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'Living by Example?' The European Union and the Implementation of the Responsibility to Protect (R2P)

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Abstract

Most empirical contributions to the normative power Europe (NPE) debate concentrate on whether and when the EU promotes its core internal norms abroad. In contrast, we investigate how norms emerging from international fora come to be accepted and internalised by the EU in the first place. We examine the case of the emerging responsibility to protect norm (R2P) and argue that the EU's implementation has been more limited and slower than one would expect from the NPE procedural ethics of 'living by example'. We examine the potential reasons for this failure to 'live by example': the role of persuasion by norm entrepreneurs; the role of inducements and costs; the goodness of fit between R2P and existing EU norms; and the clarity of the norm. We find that the lack of goodness of fit and clarity of the norm are important factors, but argue that low levels of bureaucratic receptivity were the greatest obstacle.

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1. Introduction[1]

Since it was first coined by Manners, the Normative Power Europe (NPE) concept has sparked three closely interconnected debates: (i) constitutive, about whether a set of core and minor norms adequately describes 'who the EU is' (Manners 2002; Forsberg 2011), (ii) analytical, whether it better captures key characteristics of EU foreign policy, and in particular, its promotion of norms (Hyde-Price 2006, Tocci 2008), and (iii) normative, whether it can serve as a desirable and ethical model against which the EU's external action should be evaluated (Sjursen 2006, Manners 2008). However, the debate focuses largely 'down-stream', on the extent to which 'European' norms shape the EU's identity and behaviour, rather than on how the EU accepts emerging international norms in the first place. In fact, beyond the rather broad 'core norms' of freedom, human rights and peace, it is rarely investigated how the EU internalises specific international norms in programmatic, bureaucratic and operational terms.[2] Given that 'new' norms may still be contested on various grounds, this focus also raises questions about our expectations vis-à-vis the EU as a norm adopter and implementer.

This article aims to help fill this gap in the NPE debate by exploring why the EU has accepted but not (yet) internalised the emerging norm that attributes the international community with the responsibility to protect people from four core crimes: genocide, crimes against humanity, war crimes and ethnic cleansing. In the context of this study, by 'the EU' we mean the relevant decision-making bodies such as the European External Action Service (EEAS) and its leadership, the European Commission and the European Parliament, as well as EU bodies representing member states such as the European Council, the Foreign Affairs Council and the Political and Security Committee. We first introduce the case of the 'responsibility to protect' (R2P) as an

[2] Manners' (2002) investigation of the case of the prohibition of the death penalty is an exception in empirical terms, but it is also a rather atypical norm as it is unambiguous. Another exception is the study of the EU as a 'shaper' or 'taker' of international regimes, that is, of well-established international norms, in Falkner and Müller's (2014) edited volume.

emerging international norm and we discuss how the EU's own endorsement of the norm and its long-standing role-conception as an active promoter of human rights and conflict prevention create expectations about its implementation of the norm. We clarify the differences between norm acceptance and implementation in three facets: programmatic, bureaucratic and operational. In a second step we demonstrate the extent to which the EU has been falling short of these expectations.

Drawing on insights from interviews and a series of practitioner workshops,[3] the article then examines the extent to which four explanations derived from the literature on norm acceptance and implementation can help to explain this puzzle: the role of persuasion by norm entrepreneurs; the role of inducements and costs; the goodness of fit between R2P and existing EU norms; and the clarity of the norm. We find that the last two explanations are important but not sufficient. In order to explain the timing of implementation we need to consider variable bureaucratic capacity, as the EU's foreign policy machinery has gone through a prolonged period of change, uncertainty and overstretch.

2. The puzzle: The EU's slow and limited implementation of R2P

R2P was endorsed in the outcome document of the 2005 UN World Summit (UN General Assembly 2005), and developed further by UN Secretary-General Ban Ki-moon in his 2009 Report on Implementing the Responsibility to Protect (UN General Assembly 2009). We consider R2P to be an *emerging norm*. It is a *norm* because it sets standards of appropriate behaviour by indicating what states 'ought' to do (see Finnemore and Sikkink 1998: 891-2). R2P is arguably rooted in existing international law (Cuyckens and De Man 2012), but it is novel in its reframing of state sovereignty as entailing the responsibility to meet a limited set of duties (the three pillars of R2P): firstly, states have the responsibility to protect their own citizens from the four core crimes; secondly, the international community of states, acting through the UN and partner organisations, should help states fulfil that responsibility; and thirdly, if a state

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[3] The authors conducted 30 semi-structured interviews with foreign affairs officials and NGOs representatives in Brussels and London and accessed summaries from more than 40 interviews conducted by Task Force members in Paris, Berlin, Rome, Copenhagen, Madrid, Geneva and Berne. In addition, we discussed R2P matters with almost 100 representatives from EU, national governments and NGOs at four workshops. The interview and workshop findings were triangulated with EU official documents and NGO reports about R2P implementation.

manifestly fails to protect its population, the UN and its member states should use a full range of tools to protect people.

