are still underway in Kiev, Donetsk, Kharkov and other Ukrainian cities.... Naturally, we could not leave this plea unheard; we could not abandon Crimea and its residents in distress. This would have been betrayal on our part (Kremlin 2014a).

The Foreign Ministry also stated “Russia is aware of its responsibility for the lives of compatriots and fellow citizens in Ukraine and reserves the right to take people under protection” (Gordon and Myers 2014).

Russia presented the humanitarian crisis in Crimea as quite dire. The state owned Itar-Tass News Agency, citing a Russian border agency, claimed “that 675,000 Ukrainians had fled to Russia in January and February and that there were signs of a ‘humanitarian catastrophe’” (Smale and Erlanger 2014). Russian officials attributed Yanukovich’s departure and the resulting security vacuum it produced as contributing to the gravity of the situation (Smale and Erlanger 2014). The border agency predicted that should the chaos and violence continue, “hundreds of thousands of refugees will flow into bordering Russian regions” (Smale and Erlanger 2014). Consequently, Putin stated in a phone conversation with President Barack Obama that “in case of any further spread of violence to Eastern Ukraine and Crimea, Russia retains the right to protect its interests and the Russian-speaking population of those areas” (Smale and Erlanger 2014).

For Russia, the threats against Russians and Russian speakers in Ukraine had been building up for some time. Putin in his speech to the Duma argued,

Time and time again attempts were made to deprive Russians of their historical memory, even of their language and to subject them to forced assimilation. Moreover, Russians, just as other citizens of Ukraine, are suffering from the constant political and state crisis that has been rocking the country for over 20 years (Kremlin 2014a).

He went on to say,

The new so-called authorities began by introducing a draft law to revise the language policy, which was a direct infringement on the rights of ethnic minorities. However, they were immediately ‘disciplined’ by the foreign sponsors of these so-called politicians.... The draft law was set aside, but clearly reserved for the future.... Nevertheless, we can all clearly see the intentions of these ideological heirs of Bandera, Hitler’s accomplice during World War II (Kremlin 2014a).

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<sup>5</sup>This speech was translated into English and heavily covered by *Russia Today*.

When Yanukovich was forced out of office, Russia argued that these threats to civil, political, social, and cultural rights morphed into actually jeopardizing people's lives, forcing Russia's hand. Thus, Russia intervened and did so legally, as Putin unequivocally declared on German television: "I'm firmly convinced Russia did not violate international law in any way" (Kirschbaum 2014).

Needless to say, many members of the international community very quickly and strongly condemned Russia's actions in Crimea (discussed further below). In response to such criticism, Russia invoked examples of Western humanitarian interventions. For instance, Russian Foreign Minister Sergei Lavrov repeatedly compared Russian actions in Crimea to NATO's intervention Kosovo (Karagiannis 2014:11). While Russia strongly opposed the Kosovo intervention at the time, it was willing to later acknowledge that it created a narrow precedent to permissibly violate the non-intervention norm without UNSC authorization (something NATO and many other members of the international community were unwilling to concede). According to Putin,

This happened in Yugoslavia; we remember 1999 very well. It was hard to believe, even seeing it with my own eyes, that at the end of the twentieth century, one of Europe's capitals, Belgrade, was under missile attack for several weeks, and then came the real intervention. Was there a UN Security Council resolution on this matter, allowing for these actions? Nothing of the sort... (Kremlin 2014a).

Yet, while Putin claimed Russia's intervention in Crimea was no different from NATO's intervention in Kosovo in terms of motivations and legitimacy, he claimed it differed in terms of how deadly it was to civilians on the ground. Putin argued that while Russian interventions are limited in scope such that "in Crimea not a 'single shot [was] fired'" (Burke-White 2014: 8), Western interventions are short-sighted, expansive, and poorly planned, exacting a higher toll on civilians (Kurowska 2014: 497).

## **Lack of Intersubjective Agreement**

In these justifications we can see several themes that help capture Russia's understanding of what constitutes permissible humanitarian intervention differently than R2P. One major theme draws parallels between the Crimean intervention and NATO's intervention in Kosovo. As noted above, Russia essentially labeled the opposition to its humanitarian justifications as hypocritical, given the support NATO received for its intervention. For Russia, the situation in Crimea was just as dire to civilians as was the case in Kosovo, and the likelihood that the intervention would receive UNSC backing was just as slim. Consequently, Russia could not understand why its intervention in Crimea could not be as legitimate and endorsed as NATO's in Kosovo, especially considering how much more humanely it felt its intervention was executed. These accusations of selectivity and bias indicate that Russia questioned the interpretive power of the norm enforcer, the UNSC, opening a window of opportunity for contestation.

