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**Norm Contestation & Robustness: The Effects of  
Russia's Contestation in Crimea on the Robustness of  
the Prohibition of Force Norm**

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## Abstract

The debate on norms and their effectiveness is taking place at the international political level in parallel to the debate on norms in norm scholarship. This thesis aimed to bring them together by applying a theoretical framework on norms to the prohibition of force norm that was contested by Russia in Crimea in 2014 and debated in the United Nations Security Council. The framework predicted that different types of norm contestation have different effects on the norm's robustness – the latter is expected to *strengthen* when it predominantly faces *applicatory* contestation and to *weaken* when it faces *validity* contestation. Through qualitative document analysis, the research question on how Russia's contestation of the prohibition of force norm affected the norm's robustness was answered. This study firstly established the predominant type of contestation by Russia to be *applicatory* contestation. Differently than expected, this type of contestation was found to have *increased* the robustness of the prohibition of force norm along the *validity* dimension (states belief in the norm) but *decreased* along the *facticity* dimension (guiding states actions). Because the dimensions developed in diverging directions in similar volumes, the overall robustness of the norm that was measured before Russia's contestation (2009-2013) and after (2014-2018) remained at the same level of *moderately high* based on this study's indicators. The theoretical expectations that predicted a change in robustness were therefore not affirmed. In turn, this study not only demonstrated the significance of studying the two robustness dimensions separately but also that they should not be assumed to develop in the same direction. Accordingly, this thesis produced empirical backing to the theoretical framework on norm robustness and different types of norm contestation that was lacking. Secondly, it provided insights into the robustness of the prohibition of force norm and how it was affected by Russia's mode of norm contestation. Lastly, this thesis combined norm scholarship with the international political debate on norms which eventually contributed to bridging the gap between them.

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## **List of Abbreviations**

DV	Dependent Variable
EU	European Union
ICJ	International Court of Justice
IR	International Relations
IV	Independent Variable
P5	Five Permanent Members of the UNSC
PoF	Prohibition of the use of force by states
R2P	Responsibility to protect
UK	United Kingdom
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
US	United States

## Introduction

The practice of international relations is facing a debate on its condition, as is the discipline of International Relations (IR). The contemporary world order would be in crisis (Eilstrup-Sangiovanni & Hofmann, 2020; Ikenberry, 2018). Central to this debate on the future of the international order is the question about the norms that underpin it (Öniş & Kutlay, 2020). Specific norms central to the hegemonic core and peaceful relations between states would be *under challenge* (Deitelhoff & Zimmermann, 2019; Sandholtz, 2019), *cascading* (Fisk & Ramos, 2014), or even *dying* (Panke & Petersohn, 2016).

One of the norms that has come under challenge is the norm *prohibiting the use of force between states* (PoF). Thomas M. Franck's question in 1970 of "Who killed Article 2(4)?"<sup>1</sup> on the PoF norm is being revived fifty years later, as the norm is deemed ineffective (UNSC, SC/13344, 2018) as well as "dead" (Kress, 2019). Arguments about the alleged weakness of this norm, and the United Nations' "failure to uphold it" (UNSC, S/PV.8262, 2018, pp. 18, 80), would point to recent violations of the prohibition of force by states, starting with Russia's behaviour in Crimea in 2014 (Kress, 2019; UNSC, S/PV.8262, 2018, pp. 15, 18, 22, 29, 33; SC/13344, 2018).<sup>2</sup> Against the background of this observation, it is implied that the engagement of the Russian Federation with the PoF norm in Crimea would have damaged the norm's strength.

The arguments in the debate on the PoF norm assume that violations of a norm indicate the norm's weakness – an assumption that is not unique to the debate on the PoF norm. This logic has been applied to international norms in general, as expressed by states in international debates (UNSC, SC/13344, 2018); in legal scholarship (Brunnée & Toope, 2001), as well as by IR scholars (see: McKeown (2009), Heller et al. (2012), and Panke & Petersohn (2012, 2016)). This debate is not centred around the question of whether states' non-compliance with international norms is in general problematic – especially

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<sup>1</sup> The text of Article 2(4) reads: "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." (U.N. Charter, 1945, p. 3 art. 2, para. 4).

<sup>2</sup> The 8262<sup>nd</sup> meeting of the United Nations Security Council was described in its meeting coverage as "Security Council Must Rectify Failure to Prohibit Use of Force", in which several states raised concerns about the prohibition of force norm being breached by Russia in Crimea, including the representatives of The Netherlands (p.15), the United Kingdom (p.18), Sweden (p.22), France (p.29) and Lithuania (p.33) (UNSC, S/PV.8262, 2018; SC/13344, 2018). More on this meeting can be found on page 68.

not concerning norms as fundamental to peace as the PoF norm. Rather, it centralises the impact of a norm being challenged on the norm itself. In contrast to the logic reflected in this debate on norms – namely to assume a weakening effect of non-compliance on the norm – this study argues, in line with current scholarship on norm contestation, that it should be questioned and studied whether behaviour challenging a norm is in fact problematic for the norm itself.

IR scholars that focus on norms tend to be divided on this issue, as there are two sides in norm contestation scholarship that expect diverging outcomes. One strand of norm scholarship is arguing along the lines presented above: this challenging behaviour – referred to as *norm contestation* from now onwards – is expected to destabilise the norm and impair its effectiveness (Heller et al., 2012; McKeown, 2009; Panke & Petersohn, 2012, 2016). On the contrary, other norm scholars argue that as states engage with the norm through contestation, the norm's strength is expected to increase (Barnes, 2016; Krook & True, 2012; Wiener, 2007). Applying the scholarship on norm contestation to the debate on the PoF norm, this means that Russia's contestation could have positively affected the PoF norm, contrary to the pessimistic outlook on the norm's effectiveness reflected in the international debate (UNSC, S/PV.8262, 2018; SC/13344, 2018). This exact question of how Russia's contestation of the PoF norm in Crimea affected the norm's robustness is the first issue that this study aims to draw attention to.

This lack of consensus among norm scholars on whether norm contestation leads to strengthening or weakening of a norm requires further investigation. This research puzzle will be addressed by applying norm scholarship to the PoF norm. To do so, this study relies on existing literature that goes beyond perceiving the effects of norm contestation to be either negative or positive, which allows for exploration of when norm contestation would lead to which results. More specifically, it will draw on the framework provided by Deitelhoff and Zimmermann, through which contestation is perceived to have the potential to both strengthen and weaken a norm's robustness, depending on which *type* of norm contestation is taking place (2018, p. 58). As the link between norm robustness and type of norm contestation is still understudied, nevertheless, there have been very few empirical investigations into when norm contestation has which effects on the norm's robustness (Sandholtz, 2019, pp. 139, 140).

The second issue this study aims to contribute to – in addition to gaining insights into the effects of norm contestation on the prohibition of force norm – is filling this empirical gap in norm scholarship. By empirically studying the effects of norm contestation, and by distinguishing between types of contestation for this purpose, this thesis will provide insights into the robustness of the prohibition of force norm and contributes to scholarship on norm contestation by empirically testing the framework provided by Deitelhoff and Zimmerman. In this way, this study also hopes to address the third issue concerning the parallel debates on norms inside academia and outside in international politics.

The discussion on the PoF norm is primarily taking place in international relations, as the norm's effectiveness is being questioned by states in UN meetings (UNSC, S/PV.8262, 2018; SC/13344, 2018). Meanwhile, certain norm scholars have referred to the PoF norm as a robust norm (Brunnée & Toope, 2017, p. 2; Sandholtz, 2019, p. 142). Norm studies have not zoomed into the PoF norm, but rather focused on how non-western actors would have contested other security-related and/or western-liberal norms competing with the PoF norm – namely the Responsibility to Protect (Acharya, 2013; Deitelhoff & Zimmermann, 2018; Jose & Stefes, 2018; Welsh, 2019) or anticipatory self-defence (Brunnée & Toope, 2017; Fisk & Ramos, 2014). Accordingly, this study calls for a focus on a 'universal' norm through a framework that does not assume the effects of norm contestation by a non-western actor to be weakening. It is important to apply this framework to the PoF norm because this norm, as codified in the UN Charter (art. 2, para. 4), is considered to be one of the cornerstones of the international order (Kress, 2019), yet is also perceived as "failing" in the international political debate ever since Russia's annexed Crimea (UNSC, S/PV.8262, 2018, pp. 18, 80). This study argues that before the PoF norm can be declared dead and fingers can be pointed in the political debate, the strength of the norm needs to be analysed through the framework of norm contestation before and after it was contested by Russia, to establish whether the PoF has indeed suffered a loss of robustness. To provide input that allows the political debate on the norm to be based on a theoretical framework and an analysis of the PoF norm, this study is guided by the following research question:

**“How did Russia’s contestation of the Prohibition of Force norm in Crimea affect the norm’s robustness?”**

This question allows for an investigation of this specific instance of contestation and its type, yet it is part of the wider question about the connection between the type of norm contestation and robustness. To answer this question, this study primarily relies upon the framework of Deitelhoff and Zimmermann. To investigate how norm robustness is affected, the question one should ask is not whether norm contestation is taking place or not. Instead, one should investigate, according to Deitelhoff and Zimmermann, which *type* of contestation is taking place (2018, p. 52), as norm scholars consider contestation to be common practice and even inherent to norms (Brunnée & Toope, 2017; Deitelhoff & Zimmermann, 2018, p. 52; Wiener, 2014). Along these lines, the first type is *applicatory contestation* – meaning that the actor is challenging how the norm should be applied, which could potentially *strengthen* the norm’s robustness. The second type, *validity contestation*, could weaken the norm’s robustness, referring to an actor challenging whether the norm and its core are valid (Deitelhoff & Zimmermann, 2018, pp. 51, 58). Norm *robustness*, in turn, is understood as comprising two dimensions: the extent to which states’ actions are guided by the norm (facticity) and to which they accept the norm (validity) (Deitelhoff & Zimmermann, 2019, p. 2). To test this framework, a ‘case of contestation’ would have to be selected to determine which type of contestation is taking place and whether it affected the norm’s robustness as theorised. Russia’s practices in Crimea in 2014 provide a suitable case to test this framework, as these practices did not comply with and challenged the PoF norm, and norm contestation in this study is considered to include – yet not to be limited to – non-compliance. In this way, the framework of Deitelhoff and Zimmermann can be tested, as well as the statements that the PoF norm would have weakened (UNSC, SC/13344, 2018). Drawing upon this theoretical framework, the hypotheses put forward by this study are as follows:

**H1: “If the predominant mode of contestation of a norm is applicatory contestation, then the norm’s robustness strengthens.”**

**H2: “If the predominant mode of contestation of a norm is validity contestation, then the norm’s robustness weakens.”**

With a view on the case of Russia’s contestation of the PoF norm and the research question stated above, these more general theoretical expectations imply that *if* Russia’s contestation with the PoF norm is found to be primarily *applicatory contestation*, then the robustness of the PoF is expected to have increased after the annexation of Crimea.

However, if it is found to be mainly *validity contestation* instead, the robustness of the PoF is expected to decrease (Deitelhoff & Zimmermann, 2018, p. 58).

The framework on norm robustness and norm contestation will be tested by first determining which type of contestation Russia took part in when contesting the PoF norm in Crimea. The expectations regarding the effects on the robustness of the PoF norm will be based on the type of contestation that is found to be predominant in this case. The type of contestation and the level of robustness will be determined relying mainly on primary sources from the UN. The level of robustness, based on its validity and facticity, will then be examined before Russia's annexation of Crimea (t1= 2009-2013) and after (t2= 2014-2018), in order to reject or affirm the theoretical expectations on the changes in the norm's robustness.

To sum up, this study aims to establish how Russia's contestation of the PoF norm affected the norm's robustness. This thesis wishes to contribute to the empirical testing of the framework on different types of norm contestation and their effects; to provide insights on the strength of the PoF norm, and to bridge the gap between norm literature and the international political debate on norms.

In the next, theoretical chapter, a thorough background on norm research and literature will be provided, from the introduction of norm research into IR scholarship to the study of norm contestation and robustness, in which the terms central to this study will be conceptualised. After that, the methodology chapter will discuss the research design, case selection, methods, and data used in this study, as well as the operationalisation of the variables and indicators. The theory and methods discussed in these chapters will then be applied to the empirical case in the analysis, which consists of two sections. Firstly, the practices of Russia in Crimea contesting the PoF norm will be presented and accordingly labelled as either *applicatory* or *validity* contestation. The second part of the analysis chapter lays out the robustness of the PoF norm during t1 and t2 and subsequently compares them. This is followed by a conclusion on the findings concerning the type of norm contestation and potential change in robustness. Finally, the implications of these findings for norm research and for the norm prohibiting the use of force will be concluded, as well the limitations and contributions of this thesis.

## **Norm Contestation and Norm Robustness – A Theoretical Framework**

*This chapter lays out the theoretical background of this thesis by conceptualising and theorising its core concepts and placing them within relevant scholarship and a wider theoretical framework. To apprehend where the concepts situate themselves, the introduction of norm research into International Relations literature will first be elaborated upon. Accordingly, the chapter presents the way in which norms were studied differently over time, leading up to the study of norm contestation. In turn, a closer look will be taken at how different types of norm contestation – applicatory and validity – are theorised to be connected to norm robustness, which consists of a validity and facticity element. A thorough understanding of this theoretical framework on norm contestation and norm robustness is necessary to be able to empirically test the theoretical expectations it puts forward, and, in turn, to answer the research question.*

As the overall objective of this thesis is to study Russia's contestation of the prohibition of force (PoF) norm and the subsequent effects on the norm's robustness, this chapter elaborates upon the relevant concepts and theoretical framework that function as the foundation of this study. Both norm contestation and norm robustness need to be conceptualised and theorised before applying them. However, these concepts should not be studied without first understanding their background. Firstly, it is important to comprehend the fundamental term behind norm robustness and norm contestation: *norms*. The concept of norms can be applied to a wide range of research areas and its meaning may vary accordingly. Therefore, it needs to be established how norms are understood and studied within *world politics* specifically – as this directly speaks to Russia's contestation of the PoF norm. After an elaboration on norms and the study of norms in International Relations, this chapter will conceptualise norm contestation and norm robustness and describe the different forms and types they take.

### **Norm Research in International Relations Scholarship**

Norms are part of several research disciplines, in which they are conceptualised and studied differently. It is therefore important to establish where the area of norm research used in this thesis situates itself, and how it accordingly conceptualises and studies norms. This discipline may shape how norms are studied and norm research may impact that discipline in turn. For instance, international norms are likely to be approached differently

from the angle of legal scholarship in comparison to International Relations (IR) scholarship, while these disciplines may closely relate to each other. One field may focus on *laws* when studying norms, for example, while the other studies *behaviour* (Brunnée & Toope, 2018, p. 1). The way that norms are perceived matters too, as legal and early IR scholarship both reflected the notion that norms are *stable* and *precise*, or at least they should be (Brunne & Toope, 2018, p. 1; Deitelhoff & Zimmermann, 2018, p. 57; Hoffmann, 2010, p. 12). Moreover, legal and neoliberal IR scholarship was paired with a traditional, materialist-rationalist take on norms, considering them to be *fixed* and reflecting the interest of powerful states (Bloomfield, 2015, p. 312; Fehl, 2018, p. 10; Hoffmann, 2010, p. 2). However, the way in which norms were studied developed over time along with different IR theories. After constructivism became part of the mainstream IR theories in the 1980s, in turn, IR scholarship started paying more attention to norms in general, as well as to norms' *changing* nature (Bloomfield, 2015; Brunnée & Toope, 2018; Hoffmann, 2010).

The constructivist account on norms has laid the basis for present-day norm research (Bloomfield, 2015, p. 310; Hoffmann, 2010, p. 2) and for this thesis accordingly. The popularity of norm studies, especially at the end of the 20<sup>th</sup> century, grew hand in hand with the popularity of constructivism in IR, especially at the end of the 20<sup>th</sup> century (Hoffmann, 2010, p. 2). The 'new' approach to norms – now known as *traditional* constructivism – allowed IR scholars to study norms in more depth and to consider norms' relation to change and stability (Brunnée & Toope, 2018, p. 3; Hoffmann, 2010, pp. 2, 12). The foundation of this approach to norms was laid by Sikkink and Finnemore, who define norms as “standards of appropriate behaviour for actors with a given identity” (1998, p. 891). As opposed to traditional IR approaches, these standards were not considered to simply exist. Instead, constructivists regarded norms to be *constructed*, as are actors' interests and actions (Hoffmann, 2010, pp. 2, 8). This take on norms thus opened up a new field of research – the study of how norms emerge, how they diffuse, and how they cascade (Finnemore & Sikkink, 1998).<sup>3</sup>

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<sup>3</sup> For other central contributions on the dynamics, diffusion, and evolution of norms besides Finnemore & Sikkink's “International Norm Dynamics and Political Change” (1998), see: Winston “Norm structure, diffusion, and evolution: A conceptual approach” (2018) , and Wunderlich (2013) “Theoretical Approaches in Norm Dynamics”.

### **From Norm Diffusion to Norm Contestation**

It may be said that constructivism offered a new lens through which to study international norms. This early and traditional constructivist account on norms nonetheless remained limited to the study of norms as *independent variables*, as *causes* – studying the diffusion of norms; studying if norms are guiding or causing specific behaviour; if they lead to political change (Bloomfield, 2015, p. 311; Finnemore & Sikkink, 1998; Hoffmann, 2010, p. 5; Wiener, 2004, p. 198). Consequently, a new stream of constructivism appeared, criticising this approach towards norms and its limits (Bloomfield, 2015; Hoffmann, 2010).