R2P is *emerging* because it is at that stage of a norm's 'life cycle' (Finnemore and Sikkink 1998) when norm entrepreneurs try to persuade 'a critical mass of states' to accept and implement that norm.[4] In the case of R2P, we have not yet seen a 'norm cascade' (Finnemore and Sikkink 1998: 895-6) with broad international acceptance of it (Claes 2009; Prantl and Nakano 2011; Williams 2009). So far China and Russia have not been comfortable with references to the norm in Security Council debates and the outcome of NATO's intervention in Libya has prompted attempts by states such as Brazil to limit the use of military force under pillar 3 (Thakur 2013). Moreover, the new UN adviser on R2P has herself announced she will concentrate her resources on pillar 2 and the non-military tools under pillar 3 in the immediate future (The Stanley Foundation 2013). Such elements have led some scholars to conclude that R2P is 'stuck' and not emerging at all. We contest this view because a limited but steady 'dynamic of imitation' can be clearly noted: an increasing number of states have participated in constructive UN General Assembly dialogues on R2P, references to R2P have been made in a number of UN Security Council resolutions, and 43 countries have appointed national R2P 'focal points', whose task is to promote R2P domestically and internationally.[5]

Wouters and de Man (2013: 5-12) have rightly pointed out that the role of regional organisations in implementing R2P was under-specified until the Secretary-General's 2011 report (UN Secretary-General 2011). That report acknowledged the considerable differences between regional organisations in their 'scope, capacity and authority' (ibid: 3), but highlighted their potential to make R2P operational *within their respective region*, saying little about what they could do beyond it. Given that these international expectations arose relatively late and were only partly relevant to the EU as an actor beyond its own region, we argue that the benchmark for norm implementation arises from the EU's own commitments, in particular to human rights and peace, which elsewhere have been identified as core norms of the EU (Manners

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[4] In the case of an emerging norm like R2P, whose status in international customary law is still contested, by 'acceptance' we mean 'political and cultural validation'.

[5] Among the 43 are 21 EU member states and the United States, which has created a number of new tools and institutions aimed at preventing mass atrocities (Global Centre for the Responsibility to Protect 2014).

2002, 2006, 2008). Manners sees as a central characteristic of the EU that it 'changes the norms, standards and prescriptions of world politics away from the bounded expectations of state-centricity' (2008: 45), so one would expect it, *prima facie*, to welcome a norm redefining state sovereignty such as R2P. More specifically, Manners identified three criteria to evaluate whether the EU is acting in accordance with the normative standards established by EU treaties and strategic documents: 'living by example', 'be reasonable', and 'do least harm' (2008:47). In the context of R2P, we focus on the first criterion of 'living by example' because the EU and its member states have all endorsed R2P and participated in supportive diplomacy at the UN level (Council of the European Union 2005; Kirn 2011; Wouters and de Man 2013, Brockmeier, Kurtz, and Junk 2014: 437). Norm endorsement without implementation is not enough to say that the EU 'lives by example' for at least two reasons. First, norm acceptance is only an intermediate step towards effective compliance, which means that the norm has acquired a taken-for-granted character irrespective of the individual beliefs of leaders and officials (Risse and Sikkink, 1999; Risse et al 2013). Second, a lack of implementation would hinder 'norm cascading' to other actors (Wiener 2008; Wiener and Puetter 2009) and damage the external credibility of norm entrepreneurs (Widmaier and Grube 2014). Given its repeated, albeit not always consistent, commitment to promoting human rights and preventing violent conflict, the EU would 'live by example' only if it implemented a norm designed to prevent and stop the most grievous human rights violations, most of which tend to occur during times of armed conflict. In sum, the EU can be expected to implement R2P in its external action within a reasonable time period because its identity (as characterised in the NPE literature), stated goals and capacities should make R2P implementation both appropriate and feasible.

The puzzle for this article is that these expectations were largely not met. We found that the EU has taken rather limited and slow-paced efforts to implement the norm even though it ostensibly has accepted it, despite existing capabilities that could be deployed to operationalise it (Task Force on the EU Prevention of Mass Atrocities 2013). This is not a case of limited capabilities, as in a classic 'capability-expectations gap' (Hill 1993) because capabilities could be aligned with expectations. Why, then such limited implementation?