A second major theme reflected in Russia's humanitarian justifications is the need to protect compatriots. Russian officials repeatedly spotlighted the danger to Russians and Russian-speakers in Crimea. Even staunch Russian critics, like the United States, understood the magnitude of this concern and attempted to address it in its diplomatic efforts to end the crisis: "American officials said they presented a range of ideas on how a compromise over Crimea might be achieved, including arrangements to expand the peninsula's autonomy and safeguard the rights of the Russian-speaking population" (Gordon and Myers 2014). The focus here is on the protection of Russians or communities with close cultural ties to Russia threatened in the "near abroad" (Tsygankov and Tarver-Wahlquist 2015:3). These rationales echo those Russia offered in the past for other interventions, suggesting this historical legacy deeply imprinted the context and the background information that shaped its ideas of when and how to act normatively. This restrictive view of permissible humanitarian action helps to explain apparent inconsistencies in Russia's stances, such as a willingness to protect ethnically Russian Crimeans but not Syrians brutalized in their civil war.

To Russia, it is a restrictive view when compared to the West's notion of permissible humanitarian intervention. From Russia's perspective, humanitarian intervention's latest iteration, R2P, has a broader jurisdiction stemming from its universal tone. Conceptually, it allows any state to overcome the non-intervention norm to protect any threatened community in the world. For Russia, that R2P demands UNSC authorization to be considered legitimate may only initially restrain this potentially destabilizing practice. This is because as support for the doctrine grows, it is inevitable that strict compliance with its tenets will give way to exceptions that will undermine the stability provided by the non-intervention norm and the interpretive power the UNSC possesses. As Putin argues,

Our western partners, led by the United States of America, prefer not to be guided by international law in their practical policies, but by the rule of the gun. They have come to believe in their exclusivity and exceptionalism, that they can decide the destinies of the world, that only they can ever be right. They act as they please: here and there, they use force against sovereign states, building coalitions based on the principle "If you are not with us, you are against us." To make this aggression look legitimate, they force the necessary resolutions from international organisations, and if for some reason this does not work, they simply ignore the UN Security Council and the UN overall (Kremlin 2014a).

In contrast, Russia argues that the humanitarian exceptions it advocates are less destructive because they only enable violations of the non-intervention norm when one's compatriots are vulnerable within one's sphere of influence (Kurowska 2014: 497). And for Russia, these actions may not even violate the non-intervention norm; rather, Russia is exercising its sovereign duties by protecting its ethnic community (residing in states that were part of the Soviet Union just like Russia) as dictated by the R2P doctrine (Kurowska 2014: 498).

Relatedly, a third theme also appeals to the idea of sovereignty. Much of the condemnation of Russia's actions in Crimea stemmed from the perceived violation of Ukraine's sovereignty. However, Russia claimed it did not commit this violation because the legitimate sovereign, President Yanukovich, gave Russia permission to intervene in Crimea. According to Putin,

As you may know, we have a direct appeal from the incumbent and, as I said, legitimate President of Ukraine, Mr. Yanukovich, asking us to use the Armed Forces to protect the lives, freedom and health of the citizens of Ukraine (Kremlin 2014b).

In the UNSC on March 1, 2014, the Russian Ambassador to the UN, Vitaly Churkin, echoed the argument that the ousted Ukrainian President had requested Russia's help in protecting Ukrainian civilians (Karagiannis 2014: 10–11). In fact, Russian officials claimed it was Yanukovich's unconstitutional ouster that created the security vacuum necessitating Russia's intervention:

It is also obvious that there is no legitimate executive authority in Ukraine now, nobody to talk to. Many government agencies have been taken over by the impostors, but they do not have any control in the country, while they themselves – and I would like to stress this – are often controlled by radicals. In some cases, you need a special permit from the militants on Maidan to meet with certain ministers of the current government. This is not a joke – this is reality (Kremlin 2014a).

Thus, these arguments suggest that Russia does not reject the norm of non-intervention and its humanitarian exceptions. It is not engaged in justificatory contestation. Rather, these arguments suggest Russian attempts to abide by the norm by arguing the norm's inapplicability in this instance.

Russia also made more subtle arguments that Ukrainian loss of sovereignty was not at issue, and thus the non-intervention norm was not implicated in this instance. These arguments appear in Russia's numerous references to its common history with Ukraine. Putin elucidated on this historical connection between the two states:

Everything in Crimea speaks of our shared history and pride. This is the location of ancient Khersones, where Prince Vladimir was baptised. His spiritual feat of adopting Orthodoxy predetermined the overall basis of the culture, civilisation and human values that unite the peoples of Russia, Ukraine and Belarus. The graves of Russian soldiers whose bravery brought Crimea into the Russian empire are also in Crimea. This is also Sevastopol – a legendary city with an outstanding history, a fortress that serves as the birthplace of Russia's Black Sea Fleet. Crimea is Balaklava and Kerch, Malakhov Kurgan and Sapun Ridge. Each one of these places is dear to our hearts, symbolising Russian military glory and outstanding valor" (Kremlin 2014a).