Earlier norm research tended to examine the *impact* or *influence* a norm and its diffusion could have in the international order, taking the norm as a *cause* of change. Critical constructivists (for example: Acharya (2004), Payne (2001), Wiener (2004, 2007, 2014), Sanders (2018)), in turn, challenged this conventional constructivist approach towards norms. They pointed out that the study of norms (diffusion) as a cause for change or specific behaviour, assumes that norms and their meanings are *fixed*, *stable*, and *universal* – that a norm's content is set and interpreted in the same way by all norm addressees (Hoffmann, 2010, p. 12; Wiener, 2007, p. 48, 2009, p. 176). For example, Finnemore and Sikkink's work on norm *change* focused on how norms are emerging, cascading, and internalised (1998), yet neglects how norms themselves can change in *meaning* – in the behaviour they imply. Therefore, critical constructivists aimed to shift the focus of norm research from studying the role of norms and their diffusion in political or international change, to studying how the norm itself changes. This opened the door to an understudied field, according to Antje Wiener, that examines the *meaning* of a norm – how it changes and how such meaning-making occurs (Hoffmann, 2010, p. 12; Wiener, 2004, pp. 198–199).

A focus on the process of meaning-making of norms allows for a closer look into a norm in question and how it evolves. Through a critical constructivist lens, the process of meaning-making refers to social practices, to interactions engaging with the norm and enacting a version of it – enacting the norm's "meaning-in-use" (Wiener, 2009, p. 176). This latter notion accordingly implies that there is not one universal interpretation of the norm. Rather, from this perspective, norms would face diverging interpretations and even disputes over its meaning-in-use (Wiener, 2004, p. 201, 2009, p. 176). This process, in

which norm addressees express disapproval or objection to the norm and its meaning-in-use through social practice, is conceptualised by Wiener as *norm contestation* (2014, p. 1). Norm contestation as a concept and a theory is central to this thesis, and thus requires further elaboration.

Criticism towards the way norms were dealt with in earlier constructivism and IR scholarship in general were taken into account in the theory on norm contestation, as the basis was laid by Antje Wiener (2004). The theory of norm contestation challenges the study of norms as independent variables (Hoffmann, 2010, p. 5) that remain constant and are complied with and successfully diffused by actors (Bloomfield, 2015, p. 313). Furthermore, it criticises earlier norm research that tended to focus on cases where, supposedly, ‘enlightened’ western actors would spread norms successfully and linearly in the western normative order, ‘guiding’ other non-western actors that would passively follow them (Acharya, 2004, pp. 249, 250, 259; Bloomfield, 2015, p. 313; Wiener, 2004, p. 191). As a response, the theory of norm contestation started from the premise that norm diffusion does not have to be a successful and linear process led by western states.<sup>4</sup> It moreover aimed to take into account the individual agency of states – their ability to resist the norm’s meaning-in-use and consequently *contest* it (Bloomfield, 2015, pp. 313, 314; Wiener, 2004, p. 192).

This *liberal-western bias*, however, is still visible even now that norm research’s focus includes norm *contestation* and is no longer limited to the study of norm *diffusion*. A closer look at recent norm literature reflects a shift in focus on non-western actors *following* the norm to non-western actors *contesting* liberal-western norms, such as specific human rights or the Responsibility to Protect (R2P) (see: Badescu & Weiss (2010); Burai (2016); Jose & Stefes (2018)). This means that the focus still tended to be on liberal-western norms that would be entrepreneured<sup>5</sup> and spread by western actors, a process that would be thwarted by non-western actors. For instance, Russia has been included as an actor several times in norm contestation studies on how the state would

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<sup>4</sup> With ‘western’ actors this study refers primarily to states in North America, Western Europe, and Australasia

<sup>5</sup> *Norm-entrepreneurs* are understood as actors that promote new norms or different versions of existing norms and the normative order accordingly (Finnemore & Sikkink, 1998, pp. 896–899). This change would be resisted by *norm-antipreneurs* which aim to remain the status quo (Bloomfield, 2015, p. 311). The term *norm-spoilers*, in turn, is used to refer to actors who oppose and try to undermine the already established norms (Sanders, 2018, p. 272)

have challenged and accordingly destabilised such ‘western-liberal’ norms (Allison, 2014; Badescu & Weiss, 2010; Jose & Stefes, 2018). However, research investigating the contestation of norms that are not particularly ‘western-liberal’ or not assumed to be opposed or weakened by non-western actors, seems to be lacking. It is important to be aware of this bias when engaging with norm contestation theory, as it

“creates narratives about norm emergence, diffusion, and change from western or Eurocentric vantage points, ignoring non-western perspectives and the colonial and postcolonial power asymmetries in the production and stabilisation of international norms” (Deitelhoff & Zimmermann, 2019, p. 14).

Even when norm research is not focused on liberal-western norms, the hegemonic normative community in the current international order is still one with a liberal and western core, which in turn affects what is considered norm compliance and what is considered norm contestation.

Along these lines, recent norm studies have been more attentive of *who* takes part in norm contestation. Norm diffusion is not necessarily performed by western actors and norm contestation not solely by non-western actors (Bloomfield, 2015, pp. 313, 314; Deitelhoff & Zimmermann, 2019, p. 14). At the same time, norm literature does not provide a common answer to the question of which actors can perform norm contestation – it is not clear whether this performance is limited to states. Some norm scholars have not only scrutinised IR scholarship for overlooking the agency of single states, but also of *individuals* (Brunnée & Toope, 2017; Walton, 2015; Wiener, 2004, 2018). Wiener, for example, focuses on norm contestation through the practice of non-state actors in her newest book (2018). In general, however, states still seem to remain the primary addressees of international norms, especially norms enshrined in the UN Charter.

A more pressing debate in existing norm literature than *who* is performing norm contestation, relates to *how* it takes place. When labelling practices and interactions as norm contestation, recent studies (such as: Brunnne & Toope, 2017; Deitelhoff & Zimmermann, 2018, 2019) demonstrate that the act of contesting a norm can go beyond Antje Wiener’s definition – beyond the expressed objection of an actor towards a norm (2014, p. 1). Drawing upon these recent studies, the conceptualisation of norm contestation will be revisited for the purpose of this thesis. This signifies that the

understanding of norm contestation will not be limited to actions directed against the norm but extends to actions and discourse challenging the norm and its meaning. For instance, because the meaning of norms will be considered as ever-changing and never fixed, actors interpret the norm differently and challenge it accordingly (Deitelhoff & Zimmermann, 2018, 2019).<sup>6</sup> Along the same lines, discussions on a norm at the international level may lead to stabilisation or even more disagreement on its meaning, challenging the norm as a whole or a version of it, as Deitelhoff and Zimmermann suggest (2018, p. 58). Accordingly, specific behaviour can engage with a norm and consequently contest the norm and its meaning, without necessarily expressing its opposition to the norm – without disagreeing with the norm or intending to oppose it *per se*. It is important to note that *violations* of the norm are considered to challenge a norm and are thus part of contestation, as their justifications tend to be, yet norm contestation goes far beyond violations. The norm does not have to be breached for it to be contested, as contestation can also take place through a debate on the norm's meaning-in-use by states at for instance international forums. Any practice that challenges the norm and its meaning is considered to be norm contestation in this study. A differentiation between official breaches of the norm; alleged violations, and non-compliance, is not significant for the conceptualisation of norm contestation in this study. A practice will not be understood as contestation if the norm is either complied with without debate on or questioning of the norm's interpretation, or when the norm is lifted according to its own exceptions – when the use of force is authorised by the UN or when allowed according to the right to self-defence (U.N. Charter, 1945 art. 2, par. 4, art. 39, art. 51). In the end, norm contestation is conceptualised as behaviour that engages with the norm and consequently challenges its meaning-in-use.

The discussion on how norm contestation is understood to take place directly relates to the way norms are studied. Now that the focus in scholarship has shifted from norms as *causes* to norms as *constructed outcomes*, norm contestation has been studied similarly to the latter. Most contemporary norm studies take norm contestation as an outcome and aim to find and explain the phenomenon's *cause* (Fehl & Rosert, 2020; Jose, 2017; Wiener, 2004). This debate is still ongoing – even among scholars applying the same

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<sup>6</sup> This type of contestation is defined by Deitelhoff and Zimmermann as applicatory contestation (2018, p. 57). The two Types of Norm Contestation (validity and facticity) will be discussed further on.

approach such as critical constructivism, a consensus on what triggers norm contestation seems to be lacking. Different scholars argue that the level or manner of norm contestation might depend on certain preconditions, such as the norm's *type* (Brunnée & Toope, 2001), *ambiguity* (Jose, 2017; Wiener, 2004), *legalisation* (Brunnée & Toope, 2017; Percy, 2019), or *relations* with other norms (Fehl & Rosert, 2020). What all these studies have in common, is that they take norm contestation as an anticipated outcome and try to explain it. While they might not agree on the degree of contestation or the reason behind it, they all seem to suggest that norm contestation and interpretive ambiguities generally exist and occur. Though norms may face contestation to different extents, one may assume, based on the previous observation, that norms inherently face contestation (Brunnée & Toope, 2017; Deitelhoff & Zimmermann, 2018, p. 52, 2019; Wiener, 2014).

Perceiving norm contestation as a given, however, raises an important question: what are the implications of norm contestation? Even though there have been very few empirical studies looking into the consequences of norm contestation (see: Deitelhoff & Zimmermann (2018); Welsh (2019), Brunnée & Toope (2017)), or perhaps precisely for that reason, norm scholars are once again divided on the effects of contestation – whether it positively or negatively affects the norms. While the perception that norm contestation is not linked to norm strength exists (see: Hurd (2013)), norm research generally seems to offer “two competing hypotheses: One branch of norm research often conceptualises contestation as a sign of norm weakening. By contrast, another branch assigns contestation a normative power of its own, which strengthens norms.” (Deitelhoff & Zimmermann, 2018, p. 51).

The former notion that norm contestation has a negative impact on norms is echoed by several norm scholars (see: Heller et al. (2012); Panke & Petersohn (2012, 2016)), as in legal scholarship. Accordingly, a norm's weakness could be traced back to practices that contest the norm, especially to non-compliance and violations (Deitelhoff & Zimmermann, 2018, p. 53). This narrative is also visible in international debates, especially when norms are described as “ineffective” or even “dead” when actors violate it or states disagree on its meaning (Kress, 2019; Panke & Petersohn, 2012; UNSC, S/PV.8262, 2018, pp. 18, 20). Meanwhile, the other strand of norm scholars believes that this process of engagement, of meaning-making strengthens a norm, as it may revive the debate on and commitment to the norm (Barnes, 2016, p. 103). Antje Wiener even argues

that contestation might be *necessary* for a norm to become legitimate (2007, p. 48, 2014, p. 50), ultimately strengthening the norm.<sup>7</sup>

Based on these diverging takes on norm contestation and its consequences, this thesis does not expect the effects of norm contestation to be an either-or situation. Firstly, it does not assume that there is a single *modus operandi* in which norm contestation takes place, hence the redefining of norm contestation as a concept. Secondly, the process of norm contestation by definition is not assumed to always lead to norm strengthening, nor that it naturally weakens it. One may expect that contestation could in some cases strengthen a norm's robustness and weaken it in others. As previous literature often tended to side with one of the competing hypotheses, a general framework was missing that aimed to explain the link between norm contestation to norm robustness based on the premise that norm contestation comes in different forms and can affect norm robustness differently (Deitelhoff & Zimmermann, 2018, p. 51). That is, at least, until this framework was offered by Deitelhoff and Zimmermann (2018, 2019).

This framework will be applied, taking norm contestation as an independent variable instead of a dependent variable. Therefore, the objective is not to find the causes of norm contestation, but rather the effects. If norm contestation is understood in the way that Deitelhoff and Zimmermann propose, meaning as a variable that has both the potential of strengthening a norm as well as weakening it (2018, 2019), the question arises under which conditions contestation leads to one outcome or the other. In contrast to previous norm research, Deitelhoff and Zimmermann do not ask the question of what leads to norm contestation, or whether norm contestation takes place or not. Rather, they ask the question of *what type* of contestation takes place, and how that type affects the norm's robustness accordingly (Deitelhoff & Zimmermann, 2018, p. 52). While these scholars do not assume that norm contestation is the only factor affecting a norm's robustness, they suggest to study *how* the two types of norm contestation affect norm robustness differently (2018, p. 52). To do so, they make a differentiation between two types of norm contestation: either *validity contestation* or *applicatory contestation*. The former would refer to the validity of the norm being contested, the latter to contestation of the norm's application (Deitelhoff & Zimmermann, 2018, p. 52). These types of contestation need to

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<sup>7</sup> Though Antje Wiener speaks of the positive effect of contestation on a norm's legitimacy, the author argues that this does not withstand the possibility of international conflict due to widespread contestation (2014, p. 59).

be clearly defined before getting into norm robustness, as they are central to the variable of norm contestation and, in turn, to this thesis.

### **Types of Norm Contestation**

This thesis will rely on the distinction between *validity* and *applicatory contestation*. These two types need further conceptualisation so that they can be recognised and distinguished from each other when they will be applied to the empirical case further on in this study. This section will start by taking a closer look at *validity contestation*, examining how this type of contestation is defined, when it occurs, and with what effect, followed by a similar examination of *applicatory contestation*, drawing on the framework provided by Zimmermann and Deitelhoff (2018). In the conceptualisation of the different types of contestation, this study will moreover touch upon the elements of a norm's structure as described by Winston – referring to a norm's *problem*, *value*, and implied *behaviour* (Winston, 2018, p. 641).

#### ***Validity contestation***

The first type of contestation is validity contestation. As the name suggests, this type of contestation engages with the norm's *validity*. The aspect of the norm that is being contested is whether the norm is valid – whether it should exist at all. The very *core* of the norm, meaning the basic claims for which it stands, is being challenged (Deitelhoff & Zimmermann, 2018, pp. 52, 59). Or, through the lens of norm structure – this would relate to the primary *value* of the norm (Winston, 2018, p. 641). Drawing on Deitelhoff and Zimmermann's plea that norm contestation takes place through both discourse and actions (2019, p. 6), this thesis suggests that validity contestation, as well as applicatory contestation, may be expressed *through* – for instance – violations, certain voting behaviour, arguments in international debates, or in actors' justifications, all engaging with the norm. Yet, as opposed to *applicatory* contestation, contestation of a norm's *validity* would take place when the actions or discourse engaging with the norm conflicts with, or questions, what the norm stands for. The norm's legitimacy may be challenged, as an actor would argue that its *moral standards* contradict the norm, or expressing that another, *conflicting norm* should permanently take preference over the contested norm (Deitelhoff & Zimmermann, 2018, p. 56). Deitelhoff and Zimmermann expect that the effects of validity contestation on the norm could be *negative* – meaning that it has the potential to weaken the norm's robustness. Based on their framework, it is expected that a norm's robustness is more likely to weaken when it faces validity contestation,

especially when this contestation is widespread. At the same time, the authors points out that even though validity contestation may weaken the norm's robustness, it does not have to (2018, p. 58). Therefore, it will be considered that the contestation of the norm's validity might be very limited, and the effects on the norm's robustness likewise. However, the more widespread and permanent the validity contestation becomes, the more negative effects it is expected to have on the norm's robustness (Deitelhoff & Zimmermann, 2018, pp. 52, 58).

To better illustrate how validity contestation takes place, the example of the *anti-female combatants* norm will be used. This norm is based on the premise that a state should not use female combatants (Percy, 2019, p. 123).<sup>8</sup> Validity contestation of this norm could take the form of, for instance, a state rejecting the core of the norm that differentiates between men and women. Accordingly, the state could claim that it does not support this norm under any circumstances, because the norm would not correspond with the gender equality principles it promotes, which would *permanently* be more important to the state than the protection of women through the anti-female combat norm. Discourse at the international level, or practices such as the deployment of female combatants, would demonstrate that the state does not, or no longer, believes in the legitimacy of the anti-female combat norm. Validity contestation would thus take place through actions, including discourses, of this state that rejects this norm and its core principles as a whole (Deitelhoff & Zimmermann, 2018, 2019; Percy, 2019). Due to the engagement with and contestation of the validity of the anti-female combat norm by this actor, and perhaps others, the robustness of this norm is expected to deteriorate.

In this thesis, the framework of norm contestation and robustness will be applied to the norm prohibiting the use of force. Simply put, validity contestation of this norm would come in the form of a state rejecting the norm's premise that states should refrain from the use of force against each other to maintain peace in the world order (U.N. Charter, 1945 art. 2, para. 4). All in all, this means that validity contestation takes place when the core and the legitimacy of the norm, its very existence, is being challenged, which potentially leads to a decrease in the norm's robustness (Deitelhoff & Zimmermann, 2018, p. 57). This is in contrast to *applicatory contestation*, which challenges how the

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<sup>8</sup> For more on the contestation and robustness of the anti-female combat norm, see Percy (2019): "What Makes a Norm Robust: The Norm Against Female Combat".

norm should be applied, rather than questioning the norm's existence (Deitelhoff & Zimmermann, 2018, p. 51).