We distinguish between three different indicators of norm implementation when approaching the EU's foreign policy, by looking at the degree to which:

- influential actors within the organisation promote a norm internally and externally through speeches, statements and strategy documents *(programmatic implementation)*;
- norm compliance and promotion is embedded in bureaucratic structures and procedures *(bureaucratic implementation)*;
- the norm is mainstreamed into existing policies and resource allocation *(operational implementation)*.

With regard to programmatic implementation, we found that leading EU representatives have hardly ever expressed publicly and prominently their commitment to R2P outside of the UN context, or elaborated on how it should be put into practice. The two most prominent references to the EU's support for R2P are buried within the 2005 European Consensus for Development and the 2008 Progress Report on the implementation of the European Security Strategy (European Union 2005; European Union 2008). Moreover, Wouters and De Man (2013: 18) note that these documents tend to repeat the UN wording rather than elaborate in more detail how the EU could operationalise the norm. This low-key approach contrasts with the high-profile Gothenburg programme set up in 2001 to enhance the EU's conflict prevention capacities. The European Parliament has repeatedly called for greater EU commitment to implementing R2P (European Parliament 2013), and inserted references to R2P in its resolutions on specific situations, for instance, on the Democratic Republic of Congo and Somali piracy (Wouters and de Man 2013: 19).There is very little evidence, however, that its support for R2P has had concrete impact on the EEAS or the High Representative for Foreign Affairs and Security Policy so far.

In terms of bureaucratic implementation, we found that references to and awareness of R2P are largely limited to documents referring to EU-UN relations and do not indicate how R2P could be operationalised.[6] With R2P largely confined to the UN silo and the appointment of a R2P advisor or focal point repeatedly delayed, the EEAS has lacked a specific institutional locus for R2P matters.

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[6] See for example Council of the EU (2012).

Finally at the operational level, existing policies and resource allocations have mostly ignored internal implementation or external promotion of R2P. Apart from occasional and passing references to R2P in EU-Africa summit declarations, there is little evidence of RP2 operationalisation in terms of country or regional strategies (see Kirn 2011, for the case of Africa). Only in 2014 have efforts been made to integrate atrocity risk indicators into broader exercises for risk assessment and early warning in the context of the EU's conflict prevention policy. Moreover, although the mandates for EUFOR Tchad/RCA (2008-09) and EUFOR RCA (2014) have included the objective of protecting civilians, most EU mission mandates have not.

In sum, the EU has done little to internalise the norm in its external affairs and has taken some limited steps a long time after it first endorsed the norm in 2005. How can this be explained?

3. Potential explanations of norm implementation

As the NPE literature has little to say on why the EU may accept, but then not implement, a specific norm, we need to draw on the literature on international norm diffusion and acceptance and the underpinning arguments about any lack thereof. However, in doing so, we need to keep in mind that not all the identified mechanism may apply, as the literature is predominantly focused on (non-Western) states, rather than on a highly advanced regional organisation composed of Western states.

First, some authors note that goodness of fit, or domestic salience, is important (Cortell and Davis 1996: 456). It will be easier for a state to accept a new international norm when it resonates positively with relevant pre-existing domestic norms. For example, Simmons argues that democracies are likely to ratify human rights treaties early, because 'these treaties to a great extent reflect the values of civil and political liberties, equality of opportunity, and individual rights upon which these systems are largely based' (Simmons 2009: 65). Similarly, Acharya has argued that foreign 'ideas that could be constructed to fit indigenous traditions were better received than those did not have such potential' (Acharya 2004: 244; see also Williams 2009). If an international norm competes with other domestic norms, however, then acceptance depends on the relative strength of the new norm and its

goodness of fit in the domestic context. In the absence of either domestic salience or goodness of fit, there will be a preference for the pre-existing norm (see Cortell and Davis 1996: 456).