The depth of their commonalities makes the existence of Ukraine's independent existence fuzzy, such that Russia recognizes Ukraine's sovereignty to a lesser extent than say, Syria's. Sovereignty exists on a continuum with post-Soviet states occupying the weaker end (Allison 2013). As Aglaya Snetkov and Marc Lanteigne (2014: 119) posit,

A clear distinction, however, exists between areas seen as local and those as distant within Russia's geopolitical foreign policy script. Events in what Moscow considers its own neighborhood and those in other regions of the world continue to be considered very differently. Its post-Soviet legacy means that Russian authorities continue to see the space of the former Soviet Union as its area of 'privileged interest.'

As such, the bar for non-compliance with the non-intervention norm is lower than is the case for states that do not share a common history with Russia, particularly when Russians are threatened.

## Costs

In this way, perceived Russian inconsistencies on the humanitarian exceptions to the norm fade away and a steady commitment to this understanding of the norm becomes apparent instead (Menkiszak 2014: 6; Kurowska 2014: 502). Russia held fast to these commitments despite threats and the implementation of policies that undermined its material interests. These costs came not only in the form of condemnation and sanctions authorized by the UNSC, and imposed by members of the international community, but also the costs it chose to incur to finance its Crimean activities.

On March 1, the Spokesperson for the Secretary-General released a statement saying, “The Secretary-General reiterates his call for the full respect for and preservation of the independence, sovereignty and territorial integrity of Ukraine” (UN Secretary General 2014). Shortly thereafter, Ban ki Moon told reporters in Geneva,

I have repeatedly emphasized that it is critical to ensure full respect for – and the preservation of – Ukraine’s independence, unity, sovereignty and territorial integrity. It is now of utmost importance to restore calm, to de-escalate tensions immediately through a dialogue (UN News Center 2014).

On March 28, 2014, after the completion of the Crimea annexation referendum, the UN General Assembly (UN 2014) passed Resolution 68/262 condemning Russia’s actions as an impermissible violation of Ukraine’s sovereignty. It stated that the UNGA “Affirms its commitment to the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognized borders” and that it,

Calls upon all States to desist and refrain from actions aimed at the partial or total disruption of the national unity and territorial integrity of Ukraine, including any attempts to modify Ukraine’s borders through the threat or use of force or other unlawful means (UN 2014).

One-hundred countries voted in favor of the resolution. Armenia, Belarus, Bolivia, Cuba, Nicaragua, North Korea, Russia, Sudan, Syria, Venezuela, and Zimbabwe voted against it. The UNSC attempted to pass a similar resolution but was blocked by Russia’s veto.

In terms of its own finances, the Crimean intervention may prove to be a costly affair as a result of crippling sanctions imposed on it by the United States and Western Europe (Frye 2014). Furthermore, the Crimean annexation may wreck havoc on Russia financially. Since Crimea is not self-sufficient, Russia would have to heavily invest in developing its capacities, at a time when the ruble is taking massive hits due to the Ukrainian venture (Yakovlev-Golani and Kravets 2014; see also Mathew 2014). If the economy continues to suffer in the aftermath of its Crimean intervention, Putin will face challenges from political and economic elites (Frye 2014).

The Crimean intervention also posed foreseeable security costs for Russia (Frye 2014). For instance, it is not in Russia’s interest to further push Ukraine closer to the West. For Russia, Ukraine was an important security buffer between it and NATO. Hence the reason for Russia’s alarm over its increasingly closer ties to the West. Additionally, Russia’s security interests in Crimea arguably were not seriously jeopardized, even with a pro-Western government in Kiev. Yet, the costs to its security interests for its engagement in Crimea will likely surpass any benefits it acquires from this engagement.

## Norm Contestation

Yet, despite the foreseeability of these costs, Russia nonetheless made ideational arguments that had been rejected in the past, namely during its military confrontation with Georgia (discussed below). In doing so, Russia seemed less concerned about its international reputation. Given its antagonistic relationship with many of the other major powers prior to the Crimean intervention, making a legal case that rested on the hypocrisy of the West was unlikely to improve its reputation. And Russia maintained this normative rhetoric even after the UN condemned its actions and the United States and some European states imposed sanctions on it. For instance, just before a vote on a UNSC resolution condemning Russia's annexation of Crimea, Churkin defended Russia's actions by claiming,

the Crimean people had been forced to take the “extraordinary measure” of pursuing secession as a “result of [an] unconstitutional, violent coup d'état carried out in Kiev by radical nationalists, as well as direct threats by the latter to impose their order on the whole territory of Ukraine (Lynch 2014).

He also made use of the historical context by saying it is “useful to recall here that until 1954 Crimea was part of the Russian Federation... It was given to Ukraine in violation of the norms of that time under Soviet law and without taking into account the views of Crimea (Lynch 2014). That he made these arguments despite vetoing the resolution indicates the importance to Russia of officially making these normative claims. Subsequently, the United States and Europe executed the sanctions they threatened if Russia followed through with the annexation.