### ***Application contestation***

The second type of norm contestation, besides *validity contestation*, is *applicatory contestation*. Of these two types of contestation, Deitelhoff and Zimmermann consider applicatory contestation to be 'common practice', even more so than validity contestation (2018, p. 52). This type of contestation can be seen as 'less severe', as it does not challenge the norm and its existence all together, but rather the norm's application. The aspects of the norm's application that can be contested, Zimmermann and Deitelhoff argue, relate to a given situation, and include the *appropriateness* of the norm's application under those circumstances; the *actions* that should be taken accordingly; and the *importance* of the norm in relation to *other norms* that are applicable (2018, p. 57). While this thesis associates the *value* of the norm structure with validity contestation, the other two components of norm structure – *behaviour* and *problem* – (Winston, 2018, p. 641) will be connected to applicatory contestation. Combining this take with Deitelhoff and Zimmermann's framework, this study will understand applicatory contestation to take place when actors challenge the *behaviour* implied by the norm; which *circumstances* or issues trigger the norm, or whether *another norm* should temporarily take priority. States may, for instance, disagree on international forums on which means to use to achieve the norm's core objective. Or a state might contest the norm's application by using the norm slightly different from the way the norm has been prescribed or applied previously. A state could, moreover, argue that under certain circumstances, the norm should be lifted – that other conflicting norms could be more appropriate in a given situation.

It was previously established that validity contestation is expected to weaken norm robustness if it affects it at all. Applicatory contestation, in contrast, is generally expected to strengthen norm robustness, yet still has the potential to weaken it under certain circumstances (Deitelhoff & Zimmermann, 2018, p. 58). Firstly, a closer look will be taken at how applicatory contestation can lead to the norm strengthening. This study expects that the process of meaning-making and engaging with a norm, or the act of norm violation, may include or be followed by a debate on the norm and how it should be interpreted. According to Barnes, this meaning-making process could revive a debate on the norm in which actors can express their support to the norm and meaning-in-use (2016,

p. 103). This debate, or even sanctions against violations, may first of all demonstrate that norm addressees still consider the norm important and are still committed to it. Moreover, it has the potential of providing more clarity, and to a certain extent *stabilising* the meaning of the norm and interpretation (Barnes, 2016, p. 103; Deitelhoff & Zimmermann, 2018, pp. 55, 58). In this way, contestation of the norm contestation could include or lead to re-commitment to a norm and its meaning-in-use, resulting in the norm becoming more robust.

However, under extraordinary circumstances, applicatory contestation also has the potential to impair norm robustness and weaken it. This is possible, according to Deitelhoff and Zimmermann, “when applicatory contestation becomes *permanent*, that is, if – over a long period – norm addressees cannot achieve renewed consensus or compromise on a norm’s meaning and application.” (2018, p. 58). This thus refers to the debate mentioned before, yet this time the debate would highlight and – over time – strengthen the disagreement on the norm’s meaning-in-use, instead of stabilising it (Deitelhoff & Zimmermann, 2018, p. 58). This means that if applicatory contestation becomes permanent and does not stabilise the norm’s meaning, the robustness of the norm is more likely to decrease than increase. Moreover, Deitelhoff and Zimmermann point out that such applicatory contestation could lead to the norm’s meaning being obscured insofar that violations become difficult to differentiate from compliance (2018, p. 58). When applicatory contestation becomes this ‘severe’, it is not always easily distinguished from validity contestation, as it might affect the norm’s validity. However, this study will look at a one-time event of contestation as part of the independent variable, and only look at the norm’s validity over time as part of the independent variable of norm robustness. Therefore, whether or not applicatory contestation becomes permanent and so severe that it affects the norm’s validity, will not influence the differentiation between validity and applicatory contestation in the first section on norm contestation.

This type of contestation will be applied to the anti-female combat norm as well, drawing upon Deitelhoff and Zimmermann’s framework. This norm would be considered to face *applicatory* contestation, not validity contestation, in case it is being challenged how the norm should be used. For example, states may contest *when* anti-female combat norm applies and when it is lifted. An actor could show resistance to complying with the norm in every situation and may argue for certain exceptions – such as wartime, or non-direct

combat (Percy, 2019). Moreover, a state might support the anti-female combat norm in general, but not *how* women should be excluded from combat (for instance: promoting women's exclusion from obligatory military service or excluding women from joining the army). Another way for a state to contest the norm's application, could be by prioritising other norms. While under validity contestation, the actor would argue that a competing norm should permanently be more important than the contested norm, the actor contesting the norm's application would strive for another norm to be prioritised in a specific situation. For instance, combatants might have to perform searches on women at border checkpoints, leading the state to use female combatants for this task for the purpose of cross-cultural awareness (Akers, 2009). In this way, the state would temporarily lift, and challenge, the anti-female combat norm, in the name cultural sensitivity norms. Such actions could trigger third-party reactions and debate, in which other states could express understanding or support of this interpretation of the norm, which could lead to a new (partial) consensus or compromise on the norm's meaning, and ultimately strengthen the norm. However, this debate could lead to more disagreement and confusion as well. If this contestation and the disagreement on the norm becomes permanent, it may become unclear what is a legitimate exception and what is a violation, or states might feel less bound by the norm, which in turn could make the norm less robust (Deitelhoff & Zimmermann, 2018, pp. 57, 58).

All together, this means that applicatory contestation takes place when an actor challenges how a norm should be applied, which is expected to strengthen the norm's robustness as it is likely to stabilise a norm's meaning. However, when this stabilisation does not take place and the applicatory contestation becomes permanent, applicatory contestation has the potential of weakening norm robustness. For the prohibition of force – the norm that will be used in this thesis –, this type of contestation would imply that the application of the norm is facing contestation. This means that it is being challenged how states should be prohibited from doing so, or *when* the prohibition would be lifted, instead of whether the norm should exist at all. If this study finds the contestation in this case to qualify as *applicatory*, then a closer look needs to be taken at whether or not stabilisation of the norm is taken place, and whether this indeed leads to an increase in robustness. To establish whether this prediction of Deitelhoff and Zimmermann holds, the robustness of

the prohibition of force norm needs to be measured before and after the norm contestation takes place.

### **Norm Robustness**

Now that norm contestation has been conceptualised and theorised, the concept of norm robustness and its dynamics still require further elaboration. As previously described, norm *change* tended to be an understudied field within norm research (Hoffmann, 2010, p. 12; Wiener, 2004, pp. 198–199). Still today, the focus on change specifically in the *robustness* of norms has been lacking (Sandholtz, 2019, p. 139). The few scholars that have tried to study a change in the norm strength, have often studied or described norm “erosion” (Rosert & Schirmbeck, 2007), “regression” (Barnes, 2016), “cascading” (Fisk & Ramos, 2014), or “death” (Panke & Petersohn, 2016). Yet it was only until Deitelhoff and Zimmermann provided a framework, that one could study a change in robustness of a norm, that could both increase and decrease (2019).

The concept of *robustness* already implies a relation to how *strong* and *solid* a certain phenomenon is. This thesis will rely on the conceptualisation of norm robustness drawing upon Deitelhoff and Zimmermann’s framework and on (scholarship on) international and customary law. Both consider a norm or a legal custom to contain two elements: the *facticity/objective* element and the *validity/subjective* one.

#### ***Facticity***

The first dimensions of robustness – facticity, as formulated by Deitelhoff and Zimmermann, considers whether the norm is generally complied with by norm addressees (2019, p. 2). This approach, including both elements, originates from a legal perspective particularly on what makes a practice an international legal custom. Accordingly, unwritten customs are considered to constitute customary law when there is “evidence of a *general practice* accepted as law” (United Nations, Statute on the International Court of Justice, 1946, p. 26 art. 38(b)). When this is applied through the framework of robustness rather than through a legal lens, a norm would be considered robust when most states do not violate the norm but adhere to it (Glennon, 2005, p. 940). Along these lines, a robust norm would generally guide state behaviour (Deitelhoff & Zimmermann, 2019, p. 2).

Some scholars, legal and IR, have focused primarily on practices – whether or not the compliance element of a norm or rule is met (Deitelhoff & Zimmermann, 2019, p. 6;

Glennon, 2005), while others have focused their attention on actors' belief in norms expressed through discourse (Deitelhoff & Zimmermann, 2019, p. 6; McKeown, 2009; Rosert & Schirmbeck, 2007). However, in order to grasp both the facticity and the validity as part of the norm's robustness, practices and discourses engaging with the norm need to be taken into account in this thesis in order to study a change in robustness.

### ***Validity***

In addition to the facticity and objective elements, there is a second criterion that a custom would have to meet to be seen as customary law, and for a norm to be seen as robust. This *validity* dimension relates to whether or not the norm's claims are widely accepted (Deitelhoff & Zimmermann, 2019, p. 2), which directly relates to the *subjective* element of international customary law. The latter is referred to as *opinion juris* in international law, a criterion that would be met if states generally believe that they are legally bound by the norm (U.N. International Law Commission, A/CN.4/672, 2014, p. 45). Deitelhoff and Zimmermann accordingly point out that a norm's robustness can also be seen in the way in which addressees engage with the norm outside of compliance, for instance through discourse, that might show states consider the norm to be of high importance (2019, pp. 6, 7). Accordingly, it is being argued that norm robustness comes both from behaviour consistent with the norm (facticity) and from a general belief in the norm (validity) (2019, pp. 1, 8).

When references are made in this thesis to strengthening or weakening of a norm, it implies a *change* in norm robustness along the dimensions of the facticity and validity. Results that demonstrate an increase in validity and facticity of a norm do not indicate that a norm is robust *per se*, they simply indicate an increase in robustness. Norm robustness will be applied in this way, rather than aiming to establish a precise level of robustness, as norm literature including Deitelhoff and Zimmermann's framework do not provide measuring tools or precise levels of robustness that can indicate "how robust a norm is". Instead, Deitelhoff and Zimmermann's framework puts forward four indicators along which to study norm robustness: *concordance* and *reactions* to norm violations (discourse); *compliance* and *implementation* (practice) (Deitelhoff & Zimmermann, 2019, pp. 2, 3, 6, 8). Simply put, *concordance* refers to the extent to which states regard the norm to be legitimate (2019, p. 8), *reactions* to responses of third-parties to violations of the norm (such as sanctions) (2019, p. 8), *compliance* to "the level of behaviour consistent with the norm" (2019, p. 8), and *implementation* to the level of "norm inclusion

in policy papers, protocols, standards of international and regional organisations, and adoption into domestic law.” (2019, p. 8).

These indicators are provided each with four scales (Deitelhoff & Zimmermann, 2019, p. 9). However, the scales are not labelled as high or low or other indications (but simply defined by their characteristics), nor is it clear what level they need to have for the norm’s validity, facticity, and in turn robustness, to be strengthening or weakening. As explained in the methodology chapter, these indicators will be used as guidelines in this study to rather than directly applying them, notwithstanding that it will continue to examine both the *discourse* and *practice* dimensions engaging with the norm to study both the validity and facticity that will determine a change in norm robustness.

In the end, this study is preceded by a constructivist approach that takes norms and their meanings to be inherently changing and contested, on which it will draw. The practice of norm contestation can predominantly take the form of *validity contestation* or *applicatory contestation*, and the robustness of the norm may consequently change based on the type of contestation it faces. Drawing upon previous norm scholarship and the contestation-robustness framework from Deitelhoff and Zimmermann, this study aims to reject or affirm the following two hypotheses:

H1: “If the predominant mode of contestation of a norm is applicatory contestation, then the norm’s robustness strengthens.”

H2: “If the predominant mode of contestation of a norm is validity contestation, then the norm’s robustness weakens.”

To ultimately test these expectations – to discover how Russia’s contestation has affected the robustness of the prohibition of force norm, a methodological framework will be applied that requires further elaboration.

## **Norm Contestation and Norm Robustness – A Methodological Framework**

*This chapter establishes the methodological considerations of this study. Firstly, the choice of research design and the type of case study (theory-confirming) will be justified. This is followed by an explanation of the case selection and method of qualitative document analysis. As part of the methodological framework, the variables of norm contestation and norm robustness will be operationalised. It will then be described how the indicators are used to measure the different types of norm contestation – applicatory contestation and validity contestation – and the two dimensions of norm robustness – facticity and validity. This includes an elaboration upon the data and sources used in the analysis to achieve the research aims.*

### **Research Design and Case Selection**

Firstly, the choice of research design will be explained, followed by a closer look at the case selection of this qualitative study as well as the timeframe.

From the different types of studies that can be conducted in the field of social sciences, this research will be designed as a *single case study*. This design, first of all, enables the observation of the phenomenon in question in the closest and most direct way possible, as opposed to designs with a larger number of cases (Odell, 2001, p. 169). Single case studies allow for more *depth*, especially Type I as defined by Gerring – referring to the observation of one unit over time (2004, pp. 343, 348). A Type I case study suits the purpose of this research on norm contestation and robustness well, as it would be able to study variance of norm robustness over time through this design, rather than studying variance between different norms and their robustness as studies focusing on multiple units or cases would (Gerring, 2004, p. 347). The aims of this study, in turn, makes the research *factor-centric*, focusing on the effects of X (norm contestation) on Y (norm robustness), instead of assessing an explanation for the outcome. Considering this, a case study provides a better opportunity to investigate *causal mechanisms* instead of merely *causal effects*, in comparison to other types and research designs. In the context of norm contestation (X) and norm robustness (Y), this would imply that the research does not necessarily or only study *what* the effect of X is on Y, but instead looks into *how* X affects

Y, and through which pattern(s) (Gerring, 2004, p. 348) – meaning, how the process of norm contestation affects norm robustness.

In the end, a single case study allows one to “generate valid theory” or to “refine existing theory” (Odell, 2001, pp. 169, 170). This is appropriate, if not necessary, for scholarship on norm contestation and robustness, as there is a lack of studies that empirically test the only consolidated framework for studying the link between norm contestation and norm robustness – the one formulated by Deitelhoff and Zimmermann (Sandholtz, 2019, p. 139). This lack might relate to the fact that “the type of norm contestation” and “a change in norm robustness” are not easily observed in an empirical case, which makes it difficult to compare their causal mechanism(s) across cases. This is complicated even more by the fact that norm contestation and robustness seem particularly difficult to measure ‘generally’ or ‘as a whole’. That is to say, before conclusions can be made about how norm contestation ‘tends to’ affects robustness, or before several cases of contestation or different norms can be compared with one another, the theory of Deitelhoff and Zimmermann needs to be tested on a norm. Therefore, a single case study will be a useful and the most suitable option to study norm contestation in relation to norm robustness.

Having established that the most appropriate research design to achieve the objectives of this thesis is a single case study, the question arises of what constitutes ‘a case’. As Gerring describes a case study as “an in-depth study of a single case unit” (2004, p. 341), the unit in question needs to be pointed out. This thesis, accordingly, set out to select and study ‘a case of norm contestation’. Based on this objective, the *type* of case study – theory-confirming – and case of contestation – Russia’s contestation in Crimea of the prohibition of force (PoF) norm – were selected, which now require further elaboration.

As there are several ways to perform a case study, it needs to be specified which type of case study will be applied and why it was selected. This thesis aims to take the theory and framework of Deitelhoff and Zimmermann and test it. A type of case study that specifically allows one to do so, is the *theory-confirming case study*. This type of case study offers the “ability to contribute to theory-building” (Odell, 2001, p. 165), which is essentially what this study aims to do. The theory-confirming case study particularly fits this thesis’ aims for its *theory-testing* ability. However, it should be noted that this case study is ideally applied to a case that is “least-likely” to confirm the theory (Odell, 2001, p. 165). It is difficult to determinate whether the case of contestation of the prohibition of

force norm (PoF) by Russia in Crimea constitutes the least-likely case to confirm Deitelhoff and Zimmermann's theoretical expectations. The likeliness of the theory being confirmed or rejected depends greatly on the type of contestation in this case, which remains unknown. In terms of what this study *can* do, rather than what it should ideally do, the selected case remains appropriate for a theory-confirming case study, especially considering that the argument for an "extreme case" (Odell, 2001, p. 165) can still be made. It is of high significance to this thesis that an extreme case of contestation is selected. As mentioned, contestation is considered to be usually present, yet to different extents and can accordingly have very limited effects (Deitelhoff & Zimmermann, 2018, p. 52). The theory can only be tested if the independent variable of norm contestation is present and therefore has the potential of affecting the dependent variable of norm robustness. The reasons for selecting the case study of Russia's contestation of the PoF norm in Crimea will now be further explained.

The case of the PoF norm being contested by Russia in Crimea suits the aim of this thesis – studying norm contestation and robustness – particularly well as it constitutes a clear and extreme 'case of contestation'. Russia's annexation of Crimea and its justifications do not need to be closely studied to observe that the PoF norm is being challenged. This is demonstrated not only by Russia's non-compliance at that time, but also by the controversy it triggered at the international level (Kress, 2019; UNSC, SC/13344, 2018) and the fact that scholars are still talking about it today (Burlyuk, 2021), and therefore stands out among other potential cases of norm contestation. It thus provides the 'extremeness' necessary for norm contestation to be visible and have effect, and to consequently test the hypotheses. While it offers a clear case of contestation, the type of contestation can not be observed without studying Russia's engagement with the norm more closely.

Russia's engagement with the PoF norm in the case of *Crimea* in 2014 is specifically chosen over its actions in the Russo-Georgian war (2008) or the Ukrainian crisis as a whole. Russia's actions in Georgia were not regarded as a turning point in the way Ukraine was and accordingly faced less controversy (Renz, 2019, p. 191). Along these lines, Morozov et al. argue that while "Disagreements over the exact meaning of international norms have always stood at the centre of Russia's relations" with the West, the annexation of Crimea symbolised "the real turning point", since which West primarily

perceives Russia's justifications to be based on lies and "deliberate misinterpretation of universal norms" (2018, p. 2). In the end, in comparison to the War in Donbas, there is greater availability of discourse and actions in the case of Crimea that allows a proper examination of how norms were contested and actions were justified (Bilkova, 2014).