Related to explanations based on the domestic salience or goodness of fit of the international norm are those based on the 'appropriateness' of the norm. Relevant domestic actors (politicians, officials, diplomats and so on) can be convinced or learn that accepting a norm is the right thing to do, which March and Olsen define as the process of acting in accordance with a logic of appropriateness (March and Olsen 1998; see also Wotipka and Tsutsui 2008: 736). A refusal to accept that norm would be seen as inconsistent with the country's identity and therefore inappropriate (Goodman and Jinks 2004/05: 655; Johnston 2001: 497). The logic of appropriateness highlights socialisation processes where international organisations, NGOs or other states play an important role in 'defining' the norm and causing the norm to cascade. They can do that through diplomatic pressure in international fora or simply encouraging imitative processes. In so doing, both domestic and international actors act as 'norm entrepreneurs' and, when successful, they can change the behaviour of other actors (Florini 1996: 375; Finnemore and Sikkink 1998: 896-99). Thus, norms may be contested if they are not formally validated by treaties, agreements or conventions, if they are not culturally validated, that is when they do not fit with actors' expectations, experience and background knowledge, and when the socialisation process fails to give the norm legitimacy and social recognition (Wiener 2008; Wiener and Puetter 2009). A logic of contestedness could even prevail (ibid.) and actors may choose to accept stigmatisation and react with forms of counter-stigmatisation (Adler-Nissen 2014).

Both the logics of appropriateness and contestedness differ from explanations of norm diffusion that link the outcome of norm entrepreneurs' efforts to their capacity to create substantive incentives to comply with the new norm. Realist explanations, for example, presuppose the necessary existence of an international hegemon that originates and causes the spreading of the norm. The hegemon creates incentives (or disincentives) so that, as argued by Krasner (1999), the logic of expected consequences always trumps the logic of appropriateness. However, this fails to explain situations where there is no external actor *directly* imposing costs or offering

benefits as well as variations in different states' perception of the norm's 'goodness of fit' or 'appropriateness' that have little to do with those states' relations with the hegemon(s). Nonetheless, empirical evidence supporting the 'logic of consequences' has prompted scholars to take into account the role of cost-benefit calculations (March and Olsen 1998). In fact, some scholars have re-interpreted 'appropriateness' as also the result of cost-benefit calculations among other factors (Checkel 1997 and Muller 2004).

Much has been written about the costs or benefits that can be imposed or offered by international actors. In the initial version of their 'spiral model', Risse and Sikkink argue that 'the diffusion of international norms in the human rights area crucially depends on the establishment and the sustainability of networks among domestic and transnational actors who manage to link up with international regimes, to alert Western public opinion and Western governments' (Risse and Sikkink 1999: 5; see also Finnemore and Sikkink 1998: 902). Schimmelfennig, Engert and Knobel (2006: 255) find that transnational advocacy networks are less crucial than 'socialising agencies', namely regional organisations, and that 'successful international socialization…depends on the size and credibility of tangible political incentives manipulated by the community organizations and the size of political costs incurred by the target states in adopting fundamental community rules'.

Costs and benefits may of course be political, but also bureaucratic or financial. They could include, for example, reputational damage or advantage, which implies that those states that are 'insecure about their international status or reputation' are the ones most likely to embrace international norms (Finnemore and Sikkink 1998: 905). Accepting a norm that involves setting aside pre-existing norms can have important bureaucratic costs: laws might have to be changed, bureaucracies re-organised or reformed to focus on complying with the new norm, new resources mobilised, new risks arising from the new norm identified and mitigated, and domestic constituencies that favour the pre-existing norms effectively managed.

Finally, the characteristics of the international norm may also be relevant, most notably the degree of ambiguity of their prescriptions and parameters. As Shannon (2000: 294) has argued 'norms are what states make of them', but some norms are formulated in a way that leaves actors with little wiggle room over what is expected

of them in specific situations whereas others are much more malleable. While some authors argue that a clear norm is more likely to be accepted than an ambiguous one (Finnemore and Sikkink 1998: 906-7), others see 'constructive ambiguity' as helping actors with different values to at least initially accept the norm and provide it with stability (Best 2005; Widmaier and Grube 2014). It has been argued frequently that constructive ambiguity has been used as a deliberate strategy to build coalitions on potentially controversial advances in European integration, allowing each actor to hope for the most favourable interpretation of the initial agreement (Jegen and Mérand, 2013). However, ambiguity of norms can be harmful to norm implementation, particularly at the bureaucratic and operational level. Focusing on the case of human security, Martin and Owen (2010) argue that poor and overly broad conceptualisation has hampered its promotion within the UN. Jegen and Mérand (2013) compare the use of constructive ambiguity in the area of EU energy and defence policy and find effectiveness dependent on the ability of actors to rely on and exploit pre-existing institutional opportunity structures.