This commitment to these ideational arguments conforms with the logic of appropriateness influenced by the logic of contestedness and the logic of practicality. These logics ask actors to interpret the logic of appropriateness through a localized lens, informed by particular historical experiences and culture. Following this approach, Russia's history of humanitarian action arguably influences how it currently conceptualizes permissible exceptions to the non-intervention norm. It also reveals why the norm diffusion framework is less helpful in explaining behavioral variation in this instance as the norm had been accepted by Russia for some time. Charles Ziegler's (2014: 2) argument about Russia and the R2P doctrine applies to humanitarian intervention more broadly: “acceptance and internalization of the R2P norm is constrained by historical experience, domestic politics, foreign policy aspirations, and culturally specific interpretations of sovereignty.” Russia's historical record on navigating the balance between humanitarianism and the non-intervention norm reflects a normative understanding which emphasizes solidarity with communities culturally or ethnically connected to Russia, whether it be Christians in Bulgaria (Finnemore 1996), the Serbs in Kosovo (Averre 2009), or ethnic Russians in Crimea. The same could be said about Russia's actions in Georgia in 2008. Andre P. Tsygankov and Matthew Tarver-Wahlquist (2015: 15) note,

Even during the war in Georgia [Putin] defended not only Russia's security perimeters, but also Russian citizens and small nationalities in the Caucasus. [Additionally], according to Chairman of Russia's Duma Committee for the CIS and Compatriots Affairs Andrey

Kokoshin,... “Russia must protect their lives, health, property, honor and dignity by all available means, like the United States and other Western nations are doing”... Unable to offer such protection earlier due to internal weakness, Russia was now determined to demonstrate that it has not forgotten those loyal to its values and interests in the Caucasus.

What makes the Georgian intervention interesting for the argument here is that Russia’s humanitarian justifications regarding Crimea greatly mirrored its rhetoric for the Georgian intervention, even though the international community roundly rejected those arguments (Ziegler 2014). Thus, Russia could have foreseen that not all members of the international community would be persuaded by these arguments again for the Crimean intervention. If the use of such argumentation is to advance instrumental purposes, as the materialist framework suggests, then such rhetoric makes little sense and may even have been counter-productive. Instead, this framework would have expected Russia to abandon the humanitarian arguments when they did not deflect punitive measures or to avoid them completely, particularly those which criticize its opponents, to avoid their ire.

Rather than deploying humanitarian arguments exclusively to further material interests (of which Russia has many in Crimea), Russia may have used them to contest dominant understanding of normative parameters. Putin seemed willing to pursue this contestation agenda despite the material costs: “Today, we are being threatened with sanctions, but we already experience many limitations, ones that are quite significant for us, our economy and our nation” (Kremlin 2014a). Yet, the possibility of a normative agenda having a role to play in Russia’s use of humanitarian rhetoric, is under-explored as much of the current analysis focuses on how this ideational discourse serves as a fig leaf for materialist motivations. However, as Xymena Kurowska (2014:491) recognizes,

By mechanistically reproducing the template of ‘the Russian menace’, [mainstream analysis] dismisses Russia’s input into norm contestation, regardless of how illiberal that input may be. Yet the fact that political action is deceptive and that political actors are inherently self interested does not exclude the possibility that their interests include certain compatible norms in the promotion of which Russia may purposefully engage.

In order to pursue this normative agenda, Russia engaged in direct contestation. Recall that this type of contestation involves deliberation among normative actors to determine a norm’s meaning-in-use (Wiener 2004). One site of contestation has been the UNSC (Allison 2013), as noted throughout this chapter. For Russia, its self-perception as a great power entitles it to a privileged role in building the global normative structure. This requires other great powers to take seriously, and confer legitimacy to, its interpretation of global norms and rules, even if Russia resists their “hegemonic” conception of international order (Allison 2013). The fact that it does resist, and even views these opposing normative interventions as hegemonic, suggests a community of practice lacking meaningful learning, as revealed in the previous chapter.

The ambiguity contained in the non-intervention norm gives ample opportunity for unconventional interpretations like Russia’s to emerge. In fact, this ambiguity also enabled NATO to claim its intervention was normatively permitted. Russia then capitalized on the continued normative ambiguity to make a similar argument for its



actions in Crimea. This “echo phenomenon” is reminiscent of Russia’s use of similar arguments to defend its 1968 Czechoslovakian intervention that the United States used for its intervention in the Dominican Republic in 1965 (Allison 2013). The interpretations fit plausibly enough within the ambiguous spaces of the norm that even other states are willing to throw their support behind them, as evidenced by the ten states that rejected the UNGA resolution condemning Russia’s actions in Crimea.