The case of Russia's contestation of the PoF norm in Crimea could moreover provide useful insights for the discipline of norm research and for the norm in question and the debate surrounding it. Firstly, as previously explained, norm contestation literature often focuses on liberal-western norms, yet tends to neglect non-liberal-western norms as well as the agency of non-western actors to partake in positive change of a norm('s robustness) (Bloomfield, 2015, p. 314; Deitelhoff & Zimmermann, 2019, p. 14). The PoF is an example of a 'universal' norm, as it is codified in the UN Charter. Accordingly, a case study of contestation of this norm provides insights into a norm that applies to all states and is considered to function in the interest of the international community as a whole, rather than simply of states wishing to promote liberal and western norms. Furthermore, previous studies have focused on the contestation of norms such as the Responsibility to Protect (R2P) (Acharya, 2013; Badescu & Weiss, 2010; Deitelhoff & Zimmermann, 2018; Jose & Stefes, 2018; Welsh, 2019) and anticipatory self-defence (Brunnée & Toope, 2017; DeWeese, 2015; Fisk & Ramos, 2014). These two arguably liberal-western norms can be considered as exceptions to or competing with the PoF norm, yet it remains unclear what the effects of contestation have been on this universal norm, and it therefore needs to be studied through the framework provided by Deitelhoff and Zimmermann.

The empirical case of the prohibition of force norm, moreover, highlights one of the hypotheses among norm and legal scholars that always views norm contestation in a bad light – meaning that it is assumed to have a weakening effect on the norm. While some norm scholars have referred to the PoF norm as *robust* (Brunnée & Toope, 2017, p. 2; Sandholtz, 2019, p. 142), debates at the international level, for instance at the United Nations (UN) show that the PoF norm is perceived as ineffective (UNSC, SC/13344, 2018) or even "dead" (Kress, 2019) with specific reference to Russia challenging the norm. The framework on norm contestation and robustness, however, assumes that norm contestation has the potential to weaken but also to strengthen a norm's robustness. This framework needs to be applied to the empirical case of the PoF norm being contested by

Russia to see what happened to the norm, and to test whether Russia's contestation did lead to a decrease in the norm's robustness as echoed in the debate.

In the end, Russia's 'extreme' contestation in Crimea of the PoF norm provides a good opportunity to test the framework of Deitelhoff and Zimmermann and could potentially offer insights into contestation by non-western norms and into the PoF norm's strength. This will be done by examining how the independent variable of norm contestation, or more specifically the type of contestation, has affected norm robustness – the dependent variable.

A comparison of norm robustness over time is necessary to establish whether contestation of the PoF norm was followed by a change in robustness. Russia's contestation of the norm in the first four months of 2014 will be studied to determine which type of contestation is taking place, as the annexation of Crimea happened within this timeframe. The robustness will accordingly be measured before (t1) and after (t2) the case of contestation. Instead of measuring norm robustness at one specific point in time, this study will, for several reasons, study the robustness of the PoF norm over the five years before and after the contestation. The first reason behind this decision is that simply measuring the level of robustness immediately after the contestation does not provide any insights on the lasting effects of the contestation on the robustness – as the robustness might, for instance, be impaired shortly after the contestation yet not as soon as the observed period is extended. Moreover, the level of robustness immediately before Russia's contestation, meaning at the end of 2013, could also be affected by the most recent contestation it faced. By examining the average level of robustness over the course of five years, a better illustration will be given of the norm's robustness on the long term. Therefore, the level of robustness will be measured from the start of 2009 to the end of 2013 (t1) and from 2014 until 2018 (t2).

### **Qualitative Document Analysis Method**

In order to retrieve the necessary data, this thesis applies the method of qualitative *document analysis* (Karppinen & Moe, 2012). This study will perform an analysis of *primary sources*, resorting mainly to official UN and government documents. This method will enable this study to present new and relevant findings rather than summarising research literature (Karppinen & Moe, 2012, p. 3). Previous norm contestation studies seem to have mixed both literature and documents (Deitelhoff &

Zimmermann, 2018; Percy, 2019; Welsh, 2019). However, a thorough analysis of primarily UN documents fits the purpose of this study best as it aims to perform a detailed empirical case study of a norm that is enshrined in the UN Charter and monitored at the UN level, thus being a ‘UN norm’.

### **Operationalisation of Norm Contestation**

In order to establish how the IV of norm contestation affects the DV of norm robustness, it is necessary to determine what type of contestation is taking place – whether it is contesting the norm’s validity, or its application. For the operationalisation of the variables, this study draws on the examples of contestation provided by Deitelhoff and Zimmermann (2018, pp. 56, 57, 59–71), yet several additions are made to clearly distinguish between the two types of contestation.

#### ***Validity contestation***

The first type of contestation is validity contestation, which is considered to take place when contestation of the norm’s *validity* is being challenged. In practice, this type of contestation would occur when the norm’s *core claims* are being challenged, related to the values it stands for. This type of contestation can be observed when, firstly, a state claims that the core of the norm is not or no longer in line with its *moral standards* (Deitelhoff & Zimmermann, 2018, p. 56). In this way, the actor directly opposes the values that norm stands for, and it does not wish to be associated with the norm. The second indicator of this type of contestation can be observed when a state demonstrates its belief that a *competing norm* should fully take preference (Deitelhoff & Zimmermann, 2018, p. 56), meaning that the state expresses that the contested norm should permanently be replaced or become irrelevant. This study will moreover consider any other practices that *attack the norm’s validity* if they may arise.

Validity contestation can be observed in both discourse as action, together referred to as practices engaging with the norm. An example along the lines of the first indicator can be seen in the case of Turkey pulling out of the Istanbul Convention. The state would be contesting the norm that aims to combat violence against women, on the grounds that Turkey did not want to participate in “attempts to normalise homosexuality” (President Erdoğan, 2021). This can be interpreted as Turkey claiming that the norm against gender-based violence could not be supported based on the country’s moral beliefs concerning sexuality and family values. The practice of contestation would include both the act of

withdrawal and Turkey's justification. The second indicator on *competing norms* could, for instance, be observed when a state advocates against or breaches international privacy norms as it believes that the government's right to surveillance should be prioritised at all times.

#### ***Applicatory contestation***

The contestation of a norm's *application*, in turn, is considered to take place when an actor challenges how the norm should be applied. This second type of contestation is more common than validity contestation, according to Deitelhoff and Zimmermann (2018, p. 57). Applicatory contestation can be observed when the contestation does not concern whether or not a norm is valid, but it contests the way in which to apply the norm. This can be indicated, firstly, by a state challenging which *behaviour* is implied by the norm (Deitelhoff & Zimmermann, 2018, p. 57). A norm's core might indicate its values and aims, yet not necessarily how to uphold that value or achieve that goal (Winston, 2018, p. 641). A state could contest the norm's application by interpreting or using the norm in a (slightly) different way than its meaning-in-use (Wiener, 2009, p. 179). Secondly, this type of contestation may be expressed through practices that question when the norm should be applied – in *which circumstances* the norm applies and when it does not (Deitelhoff & Zimmermann, 2018, p. 57). This study understands this circumstantial indicator to include practices that contest which problems may trigger either a norm to apply (Winston, 2018, p. 641), or the norm to be lifted. The latter would allow prohibitive norms to be studied including exceptions to the norm – situations in which it would not apply are part of the norm's application that can be challenged. Closely related is the third indicator that is visible when *other competing norms* are claimed to take priority temporarily (Deitelhoff & Zimmermann, 2018, p. 57). A given situation would allow the norm to be replaced by another norm. This indicator can be distinguished from the *competing norms* indicator of validity contestation, as the latter takes place when another norm is *permanently* prioritised over the contested norm, while applicatory contestation occurs when a specific situation would, according to an actor, allow for another norm to be prioritised for a certain period of time. However, this study likes to draw attention to the fact that a norm's core might already include exceptions. This study will not consider the lawful use of a norm's exceptions as contestation. Yet when the use and interpretation of these exceptions are being debated, or when they are breached or challenged in any way different from how the norm's exception are implied or intended, it will be

considered as applicatory contestation. In the end, this study believes applicatory contestation to be observed through practices that challenge *the behaviour* implied by the norm; which *circumstances* or problems trigger action or inaction; or whether *competing norms* should take preference in a given situation, as well as any other practices that imply the norm to be used or interpreted different from its meaning-in-use (Wiener, 2009, p. 179).

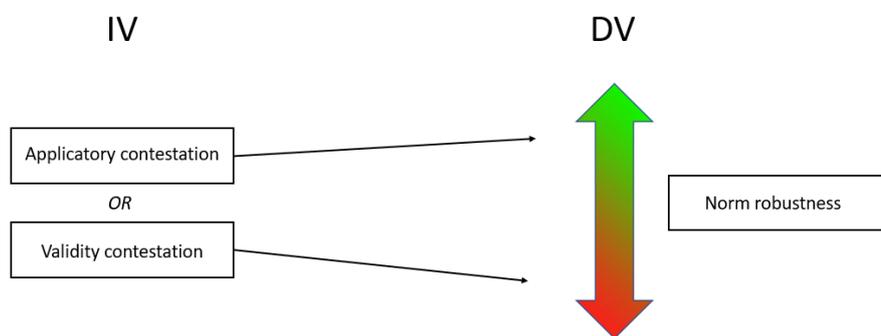
The first indicator – contestation of the *behaviour* that the norm implies – is expected by this study to be rather common, as norms tend to be guidelines rather than giving specific instructions. An example can be provided by a norm that promotes states to cut their CO2 emissions. States could meet at international for a or conventions debating this norm. If states were to disagree on the way to achieve this norm’s objective, or if a state would diverge from the implied behaviour, the norm’s application is considered to be contested. Secondly, the *circumstantial indicator* could be illustrated by the anti-discrimination norm. A state may believe that discrimination based on someone’s age, for instance, is not acceptable, except when a situation requires ‘positive discrimination’ as it would when aiming to meet a quota, thus challenging the exceptions to the norm based on the specific circumstances. The third indicator concerning *competing norms* could also be related to the anti-discrimination norm as it could be prioritised over the freedom of speech norm. A state may accept the validity of the freedom of speech norm, but may believe that, or question if, a case of supposed discrimination, the anti-discrimination norm should take the upper hand. All these examples are contesting how and when the norm should be *applied* and where its limits lay.

It is important to take into account that the independent variable of norm contestation is, in a way, conditional. In the way Deitelhoff and Zimmermann formulated the phenomenon, contestation as a whole does not weaken or strengthen norm robustness in general, but under certain *conditions*. While validity contestation almost always makes it more likely for robustness to weaken, applicatory contestation could – rarely but possibly – weaken norm robustness under the condition that the contestation becomes permanent, while it could strengthen the norm in case the contestation stabilises the norm’s meaning. However, the “becoming permanent” factor is not a separate conditional variable by itself (Deitelhoff & Zimmermann, 2018, p. 58; Van Evera, 1997) and it does not have to be for this thesis, as it only investigates a single instance of contestation.

In the end, the independent variable of norm contestation can be understood as being expressed either through *validity contestation* or through *applicatory contestation*. The indicators can be used to determine which type of contestation is taking place. In order to ascribe one or the other to the case in question, the contestation of the prohibition of force norm by Russia in Crimea needs to be closely analysed. Official documents from the UN, primarily its Security Council, and from the Russian Federation will be examined. This thesis does not aim to analyse Russia's practices in Crimea in 2014 in the context of legality, or how Russia broke its agreements with Ukraine. This study instead wishes to analyse how Russia engaged with and *contested* the PoF norm, rather than establishing if it legally violated the norm the norm or not. This case was selected because norm contestation is visible, not because Russia would have clearly violated the PoF norm. Violation of the norm will at the same time not be fully disregarded, as the act of violation as well as its justifications are still considered to be part of norm contestation in this thesis, even when it is not clear whether these practices were officially lawful or not. Accordingly, the sources will be selected based on the criteria that they provide an account of the actions taken by Russia that contest the PoF norm and the justifications for them, including allegations and reports from other states. The possibility of resorting to secondary sources is not excluded, as they enable a better grasp the facts on the grounds as well when language issues arise.

The possibility that cases of Russia engaging with the PoF norm in Crimea have gone unreported should not be excluded. For the purpose of this thesis, only the practices *on paper* will be examined – meaning those that Russia has accounted for as well as those discussed at the UN level. This study does not expect unreported instances to be the most significant contestation faced by this norm. As mentioned, these practices are not limited to legal violations of the norm but can include references to the use of force and the prohibition of it. References to other practices and allegations will also be considered, such as “occupation”, (armed) “intervention”, “annexation” and “act of aggression”. Even if these practices are not proven to have occurred in combination with the use of force, they can all be considered to refer directly to the norm, as well as at least implying *the threat* to use force – which is also prohibited by the PoF as described in Article 2(4) of the UN Charter. Therefore, Russia's practices – which include its actions and justifications – engaging with and related to the PoF norm will be demonstrated and defined to subsequently classify it as either validity or applicatory contestation.

By first analysing Russia’s actions followed by Russia’s discourse contesting the norm, this study will ascribe either the type of *validity contestation* or *applicatory contestation* as the most prominent mode of contestation by Russia. Once the type of contestation is established, it will be expected that the norm’s robustness *strengthens* if primarily *applicatory* contestation took place and that it *weakens* if primarily *validity* contestation took place (as illustrated in **Figure 1**). To test whether the type of contestation led to a change in the norm’s robustness, the robustness of the norm needs to be examined before and after the contestation.



**Figure 1.** Types of Norm Contestation (IV) and Effects on Norm Robustness (DV).

### **Operationalisation of Norm Robustness**

The dependent variable of norm robustness exists of two dimensions – *facticity* and *validity*. For a norm’s robustness to be considered ‘high’, both the norm’s facticity and validity need to be high (Deitelhoff & Zimmermann, 2019, p. 2). The primary objective of this thesis is not to measure exact levels of robustness, as it believes that this is not objectively possible. Rather, it aims to observe whether or how a norm’s robustness *changes* because of norm contestation. To observe a change, this study works with levels of robustness and its dimensions. Both dimensions can be ordinally ranked from *low/moderately low/medium/moderately high/high*, and the overall robustness will be taken as an ‘average’. For instance, if at a moment in time the norm’s facticity is considered to be *medium* while its validity is considered to be *high* – the norm’s overall robustness will be *moderately high*. The option of variation within one level will be taken into account – both facticity and validity can be at a medium level, with one being closer to moderately low and the other closer to moderately high. A bar of robustness levels was created (see **Figure 2**) to address this variation and to increase the level of precision. The

levels of facticity and validity will be indicated on this bar, as well as the level of robustness.



**Figure 2.** Levels of Robustness.

While this method is primarily used to observe a change in robustness rather than determining whether the norm in question is robust or not, the findings of this study may give an indication of how robust the norm is a given moment. For instance, a norm can be ascribed the label of robust according to this method if it at least meets the *moderately high* level. In order to study the level of robustness and accordingly a change in robustness, the levels of its facticity and validity dimensions need to be established.

This study's indicators will draw upon – yet deviate from – the four indicators proposed by Deitelhoff and Zimmermann: *compliance*, *implementation*, *concordance*, and *third-party reactions* (2019, p. 8). These indicators do not seem to be applicable to all norms and all cases of contestation, including the contestation of the prohibition of force norm. The implementation indicator, for instance, is meant to measure the level to which the norm is implemented at the national level, and in particular in domestic law. Moreover, the number of ratifications and opt-outs to the norm is part of the concordance indicator (Deitelhoff & Zimmermann, 2019, p. 8). These aspects would not be relevant nor applicable to the PoF norm, considering that the prohibition of force between different states is codified into international law and applies to all states in the international realm (U.N. Charter, 1945 art. 2, para. 4). Deitelhoff and Zimmermann do furthermore not state which indicators are meant to measure validity and which ones are to measure facticity (2019). This thesis, in turn, will still rely on the *compliance* indicator to observe facticity, while trying to observe the norm's *general acceptance* relying on the indicator concerning third-party reactions to violations and the concordance-indicator.

### ***Facticity***

The first dimension of norm robustness relates to how well the norm is guiding states' actions – how well states adhere to the norm (Deitelhoff & Zimmermann, 2019, p. 2; Glennon, 2005, p. 940). The level of facticity is indicated by *compliance*, an indicator

that can be described by Deitelhoff and Zimmermann as “behaviour consistent with norms” (2019, p. 8). To measure the facticity dimension, this study will primarily rely on primary sources from the UNSC.

This data will be retrieved from the yearly *repertoires* of the UN Security Council (UNSC) covering case studies related to the UN’s primary principles – including the prohibition of force (UNSC, 2020). The analysis of documents for the facticity dimension includes a quantitative element, as the level of *compliance* will be based on the number of different cases that engaged with and invoked the PoF norm (specifically article 2 paragraph 4 of the UN Charter) due to (alleged) cases of violation or non-compliance. This information will be retrieved from the yearly and bi-yearly UN reports listing all instances in which Article 2(4) was used in a decision, cited, or invoked in debate (UNSC, 2020). Based on these documents, this study will determine how many different cases led to a UN response or debate based on or invoking the norm. These references to the norm will be studied with the objective to observe how often there are instances of questionable behaviour, regardless of whether this is officially labelled as a violation or not. Even though violations in this thesis are considered part of norm contestation as well as an indicator of low(er) facticity, it is not an objective of this study to determine whether specific behaviour legally counts as a violation of the norm or not. Rather, this study centres around norms being contested, and facticity in particular concerns the level to which the norm being adhered to. Especially considering the political aspect of whether the UNSC labels an action as a breach, considering the veto power of specific states, this study will still consider the facticity to decrease even when there are many *alleged* violations of the norm. Therefore, not only the cases in which the UN underlines or reaffirms the importance of Article 2(4) are examined, but also the constitutional discussions and invocations in communications of the norm (UNSC, 2020). By including the invocation of the norm, this study takes into account that not all breaches of the norm are labelled or condemned as a violation by the UN.