These four mechanisms are analytically distinct, but are likely to interact in complex ways in reality. For instance, the clarity and intelligibility of a norm can be expected to make a difference to the ability of external actors to criticise states for non-implementation and compliance. If there are no pre-existing institutions for norm implementation and adoption costs are high, then inducements, whether negative or positive, will have less of an effect. The weight of the factors listed above may change in the different phases of a norm cycle. When a norm is still openly contested, it will be impossible to stigmatise countries that do not comply and difficult for norm entrepreneurs to exercise political pressure. Persuasion and socialisation may be more relevant for emerging norms than for widely accepted and institutionalised ones, which may instead count on precise definitions of what lack of compliance means and a specified list of possible sanctions (Finnemore and Sikkink 1998: 895). In the next section we consider the extent to which each of these factors has played a role in the EU's reticence to implement R2P and look out for their interrelationships.

4. Why the EU has struggled to 'live by example' with respect to R2P

4.1 Persuasion by Norm Entrepreneurs and Socialisation

The last two UN Secretary Generals, the UN secretariat and the two Special Advisers for R2P and Genocide Prevention have been highly active in building support for the emerging norm, not just through reports and speeches but also by building a network of NGOs, think tanks, and academic institutions, and reaching out to regional organisations. In so doing, the UN has tried not only to persuade governmental and intergovernmental actors about the 'goodness' of the norm but also to establish a forum where different aspects of the norm could be discussed and its meaning 'fixed' through interaction and socialization. However, until recently the EU has not been seen as a significant target for advocacy efforts from UN actors for three reasons. First, regional organisations were not the primary addressees of R2P and were given attention only in 2011, as discussed above. Second, in contrast to other regional organisations such as the African Union or the Economic Community of West African States, EU member states are relatively unlikely to experience any of the core crimes. Third, the EU's and indeed some of its members' diplomatic support for R2P contrasted positively to the openly-expressed scepticism of R2P by China, Russia and several developing countries (Claes 2012). Advocacy efforts were thus focused on norm acceptance by those openly critical states, rather than monitoring norm implementation by Western states and their regional organisations.

The EU remained 'off-the-radar' until the Libya crisis when R2P was invoked in the UN Security Council to authorise NATO's military action in Libya, with two EU member states, the UK and France, in leading roles, but a third, Germany, abstaining. Divisions within the EU (and the P5) were exposed, creating a greater need for the UN to unify and gather those EU member states that were seen as supportive of the norm. In March 2013, the Special Adviser for Genocide Prevention, Adama Dieng, met several key EU figures in Brussels to persuade them that the EU should elevate the priority it gives to mass atrocity prevention and strengthen its relevant capabilities. Just a few months later, in May 2013, the UN appointed a new Special Adviser for R2P, Jennifer Welsh, who is based in Europe. In her first public communications, Welsh made the case for a more active role of regional organizations in operationalizing the principle of R2P (The Stanley Foundation 2013) and, in particular, for senior EU officials to improve the EU's commitment to R2P implementation.

As far as the NGO community is concerned, a similar lack of interest in targeting the EU can be noted. Civil society organisations in this area, including those funded by the Jewish community, have always had headquarters in the US and have mainly targeted the US administration and the UN Secretariat. The International Coalition for the Responsibility to Protect and the Global Centre for the Responsibility to Protect are based in New York, and NGOs such as the Holocaust Memorial Museum in Washington DC and the Stanley Foundation, which have been at the forefront of R2P advocacy efforts, enjoy high-profile support from both major parties in the United States.

In marked contrast, European civil society equivalents have primarily focused on the Holocaust and are not only considerably less-well resourced, but also typically engaged in remembrance, collective memory-building, drawing lessons from history and influencing discourses about identity, citizenship and integration, rather than actively seeking to influence national foreign policies. One exception is the Aegis Trust in the UK, which has been focused on strengthening laws enabling the prosecution of individuals suspected of committing mass atrocities, and acts as the secretariat for the All-Parliamentary Group on Genocide Prevention. At the same time, those civil society organisations that are focused on peace-building and conflict prevention have no special expertise or focus on R2P's core crimes. Many of them have also been critical of pillar 3 and the use of military forces abroad and prefer to focus on better structural and civilian conflict prevention by the EU. The Budapest Centre for the International Prevention of Genocide and Mass Atrocities, created in 2011, is the only NGO that has instigated and funded advocacy initiatives such as the publication of an expert task force report on the prevention of mass atrocities by the EU (Task Force on the EU Prevention of Mass Atrocities 2013).

EU member states have to various degrees been involved in the norm socialisation process at the UN level (Brockmeier, Kurtz, and Junk 2014: 431), which has so far led to a broad acceptance of the norm. There is, however, a distinct lack of support from the most senior echelons of foreign ministries for its implementation (see, Ralph

2014, for example)[7] and there are differences between the norm-cascading-oriented activism of Denmark, Slovenia and the Netherlands and the more passive stance of other member states (Daddow and Schnapper 2013; Davidson 2013; Göler 2012).