What this rhetorical sparring indicates is that the norm lacks intersubjective agreement. While particular interpretations of the norm may have been disseminated among actors in the international arena, not all actors may have accepted these interpretations. And in the case of Russia, they may be actively resisted. In examining the above statements, we see that the UNSC and Russia’s opponents hold a particular view of when the non-intervention norm can be violated. Because they assume that Russia accepts this view, that intersubjective agreement exists among them, they perceive Russia’s contestation as insincere. It should be noted that, as was the case with the norm enforcer in the previous chapter, the UNSC did not present a unified front in this matter. China often supported Russia arguments that its actions in Crimea were lawful. And as already mentioned, a number of non-permanent UNSC members voted with Russia and China to veto resolutions condemning Russia’s actions as impermissible violations of Ukraine’s sovereignty. Like the case with the civilian immunity norm, the views of a particular faction in the UNSC prevailed in advancing its interpretations of the parameters of the non-intervention norm. Yet, these internal disagreements did help open the window for norm contestation by damaging the norm enforcer’s image of neutrality and inclusiveness, which is so important to its exercise of interpretive power. In any case, the above discussion suggests that possibly, Russia’s contestation may be a genuine means of advancing its interpretation of the non-intervention norm, even if it could also destabilize international relations as Russia claims R2P does.

## Conclusion

This chapter aimed to illustrate how the norm contestation framework can enhance our understanding of behavior related to another long-held norm, the norm of non-intervention. Much like the civilian immunity norm, the non-intervention norm has a long history of practice, yet a great deal of its content is ambiguous. In this case, the ambiguity centers on the norm’s parameters, the instructions which inform actors of the norm’s applicability. This ambiguity, and the wide acceptance of the norm itself, provides fertile ground for the emergence of multiple interpretations of what the norm requires. The norm contestation framework is particularly helpful where materialist frameworks leave off: when the logic of consequences inadequately explain norm related behavior under these conditions. That is not to say that a materialist framework cannot ever explain how norms operate. But by utilizing a combination of the logic of appropriateness, the logic of practicality, and the logic

of contestedness, the norm contestation framework can help us understand behavior related to ambiguous norms which may not necessarily further material interests. Furthermore, by appreciating the interpretive power norm enforcers possess, we can better understand when norm contestation is more likely.

We see these dynamics play out in the case of Russia's humanitarian justifications for its actions in Crimea. Russia has been a staunch supporter of the non-intervention norm but also has a long history of humanitarian interventions. Thus, its acceptance of the norm is not in question; Russia is not engaging in justificatory contestation. However, due to the norm's lengthy record of ambiguity, states have deployed varying interpretations of its parameters, sometimes even diverging from that of the norm enforcer in this case, the UNSC, an indication of its weakened status. Russia is no different, as is evidenced by its unconventional interpretations of the acceptable humanitarian exceptions to the norm. Furthermore, Russia did not abandon these interpretations despite the economic and security costs it paid (and is paying) for advancing them.

This suggests that the pursuit of material interests alone cannot fully explain Russia's actions in Crimea, that the story is more complicated. However, that is also not to say that materialist motivations have no role to play in this event. International relations is a complicated affair and efforts to explain it must appreciate that complexity. The point here is to call attention to an explanatory framework that has been under-explored in analyses of non-compliance with the non-intervention norm, and specifically of Russia's behavior in Crimea. And as the previous chapter illustrated, this is also the case regarding deliberate civilian targeting. The next chapter discusses how incorporating the insights derived from a norm contestation framework can advance not only our theoretical understandings of international relations, but can also offer helpful guidance for policy design in response to phenomena in the global arena.

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# Chapter 5

## Conclusion: Lessons Drawn from Norm Contestation's Insights

### Summary

This study demonstrates how a norm contestation framework can provide useful insights to norm-related behavior. In doing so, it argues that this framework can supplement explanations offered by other frameworks or step in when their theoretical mechanisms unsatisfactorily help us understand empirical puzzles. The norm contestation framework can offer this assistance because it appreciates norms' dynamism. Rather than viewing norms as "things" whose content remains unchanged, norm contestation's use of the logics of appropriateness, contestedness, and practicality enables it to notice how different social contexts contribute to variations in how actors interpret norms, even long-established, foundational norms. As Antje Wiener (2004: 190), puts it, "analysis of social practices in context provide additional leverage when it comes to explaining cases that otherwise seem puzzling..." These variations in interpretations are then employed to help explain differences in norm-related behavior.

The book's case studies help illustrate how norm contestation can shed light on actor behavior even in a realm which often poses challenges for norm-based theories, armed conflict. Norm contestation illuminates how divergences in the meanings-in-use of the non-intervention and civilian immunity norms' exceptions signify intersubjective disagreement, where actors within a particular regime do not share accepted understandings of appropriate behavior. This lack of intersubjective agreement can impact how actors implement their obligations and how their actions are perceived. The case studies reveal that norm users espouse understandings of these norms' prescriptions and parameters that differ from the relevant norm enforcer, those entrusted with the interpretive power to determine noncompliance. These differences stem from ambiguity in normative content, which then lead actors to reference the logics of practicality and contestedness to determine what the norm's logic of appropriateness requires. These mechanics form the core of contestation. Normative ambiguity can create a clash between local versions of the norm

and those diffused by norm enforcers. Thus, even norm enforcers' fairly effective dissemination efforts do not necessarily eliminate norm contestation when actors comply with norm variants that more deeply resonate with them.