Cases are included on the criteria that they *explicitly* refer to Article 2(4), excluding implicit references mentioned in the documents, such as calling upon ‘good neighbourliness’. Moreover, these cases that are counted as ‘non-compliance’ when they relate to the use of force by one state against another, rather than a state against its citizens, or including terrorist organisations. If the same instance of an alleged breach of the norm

leads to multiple invocations by different states, the ‘case of non-compliance’ will only be counted once under the period of review.

The facticity of the norm will be scanned on the basis of five years prior to the contestation and the five years after. The following numbers are based on two considerations. The first is the amount of times in which an article similar to Article 2(4) was invoked – namely Article 39 on that concerns threats to and breaches of peace, as well as acts of aggression (U.N. Charter, 1945 art. 39). The second consideration was established by examining other years outside of the scope of this study and the number of times that Article 2(4) was invoked there. This examination showed that both articles had approximately five different cases of alleged non-compliance a year. Therefore, only two invocations of Article 2(4) for the period under review is considered to be a *high* level of compliance, while five invocations are seen as average.

This study will examine the *compliance* and accordingly the facticity of the norm twice over the course of five years each. Accordingly, if there are *up to 10* cases in five years time, the general compliance with the norm and the facticity accordingly will be considered high. In turn, when there are *up to 20* invocations of the norm in different cases, the norm’s facticity will be considered *moderately high*. The border between moderately high and medium is 20. When this occurs up to *21 to 30 times*, the facticity will be at *medium* level. The facticity will be *moderately low* when the norm is invoked *up to 40 times*, with the *lowest* level being when Article 2(4) is used in *more than 40* different instances.

### ***Validity***

The second dimension of norm robustness relates to norm addressees’ general belief in the norm’s claims (Deitelhoff & Zimmermann, 2019, p. 2). Deitelhoff and Zimmermann suggest to apply the *third-party reactions* and *concordance* indicators to study discourse on the norm (2019, p. 8). While this thesis will examine norm discourse to measure validity, it will merge these two indicators into one indicator of *general acceptance*. This is, first of all, because the concordance-indicator by itself already equals “general belief in the norm’s claims” (Deitelhoff & Zimmermann, 2019, p. 2). Secondly, most debates on prohibitive norms seem to consist of third-party reactions to violations or questionable behaviour concerning the norm, as such an event would lead to this issue being discussed at the UN level. However, as opposed to the facticity dimension, the validity dimension

includes general UN meetings and is not limited to debates after (alleged) violations, nor does it accumulate the number of cases of non-compliance or of condemnations. This is because an increase in condemnation can be caused due to an increase of violations, which would not by itself signify an increase in validity in this study. Instead, this study will examine the references made in third-party reactions to violations and in discourse on the norm in general over the course of five years, to see *how* the norm was discussed.

The discourses used in this study rely once more primarily on UN documents and meeting coverage. The *general acceptance* indicator will observe *how* the PoF norm is discussed, rather than how often. This study also resorts to coverage at the United Nations General Assembly (UNGA) and to several government-issued documents and statements that make reference to the PoF norm. Drawing upon Deitelhoff and Zimmermann's definition of concordance, the general belief in the norm is considered to include a belief in the legitimacy of the institution monitoring the norm (2019, p. 8), which in this case would be the UN. They moreover implied that as a consequence of contestation, the norm's meaning may stabilise (2018, p. 57). Therefore, the indicator of general acceptance will include the level of acceptance of a specific meaning-in-use of the norm.

Along these lines, the norm's general acceptance and, in turn, its validity are considered to be *high* when nearly all references to the norm in discourses emphasise a strong belief in the significance of the norm's existence, as well as belief in the UN, and acceptance of how the norm should be interpreted. The level of validity becomes *moderately high* when the majority of references to the norm highlight the importance of the norm; when the UN's legitimacy is slightly questioned, and the norm's meaning-in-use might be debated. The norm's validity will reach the *medium* level when approximately half of the states' references to the norm do not demonstrate a belief in the norm's legitimacy; there is a lack of respect towards the UN and there is no consensus on the norm's meaning. A *moderately low* level will be attributed when the discourse generally does not necessarily demonstrate that states believe in the validity of the UN nor of the norm, which does not imply a common understanding. Ultimately, the norm's validity is perceived as *low* in this study when the data demonstrates no acceptance of the norm's general claims at all; of a meaning-in-use, nor of the UN's legitimacy. These different levels allow an observation of a change in robustness before and after the contestation, which now will be applied to Russia's contestation of the PoF norm.

## **Analysis: Case study of Russia & the Prohibition of Force Norm**

*In this chapter, a case study will be conducted on the Prohibition of Force (PoF) norm on the basis of the theoretical and methodological frameworks previously presented. An analysis of the contestation and robustness of the PoF norm will provide an answer to the research question and test the hypothesis. The chapter exists of two parts, the first focusing on norm contestation and the second on norm robustness. The part focusing on contestation will first describe the core of the PoF norm, to thereafter establish if the norm's core and validity was contested, or its application. After an examination of Russia's contestation of the PoF norm both through actions and discourse will lead one to determine whether the contestation in this context is predominantly applicatory or validity contestation. Secondly, the robustness of the PoF norm will be measured before (t1) and after (t2) the annexation of Crimea, by measuring the norm's facticity and validity at both points in time. This chapter will ultimately provide insights into the effects of contestation on norm robustness in the case of Russia contesting the PoF norm.*

### ***Russia's Contestation of the Prohibition of Force Norm***

The first section of this chapter aims to determine whether the international norm prohibiting the use of force is facing contestation of its *application* or its *validity* by Russia in Crimea. As illustrated in the chapter on the theoretical framework, this study considers contestation in general – not one specific type – to take place through practices that engage with and challenge a norm and its meaning-in-use, either wholly or partially.<sup>9</sup> A norm can be contested, for instance, by using the norm in a non-traditional manner; by violating it; by discussing the norm at international forums. Such practices are expected to affect the robustness of the norm – strengthen it or weaken it – based on whether these practices are contesting the norm's core claims (validity), or merely contesting how the norm should be used (applicatory) (Deitelhoff & Zimmermann, 2018, p. 51).<sup>10</sup> The type of contestation that the PoF norm is facing first needs to be established to test if either applicatory or validity contestation affects norm robustness as theorised. Firstly, a closer look needs to be taken at the core of the PoF norm as well as the practices of Russia in

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<sup>9</sup> More details about the conceptualisation of norm contestation in this thesis can be found on page 15.

<sup>10</sup> The differences between *applicatory* and *validity* contestation are described in detail starting page 19.

Crimea that engaged with the PoF to see whether or not the core of the PoF norm was challenged – whether it was facing validity or applicatory contestation.

### **The Core of the Prohibition of Force Norm**

An important distinction between validity and applicatory contestation is whether the core of the norm is challenged or not. Drawing on Deitelhoff and Zimmermann, who refer to the norm's core as its "basic claims" (2018, p. 59), the core of a norm in this thesis is understood as the primary principle or value the norm stands for. Applying this to the case in question, knowledge on the core of the PoF norm should be obtained so that practices contesting this core can be identified.

The PoF norm, as the name indicates, intends to *prohibit states from using force against one another* (U.N. Charter, art. 2, para. 4). Before this norm was codified by the United Nations (UN), it was visible in history as a primarily moral doctrine (Sayapin & Tsybulenko, 2018, p. 4). States' desire to renounce the use of force, except in the case of self-defence, was strongly expressed after World War I (General Treaty for the Renunciation of War, 1928; The Covenant of the League of Nations, 1919), establishing the non-use of force as a *customary rule* (Bilkova, 2015, pp. 30, 31; Sayapin & Tsybulenko, 2018, p. 4). After the Second World War, however, states deemed their desire to maintain peace, and the custom prohibiting force, in need of being enforced and codified, resulting in the establishment of the United Nations (UN) and its Charter. After listing the UN's purposes and objectives (U.N. Charter, art. 1), Article 2, paragraph 4 of the Charter formulates the prohibition of force as follows:

*"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."* (U.N. Charter, p. 3 art. 2, para. 4).

International law thus prohibits states from using – or merely threatening to use – force against another state. As the norm is asking states to *refrain* from specific behaviour; requiring in-action, the PoF norm would qualify as a "negative duty" as described Deitelhoff and Zimmermann (2018, p. 57). There are, however, exceptions to this prohibition, as listed in the Charter. The prohibition of force could be lifted, for instance when *collective action* is authorised by the Security Council (UNSC) (U.N. Charter, art.

39), or in the case of individual or collective self-defence after an armed attack (U.N. Charter, art. 51). A question that arises, in turn, is which practices count as the use of ‘force’ or as an ‘armed attack’. When the International Court of Justice (ICJ) addressed this issue in 1986, an armed attack was defined to include acts of armed force against another state or across national borders by regular armed forces, as are other armed groups sent by another state, excluding the mere support of rebel groups by for instance providing weapons or logistics (Judgement Nicaragua v. United States of America, 1986 para. 195, p.93, 94). However, the definition of an armed attack and the threat to an armed attack is still, or again an issue of discussion in the contemporary world (DeWeese, 2015, p. 84; Upeniece, 2018, p. 2), as will become more clear further on.

Since the UN was established with the main purpose to maintain peace and prevent any threats to peace, the prohibition of the use of force can be considered as one of the most important legal provisions, if not *the* most important, of the Charter as a whole. Accordingly, the PoF is often referred to as a *jus cogens* norm, a norm of peremptory status, though it has its derogations and limitations that could make the norm ineligible for this status (Akande, 2019; Green, 2011; Sayapin & Tsybulenko, 2018, p. 15).<sup>11</sup> Based on the legal character of the norm, one may say that the core of the PoF norm embodies the belief that *states should not use force against each other*. The norm symbolises ideals of peace – preserving peace by preventing interstate violence.

However, there is more to a norm and its core than its existence in code – as outlined before in terms of customary law. Regardless of what is written down, a norm might be used and interpreted differently. Without going into the details of the facticity and validity of the PoF norm (which will be discussed in this chapter’s section on robustness), it is important to touch upon the norm outside of its legal character. This is because a state showing behaviour that is inconsistent or non-compliant with the norm in legal terms, might not be contesting the norm as much as it seems if the general practice of states engaging with the norm’s meaning-in-use was already deviating from the legal obligation. Looking at practices engaging with the PoF norm in the last two decades, it may be

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<sup>11</sup> The criteria for a norm to be *jus cogens* are the following: “(a) it is a norm of general international law; and (b) it is accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” (U.N. International Law Commission, A/74/10, 2019, p. 141).

noticed that inter-state force has been used without being legitimised by the exceptions to the norm – meaning without UNSC authorisation, and, arguably, without falling under self-defence. The norm has been challenged on several occasions, for instance through ‘humanitarian interventions’ and ‘preventive wars’ (or anticipatory self-defence). The former being, for instance, NATO’s intervention in the Former Republic of Yugoslavia (FRY) in 1999 (O’Connell, 2010), and the latter the Iraq War starting in 2003 as part of the U.S. ‘War on Terror’ (Hinnebusch, 2007; Rigstad, 2007). Both these instances were followed by debates on the legitimacy of humanitarian and preventative reasoning as exceptions to the PoF norm.

The debate that took place after the invasion of Iraq initiated by the United States in 2003, however, demonstrated that it was mainly the US that advocated for this exception to the PoF norm (BBC, 2003). In 2003, the UN Disarmament Commission meeting called for a “world order based on effective arms control and the rejection of unilateral use of force” (U.N. Disarmament Commission, DC/2860, 2003). During this meeting, several states rendered the notion of *pre-emptive* self-defence unnecessary or even dangerous (Roberts, 2009, p. 200; United Nations, DC/2860, 2003), which would refer self-defence without having suffered an attack. Furthermore, in the same year, the then UN Secretary General Kofi Annan stated: “No principle of the Charter is more important than the principle of the non-use of force as embodied in Article 2, paragraph 4.” (Wood, 2013, p. 345). However, despite the use of force without meeting the norm’s legal exceptions, the International Court of Justice (ICJ) has not once in any of its decisions found that a state resorted to “an act of aggression” (Akande & Tzanakopoulos, 2017, p. 1; D’Alessandra, 2017, p. 10; International Court of Justice, 2021).

Recent developments show that the prohibition of force norm, despite its arguably peremptory status, occasionally faces non-compliance without legal repercussions. Contemporary justifications of the states not adhering to the norm, often include a *humanitarian element* – using humanitarian intervention and hinting at the so-called Responsibility to Protect (R2P) to rationalise exceptions to the norm beyond those provided by the norm itself (Dorr, 2008; Finnemore, 2003; O’Connell, 2010).<sup>12</sup> Through

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<sup>12</sup> Such justifications in the absence of UNSC authorisation or outside of the UNSC’s mandate can for example be seen in the cases of NATO’s intervention in the Former Republic of Yugoslavia (O’Connell, 2010) and the intervention in Libya ordered by the US in 2011 (Krauthammer, 2012; President Obama, 2011).

this reasoning, states tend to argue for the protection of ‘strangers’ rather than their own citizens (Wheeler, 2003), and calling upon the ‘self-determination of the people’ when the state under attack opposes the use of force (Bilkova, 2015, p. 43; Finnemore, 2003, p. 72). While the support for the R2P notion has been expressed by states at the UN level (UNGA, A/RES/60/1, 2005; U.N. News, 2013; Welsh, 2019), this notion tends to be used in cases where states circumvented UNSC authorisation. As Bilkova pointed out:

“the right to use force in a unilateral way, without the authorisation of the UN Security Council, to prevent or stop massive violations of human rights in a foreign country has never been generally accepted.” (2015, p. 48).

Other justifications that have been used by states to resort to force have directly or indirectly referred to self-defence, without meeting the legal criteria.<sup>13</sup> Even though Article 51 of the UN Charter explicitly mentions that states have the right to resort to self-defence by using force *in case* they have suffered an armed attack (U.N. Charter, art. 51), states have resorted to *pre-emptive* and arguably even *preventive* self-defence (Fisk & Ramos, 2014; O’Connell, 2002, p. 2 note 10; Rigstad, 2007, p. 17)<sup>14</sup>. What qualifies as an attack remains debated (DeWeese, 2015, p. 84; Upeniece, 2018, p. 2) and seems to contribute to the ambiguities that the PoF norm was already facing, as what constitutes ‘the use of force’ is not as clear anymore as it was in 1945. Modern warfare, including hybrid and cyber warfare, as well as humanitarian considerations, seem to have implications for the PoF norm (DeWeese, 2015; Lantis & Bloomberg, 2018) – affecting states’ beliefs on when they would be bound by the norm, and affecting their practices engaging with it.

What is important to take away from the way in which states have engaged with the norm, is these actions clearly challenged the PoF norm, primarily its *application*. States have contested the meaning-in-use of the norm’s application – which *issues* would trigger the norm and which *behaviour* should be used in certain situations such as humanitarian crises or in the case of an anticipated attack. This study, however, does not consider these

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<sup>13</sup> See the examples of the Bush Doctrine during the US War on Terror, specifically the invasion of Iraq in 2003 (Rigstad, 2007), or the strikes against Syria in 2018 initiated by the US (Schmitt & Ford, 2017).

<sup>14</sup> *Pre-emptive* or *anticipatory self-defence* can be understood as the use of force in anticipation of an attack that the state knows will happen, it simply does not know when. *Preventive self-defence*, in turn, would take place when the state uses force against a non-imminent threat, meaning that it does not know *if* it will take place. These two types of self-defence can nevertheless be difficult to distinguish (DeWeese, 2015, pp. 85, 86, 90).

issues that were challenged to belong to the *core* of the PoF. In general, these practices do not question the core claim that states should refrain from using force. Rather, it challenged when the prohibition and its exceptions apply, adding additional conditions for the legitimate use of force outside of those conditions provided by the norm itself. Challenges of the norm's application are not considered part of the norm's core by this study. However, it should not be disregarded that such applicatory contestation could and may have affected the norm's validity eventually. In other words, if states often challenge *when* the prohibition of force applies, the norm may not be taken serious anymore and its legitimacy may be doubted. A thorough analysis of the norm's validity and facticity as part of its robustness will be analysed later on. First, it should be noted that this previous contestation may have affected the norm's meaning-in-use. The norm's core claims that the prohibition of force is nearly absolute, considering its peremptory status and only two legal exceptions. In practice, the norm often seems to represent the notion that "states should be prohibited from using force, except...", thus going beyond its legal exceptions and therefore interpreting the norm to be more *conditional* than the norm itself claims to be.

To sum up, the core of the PoF norm exists of the belief that states should refrain from using force against each other. If this core claim is challenged, validity contestation is considered to take place. If other aspects of the norm are being challenged outside of its core, for instance how and when to apply the norm – including its exceptions, applicatory contestation is taking place. It now needs to be determined whether Russia was contesting the norm's application in Crimea, or whether it contested the validity of core of the PoF norm.

### **Russia's Practices contesting the Prohibition of Force Norm**

This study now precedes to present how Russia contested the PoF in the first four months of 2014 through its practices – referring both to the actions it took as well as the discourse it used to justify these actions. These include Russia's appeal to and approval from its Federation Council to use force; Russia's acts using force through the deployment of military units on the ground and the 'little green men'; and Russia's veto to the draft resolution based on Article 2(4). Accordingly, it will be established which type of contestation was predominant.