4.2 Inducements and Costs

There is little evidence that inducements and costs for non-compliance have played much of a role in the case of the EU and R2P. The EEAS and its High Representative are responsive to criticisms and reputational costs arising from member states. After the appointment of Catherine Ashton as the new High Representative in 2009, member states did not shy away from criticising her directly or indirectly on a wide range of issues. As a consequence, her approach was cautious, avoiding positions or priorities that are not supported by a large majority of member states. For the High Representative to take action regarding implementation of R2P, a substantial number of member states would have to ask her to take such a leading role. Thus, even if some member states – most notably the UK, France, the Netherlands, and Denmark – have publicly supported R2P in principle and made the case through the EU's structures, they have not publicly called on the High Representative or the EEAS to act in this area nor created significant inducements for action or identified potential costs for inaction. Pressure from civil society to implement R2P has also been low given the abovementioned paucity of European NGOs working specifically on R2P. Nor have national administrations been subjected to much criticism for their lack of action at the EU level, so when countries do support R2P it is not driven by fear of criticism from civil society and potential electoral costs.

Cost considerations can partly explain the EEAS' reluctance to push forward the mainstreaming of R2P if they are conceived more broadly in terms of administrative capacity and receptivity. At the top of the EEAS, Ashton struggled with the structural overload arising from multiple responsibilities as Commission Vice President, Head of EEAS and Chair of the Foreign Affairs Council, as she herself indicated in her 2013 review of the EEAS (EEAS 2013: 13). The high priority task of putting the

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[7] Past exceptions have been the former German foreign minister Joschka Fischer, former French foreign minister Bernard Kouchner or former British prime minister Tony Blair. Kouchner, in particular, attempted to strengthen the EU's commitment to R2P during the French Presidency in 2008, though with little success (Wouters and De Man 2013: 19-20).

rather vague Lisbon Treaty provisions into legal form and transforming the EEAS into a reality absorbed a considerable degree of institutional resources and management attention at various levels. There was significant fluctuation in personnel as senior officials left, and uncertainty about roles and functions grew and persisted. Moreover, just as its budget was cut by ten percent, the EEAS was faced with a series of major crises on its southern border, including the wars in Libya and Syria. In this period of administrative and political overload, neither the EEAS as an organisation nor its leadership had much opportunity or desire to launch or adjust policy, except for those concerning management of the aforementioned crises. In 2011, Ashton halted progress reporting on the Gothenburg conflict prevention programme because she wanted the EEAS to concentrate on on-going or impending crises (Schünemann 2011: 4-5). Implementing R2P was seen by some officials as a case of 'attempting to run before you have learnt to walk' and as simply not realistic given the state of the EEAS (interviews with EEAS officials, Brussels, June 2012). The unsettled nature of the EEAS also affected discussions about the appointment of an EU focal point on R2P in 2013/2014 when protracted disagreements over its organisational location, seniority and professional background hindered an appointment despite agreement in principle that having a focal point was desirable (interview, EU Council official, March 2013).

4.3 Goodness of fit

At a glance, R2P's goodness of fit with existing EU norms may appear high given the EU's existing treaty commitment to promote human rights as well as its principled endorsement of genocide and conflict prevention. War crimes and ethnic cleansing have resonance in recent European history, and the Bosnian war of 1992-1995 especially has given rise to widely shared lessons revolving around the 'never again' motto, even if countries have not always lived up to these commitments. A closer look, however, reveals three issues that complicate an assessment of the goodness of fit.

First, a substantial degree of misfit is visible on the use of military means under pillar 3. Even though EU member states have converged over acceptance that the use of force abroad to stop mass atrocities can be legitimate (Meyer 2006: 138), this support is usually highly conditional on cases and circumstances, and marked by growing

levels of risk averseness that vary substantially between countries. In the case of Libya, Miskimmon (2012: 399) noted that R2P did not feature prominently in German public debates with high public resistance against the deployment of German soldiers. This contrasts with the senior UK politicians who successfully invoked R2P in the case of Libya and voiced strong support for it, even though they later struggled to take public opinion with them in the case of Syria's use of chemical weapons. Brockmeier, Kurtz and Junk (2014) have argued that key member states have a different understanding of R2P as a result of 'diverging strategic cultures based on different historical lessons on the use of force' (ibid: 429) and that EU member states have been quick to support the conceptualisation of R2P as a three-pillar norm since that implies a shift in emphasis from intervention to prevention (ibid: 444).