Regarding the civilian immunity norm, the case study illustrates how the norm's prescriptions, namely the distinction principle, and its exceptions have long been saddled with ambiguity. Efforts by the ICRC, the norm enforcer in this case, to eliminate this ambiguity by codifying the norm were not entirely successful. Neither were its efforts to standardize the distinction principle. Local versions, predating international codification efforts, continue to exert influence on local actors, indicating the ICRC's weakened interpretive power. This is so even though these local norm variants also contain vague content. The ambiguity that affects both versions of the norm invites actors to rely on their war experiences to help them determine what the distinction principle enables. And because actors' experiences vary, they differently interpret who qualifies for the norm's protection, while commonly sharing the notion that some civilians are protected in war. This is even the case within the ICRC, whose members are not in complete agreement about when civilians can be killed. Yet, by virtue of being the norm enforcer, the ICRC still retains sufficient interpretive power that its determinations of norm noncompliance resonate with the broader international community. Furthermore, the case study shows us how some intersubjective disagreement is shaped by ideational factors, rather than material interests. In other words, norm users may steadfastly commit to their norm interpretation even if it is inconsistent with the logic of consequences.

Similar dynamics play out with the non-intervention norm case study. Both the norm's parameters and its exceptions have long been unclear, even after being enshrined in the UN Charter. Consequently, differing interpretations of when humanitarian interventions can be permissibly conducted abound. Russia's version is heavily shaped by its own historical practice of violating sovereignty for humanitarian purposes. This conceptualization differs in some respects from the UNSC's, the norm enforcer, stated position and is linked to the UNSC's diminished status in Russia's eyes. And much like with the civilian immunity norm case, intersubjective disagreement also manifests within the UNSC itself. However, both Russia's and the UNSC's versions do possess areas of agreement such that we witness no justificatory application in this instance. Furthermore, the logic of consequences cannot exclusively explain why Russia advanced humanitarian arguments to explain its violation of Ukraine's sovereignty. Rather, it consistently deployed ideational justifications, even after material costs were imposed on it when the UNSC deemed its actions as non-compliant.

The case studies also demonstrate how contestation, fueled by ambiguous content, can be intentional and unintentional. The non-intervention norm case study displays Russia directly challenging the UNSC's interpretation of permissible normative violations, pushing it to legitimate its version. In doing so, it may have been engaging in what Amitav Acharya calls norm subsidiarity, where "local actors may *export* or "*universalize*" locally constructed norms" (2011: 98, emphasis in original). And as the case study noted, one basis for Russia's challenge was its view of the norm enforcer's hypocrisy in condemning Russia's violation but not NATO's in the 1990s. This rhetorical strategy is consistent with norm subsidiarity:



self-perceived weaker states are more likely to challenge a norm enforcer's interpretive power, "when they see the violation of their cherished global norms by powerful actors and when higher level institutions tasked with their defense seem unwilling or incapable of preventing their violation" (Acharya 2011: 101). Meanwhile, the civilian immunity norm case study shows belligerents holding onto localized ideas of permissible civilian targeting while being unaware of the ICRC's views on this issue. The case studies also showcase how actors deploy both legal and non-legal arguments in the contestation process. Understandably, the use of particular rhetorical strategies is linked to how well versed the contestator is on the applicable law. These revelations indicate that perhaps a community of practice ("like-minded groups of practitioners who are informally as well as contextually bound by a shared interest in learning and applying a common practice" (Adler 2008:196)) does not fully exist within these normative regimes, an issue worthy of policymaker and practitioner consideration as they contemplate responses (a matter discussed further below).

While this book evinces how norm contestation can make sense of some behavior regulated by long-established armed conflict norms, its explanatory utility is not confined to such hard cases. Norm contestation has wide applicability. Not only can it help us understand behavior associated with well-entrenched norms, it can be applied to emerging norms as well as those with illiberal content. Furthermore, it can be used as a tool to explain behavior in a diverse range of fiercely debated issue areas like the behavior of democracies, climate change regulation, the definition of marriage, global fisheries governance, and the assassination taboo.