The first way in which Russia engaged with the PoF norm, was through President Putin's request to use force in Crimea, which was approved by the Russian Federation Council (the parliament's upper chamber) on the 1<sup>st</sup> of March (Federation Council Res. 48-SF, 2014). Officially, the authorisation did not end up being used and was cancelled (Federation Council Res. No. 296-SF, 2014). However, the fact that the permission was not officially practiced does not mean that this appeal did not contest the norm prohibition of force norm. The practice of contestation here is not the potential use of force, but the appeal to do so, as well as its authorisation. The request by itself already demonstrates the intent and willingness of President Putin to use armed force in Crimea, regardless of whether this was already happening or not. Secondly, Putin did not request the authorisation from the UNSC that is necessary for the prohibition of force to be lifted, and instead regarded permission from its own Federation Council to suffice.<sup>15</sup>

Before going into the justification provided by Russia, these specific actions are by themselves already contesting the PoF norm. Even if the request would not been approved, asking for permission for military action sends a signal. This study considers these practices to at least constitute a *threat* to use force, which is also prohibited by the norm (U.N. Charter, 1945 art. 2, para. 4). Moreover, the fact that Russia did not request authorisation from the UNSC is not surprising (due to other states veto power) yet can still be considered as contesting the need to request UNSC authorisation to resort to force. Together, these practices by themselves (without justification) are taken to be challenging the norm *partially* – the part that prohibits the *threat* to use force and the part that requires *UNSC authorisation*.

However, the challenged posed to the norm by these practices are taken to be limited. While it can be said that, first of all, this 'threat' is prohibited by the norm's core, a breach of what is prohibited by the norm's core is not automatically attributed to validity contestation. Instead, this practice is taken to be contesting a part of the norm to a rather limited extent. Simply a countries' willingness to use force is not considered to be challenging the PoF much, or its validity. The practice of circumventing the UNSC, in turn, is a way in which the PoF has often been contested, as previously explained. These

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<sup>15</sup> According to the Russian Constitution, the Federation Council has the authority to (among others) "decide on the possibility of using the Armed Forces of the Russian Federation outside the territory of the Russian Federation" (Constitution of the Russian Federation, 1993 art. 102(d)).

past practices have been taken as *applicatory* contestation since they challenge *when* the norm applies, and which *behaviour* is implied. Russia's practices can also be considered as such, as they challenge if Russia may resort to force when it does not have UNSC authorisation, or whether the action of requesting it is part of the behaviour implied by the PoF norm. However, in contrast to those past practice of applicatory contestation, Russia did not officially act upon this request to use force, and it can therefore be seen as a 'less severe' version of the applicatory contestation that the norm commonly faces. Therefore, this study takes the acts of requesting and approving the use of force by Russia as 'lightly' contesting the norm's application.

Russia's justifications, as provided in the adoption of the Federation Council's decision, demonstrate how the state contested the PoF norm through discourse. The decision justified the authorisation of the use of force for "the interest and safety of the lives of citizens of the Russian Federation, our compatriots and the personnel of the military contingent of the Armed Forces of the Russian Federation" (Bilkova, 2015, p. 38; Federation Council Res. 48-SF, 2014). This justification can be understood, firstly, as Russia speaking in the language of the Responsibility to Protect (R2P), legitimatising its need to intervene based on the urgency to protect the people of Crimea. Another way to interpret this statement is in the light of anticipatory self-defence, as it does not only mention Russia's forces (that already would have been there under agreement with Ukraine) but also the people of Russia, notwithstanding that 'Crimean compatriots' may be included in the latter from Putin's perspective (TASS, 2014).

Accordingly, by the means of these justifications, Russia is challenging legitimate exceptions to the norm. As previously explained in more detail, the norm itself only allows for the prohibition to be lifted only when authorised by the UNSC or when a state has suffered from an armed attack (U.N. Charter, 1945 art. 39, art. 51). However, in practice, states have been applying both the R2P and pre-emptive self-defence as justifications for their non-adherence to the PoF norm. Similarly, the application of such reasoning used by Russia contests which *circumstances* trigger the norm to be lifted – such as the alleged endangerment of lives. It moreover implies that *competing ideals* – again referring to the protection of the people in the territory of Crimea – should in the given situation gain priority over upholding prohibition of force. Along the lines of applicatory contestation's indicators, Russia is contesting *when* the norm should be

applied, which *problems* allow for deviating behaviour, and using *competing norms* that should temporarily take over. The statement does not indicate that the other norms should permanently be prioritised, nor does it challenge the legitimacy of the norm's core. Based on this, Russia's discourse engaging with the norm through the request and approval of the use of force on the 1<sup>st</sup> of March, are taken to be *applicatory* contestation rather than *validity* contestation. This is similar to the previous creation and promotion of conditions under which the use of force could be authorised in the absence of the conditions legally legitimising the use of force. Yet, in this particular instance Russia did not act upon this authorisation, and these practices are accordingly not perceived as a severe form of applicatory contestation.

It is important to note that even though Russia did not officially use this authorisation (Federation Council Res. No. 296-SF, 2014); even though it had forces deployed in Crimea under agreement with Ukraine (Federation Council Res. 48-SF, 2014), there have still been reports of "the deployment of additional Russian troops" (UNSC, S/PV.7124, 2014, p. 2). This was stated by the then Deputy Secretary-General of the UN during the UNSC meeting on the 1<sup>st</sup> of March (UNSC, S/PV.7124, 2014) following the Russian Federation Council's decision and the earlier request of Ukraine's representative to the UN to have an urgent meeting on the situation in Crimea (UNSC, S/2014/136, 2014). The other instances in which Russia *did* reportedly use force are also taken to be contesting the norm.

After that, Russia's engagement with the norm become more direct and noticeable. Russia has reportedly used force by through the military units already on the ground as previously described (UNSC, S/PV.7124, 2014), as well as through the so-called 'little green men' (UNSC, SC/11319, 2014; S/PV.7125, 2014; S/PV.7134, 2014). On the 3<sup>rd</sup> of March 2014, the representative of the United Kingdom stated that, as Russia would have gained effective control over the territory of Crimea:

"It has violated Article 2 of the Charter of the United Nations, which prohibits the threat or use of force against the territorial integrity or political independence of any State" (UNSC, S/PV.7125, 2014, p. 7).

States and UN representatives were already denouncing Russia using its armed forces that had been in Crimea (UNSC, S/PV.7124, 2014). Then, Russia's deployment of military

servicemen (or ‘little green men’) led to several states condemning what they called “an act of aggression” (EU, Res. 2014/2627, 2014; UNSC, SC/11319, 2014; S/PV.7125, 2014; S/PV.7134, 2014), including the UK (S/PV.7125, 2014, p. 6) and the US (S/PV.7125, 2014, p. 5) as permanent UNSC members. This was affirmed by legal scholars who described the deployment of these ‘little green men’ of all Russia’s actions in Crimea to be the clearest violation of international law – of the prohibition of force to be precise (Mälksoo, 2019, p. 305).

As opposed to the previously analysed engagement with the norm through requesting and authorising military action, these practices by Russia involved the reported use of force as part of its intervention and annexation of Crimea. This time, Russia is not merely contesting and allegedly breaching the prohibition of the *threat* to use force, but contesting and allegedly breaching the prohibition of force as a whole. When taken together with Russia’s justifications for its actions, it becomes clearer which part of the norm Russia is contesting and which type of contestation is taken place.

It is important to note that these justifications did not include statements of Russia openly admitting it had used force. Rather, they are responses by Russia to accusations and reactions from Ukraine and other states at the UN level, in which Russia aims to explain its actions. These justifications, however, still engage with the PoF norm and are therefore still relevant to this study.

A closer look at Russia’s justifications to the international community engaging with the PoF norm demonstrate four different lines of reasoning, including the R2P, self-defence, self-determination of the peoples and intervention by invitation (Bilkova, 2015, p. 27). These lines were, however, mixed with one another rather than four separate arguments, and are visible in Russia’s justification. During the UNSC meeting on the 3<sup>rd</sup> of March, Russia’s representative to the UN, Mr. Churkin, explained the need for a Russian response as follows: “the issue is one of defending our citizens and compatriots, as well as the most import human right — the right to life.” (UNSC, S/PV.7125, 20143). These grounds are very similar to those provided in the appeal to the Federation Council to authorise force (Federation Council Res. 48-SF, 2014), implying a need for the *anticipatory defence* and *protection* of people and their human rights. The crisis in Crimea would for Russia be “an issue of *lives* and the *fundamental norms* of international law”, while for other states it would simply be “a game” (Mr. Churkin, UNSC, S/PV.7134, 2014, p. 14). Russia’s need

to intervene was described *urgent* – action needed to be taken because it concerned human rights but also because the UN would not be able to act soon enough. “We [...] understand very well what international institutions are like [...], it will take months to make the preparations for such a mission, so who knows what will happen there in the meantime?” (Mr. Churkin, UNSC, S/PV.7125, 2014, p. 17).

The first two lines of reasoning visible in these justifications were similar to those provided on the 1<sup>st</sup> of March in the appeal to use force – they once more reflect the arguments along the lines of pre-emptive self-defence and the R2P. Russia emphasised the need to act before the situation worsened, before the UN could act, which directly relates to pre-emptive self-defence – taking action before having suffered an attack. Russia described the situation as facing a threat (UNSC, S/PV.7134, 2014, p. 15). This threat, in turn, would concern the lives and human rights of people in the territory, and how Russia would be the one to offer protection, the actor with the capability and ‘responsibility’ to protect. Once more, Russia is contesting the *exceptions* of the PoF – it challenges *when* the norm is lifted, and when so, *which behaviour* is implied. It challenges the way in which a state should behave when the norm lifts – should it act quickly, or should it wait for the UN take action? In the UN Charter, the legal exception to the PoF of the right to self-defence applies until the UNSC is able to act. That applies, however, only when the state has suffered an armed attack (U.N. Charter, 1945 art. 51). In this way, Russia is contesting the action implied by the norm’s exception, it is challenging the *application* of the norm’s exception.

The contestation moreover concerns which *problems* – such as humanitarian crises – would allow other *competing norms*, being the R2P and pre-emptive self-defence, to take priority over the PoF norm. Accordingly, Russia’s contestation through discourse is meeting all of the indicators of applicatory contestation, concerning the *implied behaviour*, the *circumstances/problems* allowing for (in)action, and temporarily using *competing norms*.

The other two lines of reasoning visible in Russia’s justifications, besides the R2P and anticipatory self-defence, also directly relate to the language of humanitarian intervention. Russia is moreover arguing along the lines of *self-determination* and *intervention by invitation*. Firstly, Russia’s representatives are referring to the right of self-determination of peoples, which tends to be used as a justification for humanitarian

intervention (as was the case of NATO's intervention in the Former Republic of Yugoslavia (NATO, 2001, p. 39)). Mr. Churkin called on the importance to "seek the right balance between the principles of territorial integrity and the right to self-determination." (UNSC, S/PV.7134, 2014, p. 15). The UN representative emphasised that each case is different and should be analysed as such, in particular reference to Kosovo, and that in the case of Crimea, the right to self-determination was clearly facing "direct threats" (UNSC, S/PV.7134, 2014, pp. 15, 16). By doing so, Russia contested the *exceptions* to the prohibition of force norm again. By claiming the circumstances to be special, and for the right of self-determination to be more important than Ukraine's sovereignty, Russia is challenging which special circumstances would allow other norms to take over the PoF. The use and discourse on competing norms and special circumstances constitute the indicators of applicatory contestation and these justifications by Russia will thus be counted this mode of contestation.

The last line of argumentation by Russia engaging with the PoF norm comes down to *intervention by invitation*. Russia stated that both the Crimean Prime Minister Aksyonov (BBC News, 2014) and Ukrainian President Yanukovich would have given Russia consent to use its armed forces (UNSC, S/PV.7125, 2014, pp. 3, 4). If Russia's practices were fully lawful on the grounds of 'intervention by invitation' and understood as such by the UN and the international community, this case would not have been selected as a severe case of contestation for this study. Without going into much detail on why the legality of Russia's actions under this justification were questionable, it must be noted that Yanukovich was no longer in office by the end of February 2014 (Booth, 2014); that the Crimean Prime Minister's approval alone would not suffice; and that *if* a state is invited, it does not need to use force (U.N. International Law Commission, A/56/10, 2001 art. 20; UNSC, S/PV.7125, 2014, p. 5). The point to be made here is that Russia shifted the exceptions of the PoF norm even further, offering an additional grounds on which the PoF could be lifted, again contesting *when* the norm does not apply.

To sum up, Russia's actions directly engaging with the use of force are followed by four different justifications that contest the norm accordingly. These actions, in particular the deployment of the 'little green men' and the use of Russia's military units already in Crimea, are justified by Russia in the light of the *responsibility to protect*, *anticipatory self-defence*, *self-determination of peoples*, and *intervention by invitation*. While the

findings above demonstrate that Russia engaged in contestation by claiming exceptions to the PoF norm on these grounds, that does not mean they are valid or accepted. Russia did not officially invoke any of these legal grounds, nor could it have – as legal scholars claim (Bilkova, 2015, p. 49; Yue, 2016, p. 190). Yet, as mentioned, this study does not aim to determine if Russia broke international law or specifically the PoF, but rather to present how Russia contested.

Russia's use of force and justifications are taken in this study as more severe contestation than the previous instance of requesting the use of force. Not only did Russia's interventions and annexation allegedly breach the norm and cause controversy at the international level (UNSC, S/PV.7124, 2014; S/PV.7125, 2014; S/PV.7134, 2014), all of the justifications engaging with the PoF norm are considered to be challenging it. By implying that the R2P, anticipatory self-defence, intervention by invitation, and self-determination are legitimate justifications for the use of force, the norm's legal exceptions are taken to be shifted and its constraints to be lifted. Russia is not the first to contest the PoF norm with these practices, yet that does not take away that its actions do not affect the norm. The argument that others – meaning western actors – have engaged with the norm in a similar way, was central in Russia's discursive claims (UNSC, S/PV.7125, 2014, p. 17; S/PV.7134, 2014, p. 16). If the US was able to justify its humanitarian intervention in Kosovo through NATO based on an allegedly threatening crisis of human rights including the right to self-determination, then Russia would do the same (UNSC, S/PV.7134, 2014, p. 16). In this way, Russia can be seen as mimicking the rhetoric used in justifications for western-led interventions that Russia strongly opposed (Allison, 2014, p. 1260; Berg & Mölder, 2018, p. 412; Burai, 2016; Oskanian, 2018, p. 41). Russia's justifications for not adhering to the PoF, accordingly, do not necessarily argue for the legality of its actions. Rather, Russia points to the West's hypocrisy and double standards for condemning Russia's practices while the West would have circumvented the PoF norm all the same (Berg & Mölder, 2018, p. 409; Mälksoo, 2015, p. 180).

The mimicking of this behaviour fosters the confusion and ambiguity on the exceptions to the PoF norm. This engagement promotes the broadening of the norm's scope and application, it promotes the notion that a state can be excused from adhering to the norm without meeting the legal criteria to do so. Though this behaviour can be seen as promoting non-compliance, the effects of the contestation on the norm do not come into play yet.

Looking at what these practices by themselves challenge, they do not attack the norm's core claims directly. Instead, these practices advocate that *specific conditions* involving *competing norms* may *temporarily* lead to *behaviour* different from what the norm itself denotes. Therefore, these actions and justifications of Russia engaging with the prohibition of force norm are meeting each of this study's indicators for applicatory contestation.

As a response to Russia's actions, the UNSC aimed to adopt a resolution to destabilise the situation in Crimea. Not unsurprisingly, Russia voted against the adoption of the draft resolution on the 15<sup>th</sup> of March (UNSC, SC/11319, 2014). This veto by Russia is also considered as an instant of contestation of the prohibition of force norm.

One day before the referendum on the independence of Crimea took place, the UNSC failed to pass the draft of a resolution on the non-recognition of the referendum and its results. This draft resolution did not only concern the results of the referendum, but also the situation in Crimea as a whole and called for a peaceful resolution in line with the UN's core principles (UNSC, SC/11328, 2014). The representatives of the US and Chad specifically mentioned that the draft was based on the Article 2 (4) of the Charter – on the prohibition of force (UNSC, S/PV.7138, 2014, pp. 3, 10). While all other UNSC members voted in favour, China abstained, and Russia vetoed (UNSC, S/PV.7138, 2014, p. 3).

Russia's act of vetoing a resolution that is based on the PoF is by itself an act of contestation. Even the draft resolution by itself, adopted or not, could have been considered an act of contestation as states debated the importance and interpretation of the PoF norm, though to a limited extent. Russia took part in this discourse, which it what this section will primarily consider (rather than all states' contestation). Russia justified its decision by recalling the "principle of equal rights and self-determination of peoples" which, according to Mr. Churkin, were contradicted by this draft resolution (UNSC, S/PV.7138, 2014, p. 2). Accordingly, the norm was once more discursively contested through the argument of self-determination. Moreover, Churkin touched upon the specificity of the case in Crimea in comparison to other instances, and emphasised that the "principles of international law are closely interlinked and should be considered in light of the others" (UNSC, S/PV.7138, 2014, p. 2).

This act of vetoing the draft resolution and Russia's subsequent justifications are also taken to contest the PoF norm. Responding to Russia's decision, the representative of Lithuania fully quoted the PoF as enshrined in Article 2(4), urging that because the resolution was built on this norm central to the UN Charter, "The Russian Federation is challenging the very principles on which this organisation, the United Nations, is built and which supported the international system for the past decades." (UNSC, S/PV.7138, 2014, p. 6). The way in which Russia is challenging the norm in this instance is not very different from the last two cases. Russia first contested the norm by voting against the draft resolution based on this norm, and consequently emphasised the *special conditions* that allowed for a *different norm* – of self-determination – to be more important in this specific situation. Once again, Russia contested *when* and *how* the norm should be applied – Russia contested the norm's *application*.