Second, since R2P's inception, EU member states have become more divided over the purpose and capabilities of EU foreign policy. The new treaty articles and policy strategies have been overtaken by the EU's leadership becoming less ambitious since 2008/2009. This waning enthusiasm is in no small part due to the onset of the financial and Eurozone crises absorbing scarce political attention in key member states, further exacerbated by the perception that smaller and new member states had 'more important things to do' than make efforts to share the burden for implementing new initiatives or capacities (interview with national expert, 2012). Even though the UK is one of the most supportive of R2P, the Conservative-led coalition is also considerably more sceptical than the previous government of strengthening EU capacities let alone powers. France has lost some of its long-standing enthusiasm in building a common security and defence policy (CSDP) after only four other European NATO members actively contributed to the airstrikes on Libya (O'Donnell 2011: 4), German and Polish reluctance to deploy the Weimar battle-group in Mali, and Germany's scuppering the EADS/BAE merger. Ashton lamented the lack of an '**agreed long-term vision** on the future of CSDP' in her report to the European Council, which subsequently shied away from addressing the 'strategic deficit' (High Representative, 2013; emphasis in original).

Thirdly, in so far as mainstreaming the 'mass atrocity lens' into broader EU foreign policies requires identifying particular countries at risks and devising a preventive strategy, the EU would struggle to maintain cohesion. As soon as countries or leaders

are highlighted as potential places and perpetrators of mass atrocities, intra-EU cohesion becomes fragile given member states' different links and interests vis-à-vis third countries. We already know from the area of conflict prevention that some member states have vetoed the inclusion of particular countries on the EU watchlist as this might damage their bilateral diplomatic and trade relationships.

4.4 Clarity of Norm

Even though the EU endorsed R2P back in 2005 and officials keep emphasising their support in principle, our interviews in both Brussels and national capitals demonstrated a great deal of confusion about what R2P actually means and how it can be implemented in terms of organisational structures as well as policy practices. This is surprising if one considers the role that the EU and member states had in the very development of the norm at the UN level and how intense their participation in the norm socialisation process has been (Brockmeier, Kurtz and Junk 2014). It could, therefore, be argued that 'constructive ambiguity' was created or supported by key EU member states to maintain the existing international consensus around R2P (ibid: 443). However, ambiguity has backfired as most of our interviewees identified it as an obstacle to implementation.

Three main problems with the clarity of the norm can be identified, which have affected the EU's understanding of the meaning and reach of the norm. First, as argued by Cuyckens and De Man (2012: 111), R2P lacks characteristics that distinguish it from pre-existing notions and in the EU context it became conceptually 'entangled' with pre-existing policy paradigms, most notably conflict prevention. Conflict prevention in the EU context covers everything from long-term structural policies to responses to immediate crises, and it is managed by a directorate called 'Crisis Response and Operational Management'. It was therefore tempting for the EEAS to simply assimilate R2P within its existing policies and claim as they did in interviews in 2012 that existing instruments, such as its checklist of structural risks of conflict, already covered mass atrocity risks as well. Many of our EEAS interlocutors did not accept the argument that employing a mass atrocity prevention lens required a distinctive approach within as well as outside of a conflict prevention policy framework. UN documents on R2P have been surprisingly silent on how to overcome

this problem, leaving it to academics and NGOs to advance fairly nuanced arguments about the different nature of mass atrocity crimes and violent conflict and providing relevant empirical evidence (Bellamy 2011).

Second, R2P is a very complex norm to operationalise as the crimes listed vary in terms of the specificity, gravity, likelihood of their occurrence, the information that is needed to warn about them, and the instruments needed to prevent or stop them. Genocide is a grave though quite rare event, but identifying ongoing genocides has long been controversial (Smith 2010). Crimes against humanity can take a variety of forms and are thus difficult to pin down for early warning and policy purposes. Ethnic cleansing is generally not considered as a separate crime in international law (Kleffner 2012) and can take different forms, blurring at the extreme end into genocide. Instances of war crimes, finally, can often be found where organised violent conflict occurs but with important variations in terms of scale, gravity and identity of perpetrators and victims. Our interviews in Brussels and national capitals showed that the difficulties of unbundling these four 'core crimes' for the purpose of policy made it easier for officials to simply assimilate them as a form of 'violence' and treat them as a sub-category of 'conflict'.