## **Theoretical Implications and Future Research**

This book's findings pave rather intriguing and enriching avenues to further our understanding of how norms operate in the global arena. First, they invite us to re-examine how we conceptualize norm violation. By noting the different roles held by norm enforcers and norm users, we can better appreciate how asymmetries in the type of productive power discussed here, interpretive power, shape how norm-related behavior is viewed. Norm enforcers' power, sourced from collectively recognized legitimacy, allows them to designate a particular instance of action or inaction as noncompliance. However, as this book suggests, these are not the sole standards existing in the global environment. Some localized norm variants predate the ones codified in international law and have greater sway on regime actors than their global counterparts. The same could be true about local norm enforcers. How might a reconceptualization of norm violation, one that is not exclusively drawn from a norm enforcer's perspective, affect how we understand normative behavior? Additionally, the book demonstrates how norm enforcers' interpretive power is not fixed. It argues that norm contestation is more likely to erupt when norm enforcers' power is weakened, such as when they are seen as biased. In such instances, when global norm enforcers' power is diminished, by whose standards do we gauge norm compliance? In other words, how do we know when and if norm violation occurs?

These issues stimulate additional questions that encourage adopting the book's appreciation of norm fluidity. A contestation framework moves us away from conceptualizing norms as static "things" toward the idea that norms encompass dynamic processes rife with contestation. While this book focused its attention on applicatory contestation, contestation centered how to implement a norm's prescriptions and parameters, its findings may have bearing on justificatory contestation, contestation over a norm's validity. One question unanswered here is what, if any, link exists between anticipatory contestation and justificatory contestation? Can repeated and sustained anticipatory contestation lead to justificatory contestation?

This line of inquiry leads to another set of questions revolving around norm robustness. Does contestation weaken norms or can it strengthen them? Does it depend on what kind of contestation occurs regarding normative content? Does the effect vary depending on the strength, age of the norm, or contestator's identity? And when is contestation more likely to produce changes in normative content? These questions touch on the unresolved debate between contending views argued by Wiener (2004), Dietelhoff and Zimmermann (2013), and Bloomfield (2015).

Underlying these questions is the need for norms scholars to more fully recognize the role of non-Western actors. While the current focus in norms research is expanding, for some time, the dominant story told was of norms originating in the West and diffusing to the rest. Norms scholars paid less attention to how actors in other parts of the world challenged global norms, promoted local norms, or fused the two. According to Acharya,

The relationship between the global and regional norms and the role of regions (especially outside of Western Europe) as sites of global norm making remains undertheorized. Some supposedly global norms can have regional origins, influences, and manifestations. One should not assume that regions merely adopt global norms wholesale; it can also be the other way around (2014:405).

Paying more attention to how non-Western actors engage with global norms enables us to offer richer and more comprehensive explanations for how norms operate in the global arena.

This study also stimulates related questions about the role ambiguity plays in a norm's effectiveness. Recall that ambiguity in the civilian immunity norm and the non-intervention norm contributed to the contestation within them. Does ambiguity help or hinder norm compliance? Can it do both? One argument, as Kenneth W. Abbott and Duncan Snidal (2000: 427) present, is that ambiguity can lead to auto-interpretation which can be problematic for norm compliance: "Precision of individual commitments, coherence between individual commitments and broader legal principles, and accepted modes of legal discourse and argument, all help limit such [self-serving auto-interpretation]." However, Widmaier and Glanville showcase how ambiguity can enhance norm compliance:

ambiguity may enhance flexibility in implementation, providing room to adjust to interpretive shifts and unexpected events, and preventing adherence to formal rules from undermining the deeper issues that underpin the norm" (2015: 369; see also Abbott and Snidal (2000)).

Further study of contestation may provide meaningful insight into these important issues. And delving into whether the ambiguity observed in normative content was intentionally created can assist in this endeavor.

The book's findings also hold implications for designing research on norms. As it stresses the agency of contesters, via their active interpretation of normative prescriptions and parameters, norms researchers would do well to employ an inclusive approach and widen their lenses when investigating normative behavior. They should not only examine how norm enforcers understand relevant normative obligations, they should also engage as many other members of the associated regime as possible. In other words, do not assume that intersubjective agreement within the norm exists. It is by uncovering the interpretations held by both norm enforcers and norm users that this be determined. Implicit in this advice is to not simply to assume that material interests might be at the heart of unexpected normative behavior. It may well be. But actions norm enforcers deem as violations may be considered by other regime actors as norm compliant. Investigating the state of intersubjective agreement among the diverse range of normative actors will help researchers draw these conclusions.

## Policy Implications

The book's findings also provide meaningful insights to policy makers and practitioners. In particular, the book's emphasis on examining the state of intersubjective agreement among actors and the motivations behind their actions can usefully guide those interested in changing actor behavior. For instance, if intersubjective disagreement and its resultant behavior are consistent with Shannon's model (as described in Chap. 2), where ambiguous norms enable actors to use normative rhetoric to mask the pursuit of material interests, then responses aimed at altering actors' cost/benefit calculations might prove effective. Consider the civilian immunity norm case study. In instances where belligerents strategically target self-acknowledged protected civilians, the ICRC may do well to consider ways to make these norm violations more costly or, alternatively, incentivize norm compliance. Or both. However, if norm deviations stem from actor adherence to the logic of appropriateness, then responses with the logic of consequences in mind may be ineffectual. Rather, norm enforcers may want to consider investigating how norm users see themselves and to understand the local norms in which they are immersed in order to design more potent policies. In the non-intervention norm case study, imposing economic and security costs does not appear to halt Russia's contestation of the norm. Perhaps UNSC responses that more fully take into account its self-perception and its historical normative practice may produce different results.