#### ***Type of Norm Contestation by Russia***

These findings established that Russia behaviourally contested the PoF norm by requesting and approving the use of force in Crimea, by using force in Crimea, and by vetoing the draft resolution. In turn, Russia discursively contested the PoF norm with its justifications for these actions. According to this study's indicators of validity and facticity contestation, Russia's actions in Crimea can clearly be attributed to *applicatory contestation*. This can be seen from the parts of the norm that were contested as well as the way in which this was done. In other words, through these three instances Russia challenged which *issues* (threats to its own forces, to people's lives, to human rights) trigger which *behaviour* (use of force, intervention by invitation, circumvention of UNSC) based on *competing norms* (R2P, self-defence, self-determination). This can be distinguished from *validity application*, which is directed against the core of the norm – in this case being the belief that states should refrain from the use of force against each other. The core is not considered to be 'attacked' these competing norms or moral standards were taken as *permanently* more important than the norm, but instead were prioritised based on a specific, temporary situation.

As this study touched upon how states have usually engaged with the PoF norm, it can be insightful to also briefly present how Russia generally deals with the norm. A closer look at Russia's approach demonstrates that the Russian Federation does not usually promote the application of the norm in the way that it contested the norm in Crimea. Instead, it tends to oppose these 'additional conditions' and strongly supports a strict and traditional

interpretation of the PoF norm (Allison, 2014, p. 1260; Mälksoo, 2015, p. 134), though one might disagree based on Russia's actions in Georgia in 2008. In its Foreign Policy Concepts, the meaning-in-use of the PoF norm that Russia promotes is one based on principles such as *non-interference* (2016, p. 5 pt. 23) and *sovereignty* (p. 6 pt. 26b). Any attempts by states to interpret international norms to their own advantage, and specifically circumvention of the prohibition of force through the "responsibility to protect", Russia intends to counter (p. 6 pt. 26b, p.7 pt. 26c). In this official document, as well as among the international community (Allison, 2014, p. 1260; Mälksoo, 2014, p. 143; Welsh, 2019, p. 60), Russia tends to emphasise that it considers *the non-use of force* as one of the most important norms that should allow for "arbitrary interpretations" (p. 9 pt. 31), and that it should not be easily lifted based on humanitarian considerations (p. 7 pt. 26c) or threats instead of an armed attack (p. 9 pt. 32).

Russia thus proclaims and portrays itself as an actor that opposes contestation of the PoF norm, condemning not only violations but also alterations to its meaning and broadening of possible interpretations. Russia's practices in Crimea can, on the one hand, be seen as a break with tradition, contesting the restrictionist version<sup>16</sup> of the norm it so strongly promoted and using the doctrine it always contested (Allison, 2020, p. 7; Bilkova, 2015, p. 48; Gorenburg, 2019, p. 5). At the same time, Russia's behaviour concerning the PoF norm, as well as its practices and discourse in Crimea, can both be seen as part of Russia's advocacy of the strong and narrow definition, as outlined in Article 2 (4), instead of the broader and humanitarian application of the norm as previously done by the West. Rather than challenging the norm, Russia seems to aim at challenging how western states have been applying and interpreting exceptions to the PoF norm in the contemporary international order. This is visible in Russia's use of similar justifications used for western-led interventions which Russia has always opposed (Allison, 2014, p. 1260; Berg & Mölder, 2018, p. 412; Burai, 2016; Oskanian, 2018, p. 41), as well as the specific references made by Russia to those interventions (UNSC, S/PV.7134, 2014, pp. 15, 16).

The belief that Russia's practices are not aimed at challenging the norm in general but rather attempt to challenge the 'western' meaning-in-use, however, should not preclude

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<sup>16</sup> "Restrictionists, sometimes termed international legal positivists, claim that only unilateral and collective self-defence and Security Council enforcement action under Chapter VII of the UN Charter can form exceptions to the Charter's general prohibition on the use of force." (Allison, 2020, p. 7 note 3).

Russia from being capable to contest the PoF norm through these attempts. Whether or not Russia generally acknowledges the validity of the PoF norm, its actions and discourse in Crimea have been found to constitute contestation of the norm. This contestation by Russia in Crimea, nonetheless, focuses on the conditions of the norm's application. Therefore, this study attributes Russia's contestation of the PoF in Crimea to the *applicatory* type of contestation.

The finding that Russia's contestation would fall under *applicatory contestation* now enables this study to test the first hypothesis as formulated, which expects this type of contestation to lead to *an increase in norm robustness* (Deitelhoff & Zimmermann, 2018, p. 58). The following section will be used to apply this theoretical expectation to the case of the PoF norm, which will lead us to see if this applicatory contestation by Russia did in fact lead to an increase in the robustness of the prohibition of force norm.

### ***Robustness of the Prohibition of Force Norm before and after Contestation***

The previous section established that the norm prohibiting the use of force was predominantly facing *applicatory* norm contestation by Russia in Crimea. This section, in turn, aims to test how Russia's norm contestation affected the robustness of the PoF norm and if this, as expected, led to an increase in norm robustness. To do so, the level of robustness of the PoF norm will be measured and compared over time, meaning *before* (t1) and *after* (t2) the annexation of Crimea. This study first measures the robustness of the norm from 2009 to 2013 (t1), followed by the period of 2014-2018 (t2), along the dimensions of the norm's *facticity* and *validity*.<sup>17</sup> As explained in the methods chapter, the *facticity* dimension concerns the extent to which states adhere to the norm. This first dimension is measured through the *compliance* indicator that determines how often the norm was invoked and used in decisions at the UNSC during t1 and t2. The second dimension of *validity*, in turn, will be measured through the *general acceptance* indicator that studies states' general belief in the norm, in its interpretation and its importance, as well as the importance of the UN, as reflected in UN documents. Based on these indicators, the levels of facticity and validity will separately be ranked as low, moderately low, medium, moderately high, or high. The average of the level of facticity and validity

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<sup>17</sup> The two dimensions of validity and facticity are further conceptualised in the theoretical chapter starting page 24 and operationalised starting from page 37 in the methodology chapter.

will constitute the overall level of robustness of the norm. The comparison of the robustness before and after Russia contested the PoF in Crimea will demonstrate if and how the norm's robustness changed, and if it indeed – as theorised – strengthened after facing applicatory contestation.

### **Prohibition of Force Norm Robustness before Contestation by Russia in Crimea (t1)**

#### ***Facticity***

This study now proceeds to present the level of *compliance* with the PoF norm before it was contested at the start of 2014, examining the period from 2009 to 2013. The UN's bi-yearly repertoire demonstrates all instances in decisions were based on Article 2 (4) on the PoF and in which it was invoked.

All decisions that were explicitly based on Article 2(4) from 2009 to 2013 were taken in the first year analysed – in 2009. Starting with this year, two of these resolutions were addressing the conflict between Djibouti and Eritrea (UNSC, S/RES/1862, 2009; S/RES/1907, 2009), and one resolution concerned the use of force and the protection of civilians in conflict (UNSC, S/RES/1894, 2009). The first two resolutions concerned the same case of (alleged) use of force, and is for the purpose of this study counted as one case. The last resolution did not concern a case of non-compliance or a violation and will therefore not be counted either. The norm was moreover invoked in the UN's communication on the situation at the time in Nagorno Karabakh (UNSC, S/2009/51, 2009). Based on one decision and one separate invocations, the PoF norm was invoked in *two cases* in the year 2009 (UNSC, Repertoire of the Practice of the Security Council 2008-2009, 2020).

The next bi-yearly report on 2010 and 2011 demonstrates different numbers. No decisions were taken based on the PoF norm during this period. However, the norm was included in debate, as a UNSC meeting was held to address the use of force by Israel on international waters (S/PV.6325, 2010). Moreover, letters were sent to the UNSC by states, explicitly referencing to instances of non-compliance with to prohibit force. Iran sent a letter accusing the US of breaching the threat to use force (UNSC, S/2010/188, 2010, p. 1), while Cambodia addressed the alleged acts of aggression by Thailand (UNSC, S/2011/58, 2011, p. 1). In the years 2010 and 2011, all together, there were *three cases* leading to the invocation of the norm, while zero decisions were explicitly based on the

norm (UNSC, Repertoire of the Practice of the Security Council 2010-2011, 2020). It should be noted that in 2011 the UNSC authorised “all means necessary” – meaning the use of force – in the conflict in Libya (UNSC, S/RES/1973, 2011).<sup>18</sup> This happened according to the exceptions prescribed by the PoF and therefore will not be counted as non-compliance.

The last two years of t1, being 2012 and 2013, showed similar results to 2010-2011. Once again, no resolutions based on Article 2(4) were adopted. In turn, the norm was cited by the Democratic Republic of the Congo claiming that Rwanda would have circumvented Article 2(4) (UNSC, S/PV.6866, 2012, p. 3), and Iran accused Israel of using force against Syria (UNSC, S/2013/270, 2013, p. 1). All together, the norm was invoked in *two cases* (UNSC, Repertoire of the Practice of the Security Council 2012-2013, 2020).

The repertoire of the UN over five years, from 2009 to 2013, demonstrates one case that led to a decision based on the PoF norm and six others that led to the norm being invoked, adding up to a total of *seven cases*. This means that, according to the indicator of *compliance*, adherence to the norm in these years was relatively high. To be specific, a *high* level of facticity is considered to include zero to ten invocations. Because the compliance during this period comes down to seven cases in total, the level of facticity of the PoF norm during these five years comes down to *high*, yet closer to moderately high (10) than to the highest point of facticity (0).

### ***Validity***

The second dimension of norm robustness now needs to be measured, which comes down to the extent to which states believe in the norm and its significance – the norm’s validity. The norm’s validity is measured through *general acceptance* that is demonstrated in UN documents from 2009 until the end of 2013 (t1). The examination of the UN documents also extends to accounts of UNGA meetings, which provided further insights into the debates regarding the PoF norm.

The PoF was on the agenda of the UNSC meeting on the 29<sup>th</sup> of June in 2010, as the states planned to discuss the promotion of rule of law in the maintenance of peace (UNSC, S/PV.6347, 2010). Some states, like Russia and China, emphasised the importance of

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<sup>18</sup> In this resolution, the UN condemned the use of force of Libyan authorities, yet the practice that was condemned concerned force against *civilians* rather than against another state and is therefore not part of this study (UNSC, S/RES/1970, 2011).

upholding the non-use of force when it comes to the promotion of the rule of law, and even “rejected” the practice of using force that is not in line with the Charter (UNSC, S/PV.6347, 2010, pp. 21, 24). Meanwhile, several other states tended to put the emphasis on human rights, and Denmark, Peru, and France specifically put emphasis on the responsibility to protect (R2P) (UNSC, S/PV.6347, 2010, pp. 3, 14, 15). Self-defence, another principle used to legitimise exceptions to the PoF norm, was prioritised by Azerbaijan. The representative, however, did mention that the use of this right should happen in accordance with the UN Charter (UNSC, S/PV.6347, 2010, p. 22). Most interestingly, Lebanon expressed *concerns* about the PoF norm, and the way in which the UN safeguarded this norm:

“We continue to witness a selective application of the principle of preventing the use of force. This reality threatens to render that concept meaningless. It also constitutes a blatant violation of the rule of law. [...] This reality is extremely dangerous because it creates the public perception that the international community is incapable of preventing these practices, which violate the principles of the United Nations and of international law, specifically [...] the non-use of force.” (Mr. Salam, UNSC, S/PV.6347, 2010, pp. 19, 20).

Accordingly, this meeting topic was not based on the PoF norm *per se*, but states have brought up the topic and expressed relatively diverging views. The fact that states raised the importance of upholding the norm demonstrates, to a certain extent, states’ belief in the norm. However, even more states brought up the importance of a competing norm instead. Lebanon, in turn, expressed its concerns about the norm and especially about the UN’s ability to prevent states from resorting to breaches of this norm. On the one hand, the debate affirms a belief in the norm’s legitimacy to a certain extent, yet less so for this belief in the UN, nor does it demonstrate a consensus on the norm’s interpretation *per se*.

Starting from 2011, several conflicts took place that caught the attention of the international community and triggered discourse on the PoF norm, for instance debates concerning when the UN could intervene and authorise the use of force or concerning the condemnation of the use of force by states. This was demonstrated in the debate on the conflict in Libya and which actions the international community should take in response. The UNSC adopted two resolutions to address the conflict and calling upon the responsibility to protect (UNSC, S/RES/1973, 2011, p. 1; S/RES/1970, 2011, p. 2) and

eventually authorising the use of force (UNSC, S/RES/1973, 2011).<sup>19</sup> Even though these drafts passed, they did not do so without controversy. The countries abstaining from the vote emphasised the importance of using peaceful means instead of the use of force. Russia's and India's position was that the resolution was not clear enough about what the use of force would entail and what its scope would be, and would fear for the implications of these uncertainties (UNSC, S/PV.6498, 2011, pp. 5, 8; SC/10200, 2011). China, in turn, emphasised that it had always been an opponent of the use of force. Meanwhile, Germany's representative spoke of the difficulties that decisions to use armed force brought along and that they should not be underestimated (UNSC, S/PV.6498, 2011, p. 10). Brazil made a similar point, highlighting that the use of force might not be the solution to stop the violence and protect the people in Libya. Its representative stated that this course of action would be "causing more harm than good" to the people on the ground (Mrs. Viotti, UNSC, S/PV.6498, 2011, p. 6). These states questioned whether the PoF was truly lifted as a *last resort*; whether the UN was able to use it as intended; whether the norm's meaning-in-use suggested that it should be lifted in such a situation and where the limitations of its interpretation lay (UNSC, SC/10200, 2011).

Another conflict that sparked debate on the PoF norm and its use is the Syrian civil war. Once again, the UN tried to adopt resolutions to address the situation and failed three times during this period due to vetoes from Russia and China (UNSC, S/2011/612, 2011; S/2012/77, 2012; S/2012/538, 2012). The first resolution, urging Syrian authorities to stop using force against civilians, did not propose military intervention by the international community or the authorisation of the use of force *per se*, yet several states still disagreed with the resolution fearing for the PoF norm to be lifted (UNSC, SC/10403, 2011; UNSC, SC/10704, 2012). According to some states, such as South Africa and Russia, the resolution did not reject the possibility to use force either and they would only support a resolution to which the principles of non-intervention and the non-use of force by states other than Syria would be central (UNSC, S/PV.6627, 2011, pp. 3, 4, 11). While the UK and Germany stated that they would have preferred a stronger approach (UNSC, S/PV.6627, 2011, pp. 2, 10), several countries expressed that they preferred a peaceful approach – such as China, Portugal, and Brazil (UNSC, S/PV.6627, 2011, pp. 5, 11;

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<sup>19</sup> The UNSC authorises force by authorising the use of "all means necessary to protect civilians", which included imposing a no-fly zone in the case of Libya (U.N. News, 2011; UNSC, S/RES/1973, 2011).

SC/10403, 2011). The debate furthermore demonstrated disagreement on the purpose of lifting the PoF norm and which issues it should address, in particular the issue of *regime change* as it did in the case of Libya. While primarily western states were in favour of the use of force to be lifted in order to bring about regime change in the country where the intervention would take place, others – such as India, Russia, South Africa – strongly aimed to prevent this objective to become part of the norm’s meaning-in-use (UNSC, S/PV.6627, 2011, pp. 4–6, 11). South Africa’s representative, for instance, stated that “the Council should not be part of any hidden agenda for regime change” (Mr. Baso Sangqu, UNSC, S/PV.6627, 2011, p. 11). Similar disagreements were reflected in debates on the Syrian conflict in the following years up until 2013. The discourse at the UN level concerning the Syrian crisis that engaged with the PoF norm showed that states generally disagreed on the importance and interpretation of the norm, on when the UN should and could legitimately lift it, and for which purpose it may be lifted (UNSC, SC/10403, 2011; SC/10704, 2012; SC/11160, 2013).

The role of the PoF norm was moreover discussed in September 2013 at the UNGA meetings on the global fight against terrorism and the alleged use of chemical weapons by Syria. Summaries of these meetings (UNGA, GA/11429, 2013) demonstrate that concerns were voiced about the potential erosion of the PoF norm, in particular by Russia. Foreign Minister Lavrov stated that each intervention in the past “had demonstrated that *it*”, meaning the use of force to address problems, “was ineffective, meaningless, and destructive” (UNGA, GA/11429, 2013). The meetings generally displayed disagreement on how far the international community could go to counter or even prevent threats of terrorism and whether the use of military force would be acceptable as means to achieve this objective (UNGA, GA/11429, 2013). The issues raised in these meetings were similar to those displayed before in the debates on UNSC decisions.

In all of these debates, states discuss the international response to conflicts, crises and alleged threats – referring to conflicts in Libya and Syria and addressing issues such as fighting terrorism and promoting the rule of law – and what the role of the PoF, or the use of force, should be in these responses. Most debates that include references to the PoF norm demonstrate a certain level of disagreement. In general, it can be said that even when the PoF norm is not on the agenda, states bring up its importance, which demonstrates that states regard the norm to be significant to a certain extent. Moreover,

though several states voiced their opposition, the majority of states still agreed on how to apply the norm in the resolutions. The majority of states do not seem to have diverging views on the interpretation of the norm. However, several of the states that *do* disagree tend to be part of the permanent members (P5) of the UNSC and this disagreement therefore matter as much as it can prevent resolution from being adopted. A lack of consensus on the norm's application and interpretation among the P5 is seen as a relevant lack of consensus in this study. These states – the UK, US, France, Russia, and China – have diverging views on which grounds the norm may be lifted and for which purposes they may do. Several states moreover question the UN's ability to respect the norm when it authorises the use of force or when it does not exclude this course of action.