Third, there is still considerable disagreement over the interpretation of the use of military instruments under pillar 3. While some officials stressed their belief that R2P mandates some form of military intervention in case of gross violations of human rights and mass atrocities, others stressed that R2P allows different kinds of action depending on a given situation. For instance, in the case of Libya senior German politicians claimed that R2P did not entail a responsibility to intervene when the risks were too great (Miskimmon 2012: 397). Similarly, some of the officials we interviewed argued that Syria was a case of failing to live up to R2P, whereas others put forward a more positive view of the potential impact on the ground and cited Syria as a case where the international community could be seen as still complying with R2P precisely because actions other than military intervention were considered and implemented. The cases of Libya and Syria led one EEAS official to express more fundamental reservations about having inevitably 'messy' foreign policy guided by simplistic legalistic formula that could not do justice to multiple political considerations and realities on the ground. This approach would ultimately get in the

way of 'saving lives' (interviews with EEAS official, Brussels, June 2012). Overall, lack of clarity about when military intervention is required in the R2P framework has further exposed member states' diverging attitudes toward the use of force and raised concerns among EEAS officials about unrealistic and unhelpful expectations of effective foreign policy more broadly.

Conclusions

We have shown that the EU has struggled to 'live by example' (Manners 2008: 46) in the implementation of R2P even though it supported the norm within the UN context, the norm resonates with core EU norms and policies, and suitable capabilities are available. We have traced this limited and slow implementation at the programmatic, bureaucratic and operational level and then investigated the reasons to better guide critique. We drew on the extant literature on norm acceptance and compliance, but found surprisingly little evidence for frequently-emphasised mechanisms such as pressure from either international actors or European civil society actors to make the EU match its commitments to R2P with substantive implementation. While we have seen some activism from smaller member states, the largest and most influential states did little to advance implementation, either because their interpretation of pillar 3 was not widely shared, or because they were reluctant to be seen as being supportive of a greater role for the EU in foreign affairs. The European Parliament has turned out to be one of the most vocal advocates of change, but its influence thus far has been limited by its restricted legal competences in EU foreign policy as well as its own divisions over pillar 3. So while R2P is not openly contested, neither has it been 'culturally validated' yet.

We argue that the characteristics of the emerging R2P norm matter for our case even though this factor plays only a secondary role in dominant accounts of norm diffusion and compliance. The ambiguity, complexity and lack of distinctiveness of R2P provide international actors with substantial wiggle room for implementing the norm in practice. The problems of moving from acceptance to operationalisation are magnified in the case of the EU, because its members have divergent interpretations and interests in how, where and when to act. We have seen this played out among EU member states whose different perceptions of the utility and legitimacy of using force

shape their divergent interpretations of how pillar 3 should be operationalised (see also Göler 2012). It is also visible in the case of the Commission and EEAS, where R2P became 'entangled' with conflict prevention (Cuyckens and de Man 2012) as a policy paradigm, which in the case of the EU was already suffering from conceptual overstretch despite high levels of programmatic implementation. So even though 'constructive ambiguity' may be helpful for initial norm acceptance, it can become a severe obstacle to norm implementation.

Secondly, we argue for paying greater attention to bureaucratic capacity within a specific historical context rather than willingness to implement. R2P emerged at a time when the EU's foreign affairs structures were pre-occupied with implementing the Lisbon Treaty's provisions, especially establishing the EEAS with fewer resources than its precursors, whilst being faced with external crises and a decline in the political support from some of its most influential members. As a result, the EEAS had hardly had any resources available to take on board new task such as interpreting and operationalising R2P, as the Commission was able to do with the human security norm a few years earlier (Martin and Owen 2010). This structural overload of the EU's foreign affairs bureaucracy at the time of making the transition from norm commitment to implementation partly explains why even the relatively uncontroversial implementation of pillars 1 and 2 has been so slow. EU actors had strong incentives to declare that R2P required hardly any adjustments of their current policies, procedures or instruments. This stance was facilitated by the ambiguity of the norm itself and, until recently, the lack of external or internal pressure for its full implementation.

Consequently, if the EU is to live up to its commitments in this area, it will need to address these obstacles by working at the international level towards a less ambiguous, contested and simpler definition of the R2P norm, by explaining better to foreign policy communities and NGOs how implementing a new norm requires some changes to existing policy paradigms, by convincing them that the organisation can contribute added value to the prevention of mass atrocities with existing resources, and, finally, by making sure that the EEAS is given the leadership, resources and political support to be able to engage seriously with a new norm such as R2P. It would be unrealistic to expect a consensus within the EU on the implementation of

pillar 3 for the foreseeable future, but significant progress in mainstreaming the prevention of genocide and closely-related mass atrocities crimes is certainly possible, especially through aid and development policies.

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