As the book and the above discussion allude, the instances of norm contestation here suggest that a meaningful community of learning is absent, along with intersubjective agreement. Wiener (2004) advises that to enhance intersubjective agreement, elites such as norm enforcers should invest in ensuring rule-generating and rule-adapting processes are genuinely democratic. This means opening up legitimate contestation sites to all relevant norm users. She argues, "[a]ny agent who is able to access and capable to mobilize all positions on the cycle has a comparative advantage to others who do not" (2016: 31). Those excluded from these sites and processes of

norm generation and norm adaptation, such as rebel forces, are less likely to view the parameters and prescriptions of the norms debated as legitimate to their practice, even if they maintain a general belief in the norm's validity. Yet merely providing access is insufficient for creating effective communities of practice. Norm enforcers and other powerful actors must also meaningfully consider the views expressed within this community at these sites and engage in actual learning, a process in which "participation in and engagement with the meanings, identities, and language of communities of practice and their members" occurs (Adler 2008: 201). Brunne and Troope's interactional law framework assists here in suggesting that doing so also helps ensure normative buy-in by all the necessary stakeholders: "without sufficiently dense interactions between participants in the legal system, positive law will remain, or become, dead letter... Without a community of practice, supposed shared values will remain lofty rhetoric" (Brunnee and Troope 2011: 313). That buy-in, born from the active participation of a regime's diverse actors in law's creation and modification, manifests in the development of legal obligation (internalized fidelity to the international law version of the norm) because the law is collectively seen as legitimate (Brunnee and Troope 2011: 312). However, these outcomes require that norm enforcers take Acharya's advice and fully recognize the agency of other regime actors, a point touched on in the previous section. As Acharya posits,

norm creation and propagation is not the prerogative of materially powerful states. Weak states can also create regional and global norms. They may do so if they are excluded or marginalized from initial global norm-making processes. They may also do so to protest against the hypocrisy of powerful actors when they seem to violate the very norms that they have helped to create and diffuse (2014: 406).

One of the many things these communities of practice should consider is whether ambiguous content should be clarified. As presented above, both sides of the theoretical debate offer compelling arguments. Yet, this debate also has policy relevance. Within the context of the anti-mercenary norm, Sarah Percy observes that in maximizing the norm's precision as the international community converted it into treaty law resulted in weakening the norm itself. She states, "[p]recision in the law does not necessarily lead to robustness, because in creating law that is precise, states can create loopholes that make a law easy to avoid" (2007: 390). She goes on to argue that, "failure to use a legal instrument can be just as damning as repeated violations of that instrument" (2007: 391). Yet, in justifying its effort to make the civilian immunity norm more precise in international law, the ICRC argued,

Today, more than ever, it is of the utmost importance that all feasible measures be taken to prevent the exposure of the civilian population to erroneous or arbitrary targeting based, among other things, on reliable guidance as to how the principle of distinction should be implemented in the challenging and complex circumstances of contemporary warfare. By presenting this Interpretive Guidance, the ICRC hopes to make a contribution to ensuring that those who do not take a direct part in hostilities receive the humanitarian protection that they are entitled to under international humanitarian law. (Melzer 2009: 7).

By drawing more attention to this debate, the book hopefully spurs conversation among practitioners and policymakers on this issue to determine which course of action is best suited for the norms with which they engage.

Policy makers and practitioners should also consider the interaction between interpretive power, concentrated in global norm enforcers' hands, and norm-related behavior. For instance, if interpretive power is to remain with specifically designated norm enforcers, then they must take special care to protect the sources of this power: legitimacy generated from perceived neutrality and expertise. In other words, they must be mindful of taking actions which might appear as biased in the eyes of norm users and expend the effort to replenish their sources of power when they have dwindled. Of course, there are multiple ways to consider this matter. This includes pondering whether global norm enforcers should retain the primary power to determine norm noncompliance or whether it should be diffused among several actors in the global arena. For instance, some argue that regional security organizations like ASEAN can authorize humanitarian interventions when the UNSC cannot do so (Paust 2012). Would this diffusion of power enhance norm compliance in every instance, or would this strategy be successful with particular types of norms?

The norm contestation framework is a powerful and useful tool to guide us as we further our understanding of how norms affect global political behavior. We have much to thank norms scholars who forged ahead to show the importance of this research program. Because of the complexity of the subject matter, our current understanding is incomplete and many questions remain unanswered. This book hopes to help answer some of them, and consequently, expand our explanatory toolkit and offer fresh ideas to shape action on the ground.

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