The question now remains what these findings mean for the level of *validity* of the PoF norm based on states' *general acceptance*. The level of *moderately high* is assigned when the majority of references to the norm demonstrate states' belief in the norm's legitimacy while the norm's meaning-in-use, as well as the UN's abilities may be slightly questioned. The *medium* level of validity would signify that about half of the references to the norm believe in its validity and the other half questions it, while there is a lack of a consensus on the norm's interpretation and on the UN's legitimacy. In the period of 2009 to 2013, most references to the norm expressed concerns about the PoF norm and demonstrated a lack of common understanding on how, when, and why the norm should be lifted and some questioned the UN's ability to do so effectively and in line with the norm. At the same time, these concerns still highlighted the importance of the norm. Even though some states accused others of not taking the norm into account in the resolutions, states did not seem to disagree on the importance of the norm or claim that it was not important. Therefore, it can be said that the norm is still considered to be generally accepted; that the UN's abilities are slightly questioned; but that there is a lack of consensus on the norm's interpretation. Therefore, based on the general acceptance indicator, the norm's validity from 2009 to 2013 is taken to be *moderately high*, yet close to the border of the *medium* level of validity.

#### ***Discussion of results t1***

The findings demonstrate that the robustness of the PoF norm in terms of *facticity* was *high* (yet close to *moderately high*) in the period 2009 to 2013, while it was *moderately high* (yet close to *medium*) in terms of *validity*. In other words, the norm's robustness during this period has been impaired more by the discourse on the norm's validity than

by non-compliance. The facticity dimension demonstrated that the PoF norm was discussed in the light of alleged violations and non-adherence on several occasions. These often led to discourses on the norm which were studied as part of the validity dimension. According to the theoretical framework on norm robustness and norm contestation, such debates can lead to the *stabilisation* of the norm’s meaning, a consensus on how the norm should be applied (Deitelhoff & Zimmermann, 2018, p. 58). In the case of the PoF norm, the importance of the norm often tended to be emphasised after it was violated or applied in a questionable manner according to states. Yet, at the same time, these debates did *not* lead states to agree or compromise on the norm’s meaning-in-use. Instead, the international approach seemed to reflect a crisis on how to deal with the norm prohibiting the use of force, and the norm found itself in a position where violations were not easily differentiated from behaviour in line with the norm. Therefore, this study concludes that during the period of 2009 to 2013, states did not entirely agree on the norm and its interpretation, while they at the same time did generally comply with the norm. The norm tended to guide states behaviour, making the level of facticity to be *moderately high* to *high*. Simultaneously, the norm was generally considered to be important yet there was a lack of acceptance in terms of the norm’s interpretation, leading to a *medium* to *moderately high* level of validity. As the level of overall norm robustness is based on both dimensions of facticity and validity, the robustness of the PoF norm from 2009 to 2013 ends up being *moderately high* and closer to *high* (see **Figure 3**).



**Figure 3.** Level of Robustness Prohibition of Force Norm at t1.

### **Prohibition of Force Norm Robustness after Contestation by Russia in Crimea (t2)**

The level of robustness of the PoF norm has been established as *moderately high* before Russia’s contestation of the norm in Crimea in 2014. This section now aims to measure the level of norm robustness *after* this contestation (t2), in order to compare it to t1. Not only will this demonstrate the potential effects of Russia’s contestation on the norm’s

strength, but it will also provide the results necessary to reject or confirm the theoretical expectation that applicatory contestation leads to an increase of norm robustness (Deitelhoff & Zimmermann, 2018, p. 58). To get there, the facticity and validity of the PoF norm need to be established once more, only this time in the period of 2014 to 2018, after Russia contested the norm's application.

### *Facticity*

This study now proceeds to present the level of *compliance* with the PoF norm from the start of 2014 to the end of 2018. Once more, the bi-yearly and yearly repertoires on the UNSC's practices are used to examine the number of instances that triggered either debate on the norm due to alleged violations or that led to the UN to adopt resolutions based on Article 2(4).

The first two years that were analysed to measure *compliance* were 2014 and 2015, in which one decision took place that included Article 2(4) (UNSC, Repertoire of the Practice of the Security Council 2014-2015, 2020). However, this reference was made to Article 2 in its entirety, and related to the protection of individuals, in particular journalists, and not to the use of force by states against others (UNSC, S/RES/2222, 2015, p. 1), and was therefore not taken into consideration as an instance of non-compliance. The UNSC did, however, urge states to be reminded of the prohibition of the threat and use of force, warning both Israel and Syria (UNSC, S/RES/2163, 2014) as well as Yemen (UNSC, S/RES/2215, 2015). The PoF norm was moreover invoked in the communications on conflict of Crimea (UNSC, S/2014/136, 2014), which counts as an instance of non-compliance with the norm as part of this study, as well as in relation to alleged uses of force by Iran (UNSC, S/2014/759, 2014) and Turkey (UNSC, S/2014/428, 2014). During the years of 2014 and 2015, there were *five cases* of alleged non-compliance that led to the norm being invoked (UNSC, Repertoire of the Practice of the Security Council 2014-2015, 2020).

In the next two years, being 2016 and 2017, there were again no decisions taken based directly on Article 2(4), yet it was invoked several times. Besides several cases that were already counted as part of 2014-2015, there were seven additional instances the UN or states individually invoke the PoF norm. Firstly, Israel-Palestine and Sudan-South Sudan conflicts led to the UN response affirming the PoF norm (UNSC, S/RES/2334, 2016; S/RES/2287, 2016). The norm was moreover invoked related to the alleged use of force

in Nagorno-Karabakh by both Armenia and Azerbaijan (UNSC, S/PV.7621, 2016, pp. 79, 87), as well as allegations from Cyprus of the use of force by Turkey (UNSC, S/PV.7621, 2016, p. 76) and from Djibouti accusing Eritrea (UNSC, S/2016/300, 2016). There were moreover two cases where the threat to use force was allegedly breached, one accusation from Lebanon against Syria (UNSC, S/2017/228, 2017) and from Korea against the US (UNSC, S/2017/303, 2017). Though there were no explicit decisions taken based on the PoF norm, there were *seven instances* in total from 2016 to the end of 2017 that related to non-compliance with the PoF norm.

The last UN report under the loop of this study is from 2018. During this year, no decisions were adopted directly based on the PoF. However, there were 24 references to the norm in total, many more than the years before. Many of these nonetheless referred to the same cases or to previously counted cases. The *new* instances where the norm was invoked included the UK's representative calling the Skripal attack by Russia a violation of Article 2(4) (UNSC, S/2018/218), Saudi Arabia being accused by Iran of breaching the norm (UNSC, S/2018/278) and the failed resolution drafted by Russia condemning air strikes by the US, UK, and France against Syria as the unlawful use of force (UNSC, S/2018/355, 2018). Accordingly, *three new cases* where the PoF norm was invoked are added (UNSC, Repertoire of the Practice of the Security Council 2018, 2020).

This study takes cases into account when they constitute an allegation of a new instance of non-compliance with the PoF norm by a state against a state. Based on this criterion, the period of 2014 to 2018 included *fifteen* different cases where the norm was invoked. This means that the level of facticity according to the general compliance indicator during this period comes down to being *moderately high*, as this level includes 11 to 20 cases.

### ***Validity***

In turn, it needs to be established how the validity of the PoF norm – states' belief in the norm's legitimacy – has changed after Russia's contestation, and whether it decreased alongside the norm's facticity.

Russia's annexation of Crimea caused upheaval at the international level and led Russia to face condemnation from the international community, from international organisations, and individual states. To establish whether these condemnations reflect the PoF norm's *validity* – states' belief in the norm legitimacy – a closer look needs to be taken at how

these third-party reactions engaged with the norm and whether they specifically condemned Russia's behaviour concerning the PoF norm.

In UNSC debates during the annexation, Russia's actions were discussed as "an act of aggression" by Ukraine, Australia, the UK and the US, despite the exclusion of this reference to the draft resolution due to a veto from Russia (UNSC, S/PV.7124, 2014; S/PV.7125, 2014; S/2014/189, 2014). The majority of states agreed that Russia's actions fell outside of the framework of the UN Charter. Then, on the 27<sup>th</sup> of March 2014, the UNGA adopted Resolution 68/262 on the "Territorial integrity of Ukraine" by a large majority, in which it condemned Russia's "attempts to modify Ukraine's borders through the *threat or use of force*" (UNGA, A/RES/68/262, 2014, p. 2 pt. 2). The condemnation of Russia's practices was widespread and not limited to the UN nor to statements, as international organisations such as the EU and the G7 condemned the annexation and imposed sanctions on Russia (EU, Res. 2015/C 315/06, 2015; G-7 Leaders Statement 2014). A large number of states responded individually as well, condemning Russia's "act of aggression" (British UN Ambassador Grant, 2014; Government of Montenegro, 2014; MFA Poland, 2020; Romanian President Basescu, 2014; U.S. Secretary of State Kerry, 2014), its "use of military forces", and calling upon the "non-use of force in line with the Charter" (MFA Poland, 2020; New Zealand PM McCully, 2014; Philippines Department of Foreign Affairs, 2014; UNGA, GA/11429, 2013; UNSC, S/PV.7138, 2014, pp. 6, 10; SC/11319, 2014). This demonstrates the widespread debate on the PoF norm and its abuse sparked by Russia's practices in Crimea, which were greatly condemned. In debate that took place at the UN level concerning crisis in Crimea, the majority of states highlighted the importance of adherence to Article 2(4).

This affirmation of the norm's significance continued after states condemned Russia's actions. During a plenary session of the UNGA, the representative of the Holy See pointed out the need for Article 2(4) to be transparently and genuinely applied to "exclude all unilateral use of force against another Member" (Archbishop Gallagher, UNGA, A/70/PV.27, 2015, p. 3). In the next year, 2016, during a yearly UNSC meeting on the maintenance of international peace and security, the PoF norm was central to the discussion (UNSC, S/PV.7621, 2016). The representatives of around thirty different states (nearly all those present) explicitly referred to the PoF norm. Angola, for instance, called upon other countries to prevent the use of force when responding to international

problems (UNSC, S/PV.7621, 2016, p. 7), and France emphasised the need to “restrict the use of force within the boundaries of collective responsibility” (Mr. Delattre, UNSC, S/PV.7621, 2016, p. 12). Moreover, many states recalled Russia’s actions in Crimea in 2014 when referring to the norm. Responding to these claims, Russia once more defended its actions by calling upon the principle of self-determination of peoples (UNSC, S/PV.7621, 2016, p. 29). However, Russia was not backed by other states, as the debate demonstrated a general consensus that PoF is not to be violated in generally, nor on those grounds. At a similar meeting in 2017 similar views were expressed, as Sweden’s representative stated that the decision of a state to use force and invade another state “is a threat to us all” when specifically talking about the conflict in Ukraine (Ms. Söder, UNSC, S/PV.7886, 2017, p. 16). One of the states who expressed a different view on the use of force in comparison to other states, was the UK. Its representative highlighted UNSC’s responsibility to intervene and take action against new threats, which would include the use of force (UNSC, S/PV.7621, 2016, p. 20). Meanwhile, the majority of states emphasised the non-use of force, some focusing on the non-unilateral use of force while others stressed that even collective action should not include the use of force.

In 2018, the last year under the loop, many references were made to the PoF norm. The legitimacy of exceptions to the PoF norm were discussed at the 8175<sup>th</sup> meeting of the UNSC (UNSC, S/PV.8175, 2018). Mexico, for instance, drew attention to states attempting to the use right to self-defence, and military actions accordingly, when facing threats. The exercise of these attempts in combination with the

“ambiguous language of recent Council resolutions, runs the risk of a de facto broadening of exceptions to the general prohibition on the use of force, as set out in Article 2, paragraph 4, of the Charter of the United Nations, in an irregular manner.” (Mr. Sandoval Mendiola, UNSC, S/PV.8175, 2018, p. 58).

This view was shared by other states as well, as Mr. Vieira on behalf of Brazil expressed that:

“We should devote more attention to the working methods of the Council as they relate to the use of force. [...] We live in challenging times in which we cannot allow for the erosion of the authority of the Charter, especially regarding the rules” (UNSC, S/PV.8175, 2018, pp. 24, 25).

The representative pointed specifically to self-defence and resolutions authorising the use of force, and that an increasing number of states would submit such requests to the UNSC as part of their desire to use force. It moreover called for the UN to use its power to uphold the PoF norm.

A remarkable debate at UN level took place on the 17<sup>th</sup> of May 2018, afterwards described as “Security Council Must Rectify Failure to Prohibit Use of Force, Maintain International Peace, Speakers Stress in Day-long Debate” (UNSC, S/PV.8262, 2018; SC/13344, 2018). In regards to this “failure” to uphold the PoF norm, states pointed to violations in Myanmar, Syria, and Crimea. Many states stressed the importance of upholding the “hard-won gains in international law” that were under pressure since “the annexation of Crimea”, as described by the Dutch Representative (Mr. Blok, UNSC, S/PV.8262, 2018, p. 15). The meeting coverage shows that several states specifically referred to the PoF norm, condemning its violations, and urging the UN to uphold it. These were, among others:

*François Delattre (France)* said that the UN should secure its position as a protector of international law, particularly when authorising the use of force, and by ensuring that violations thereof “do not go unpunished” (UNSC, S/PV.8262, 2018, p. 29).

*David Zalkaliani (Georgia)* rendered the non-use of force as *once* at the core of the international order, and argued that “turning a blind eye to violations of international law emboldens the perpetrators anywhere in the world.” (UNSC, S/PV.8262, 2018, p. 37).

*Frederico S. Duque Estrada Meyer (Brazil)* explicitly referred to Article 2(4) and expressed his concerns about states’ tendencies to invoke the use of force for protecting human rights or when facing threat, referring to anticipatory self-defence and humanitarian intervention. He emphasised that some states saw Article 2(4) as a “self-help mechanism” or a means to respond to violations of international law. “Brazil does not share that view, as it considers that Article 2, paragraph 4, aims to reinforce prohibition of the use of force.” (UNSC, S/PV.8262, 2018, p. 45).

*Fatima Kyari Mohammed (African Union)* emphasised that “the relevant provisions of the Charter must be strictly observed, especially when it comes to the use of force in international relations.” (UNSC, S/PV.8262, 2018, p. 62).

*Mr. Ruda Santolaria (Peru) said that “one of the cornerstones of the international order is the prohibition of the use of force in any way that is incompatible with the Charter of the United Nations. We are concerned about the possibility that some countries are testing arguments and interpretations that are ultimately alien to international law and that undermine the system of collective security.” (UNSC, S/PV.8262, 2018, pp. 19, 20).*

*At last, Mr. Polyanskiy (Russian Federation) emphasised that “the use of military force against a State is permitted only when sanctioned by the Security Council or for self-defence, as paragraph 4 of Article 2 and Article 51 of the Charter clearly state in one of its best known and most widely cited provisions.” (UNSC, S/PV.8262, 2018, p. 27).*

In the end, all these debates have one aspect in common – they reflect a revived debate on the PoF norm. The widespread condemnation of alleged uses of force can be seen as a sign of commitment of the international community to the norm, and that violations are not to be accepted. A stronger emphasis is put in debates in general on the norm, and when the norm is discussed, its significance tends to be emphasised. The debate still includes concerns on the UN’s ability to uphold the PoF, yet at the same time the calls for the UNSC to do so demonstrates that these states still consider the UN legitimate and capable to ensure compliance with the norm. Moreover, attention is drawn to the ambiguity of the norm’s exceptions that go beyond the UN Charter, especially concerning anticipatory self-defence and interventions concerning human rights. Though we can not yet speak of a renewed consensus on how the norm is to be applied and when it is lifted, states have emphasised more frequently and clearly which behaviour they find questionable and which behaviour they find acceptable. Condemnation of using justifications outside of the UN Charter and circumventing UNSC authorisation is more common. States still disagree on whether or not the UN itself should authorise the use of force in specific situations, and whether it is truly only done in cases of last resort, though most states now seem to agree that this authorisation is necessary before a state may use force.

All together, the debate on the PoF is very alive during the years of 2014 to 2018 and demonstrate a larger emphasis on the norm’s importance than the previous period. Nearly all states have expressed their general belief in the norm’s legitimacy and condemnation of violations are widespread. The debate at UN level reflects states’ commitment to the norm and its peremptory character. States regard the norm to be at the centre of the

international system, a norm that is necessary to be upheld. At the same time, it shows that the same states regard the norm to be in crisis, finding it to be easily circumvented and violated, calling out the UN's failure, yet imperative, to prohibit the use of force. It emphasised the need for the UN to regulate the use of force, rather than to act after violations have taken place. States still question the UN's ability to uphold the norm to a small extent and do not fully agree on the interpretation of the norm. The strong belief of states in the PoF norm fits the level of *high* validity in terms of *general acceptance*. However, states have not yet managed to agree on the norm's meaning-in-use or to fully respect the legitimacy of the UN. Therefore, the norm ends up between the *moderately high* and *high* levels of validity.

### ***Discussion of results t2***

In the end, this study finds the facticity dimension of the PoF norm's robustness to be *moderately high* and the validity to be *moderately high* to *high*. The facticity of the norm's robustness – how well states adhere to the norm – was measured with the *compliance* indicator through which this study found fifteen cases of alleged non-compliance over the course of five years – from 2014 to 2018. As the *moderately high* level is attributed to 11 to 20 cases where the norm was invoked, the norm's facticity ends up right in the centre of the *moderately high* level. In turn, the validity was measured through the indicator of *general acceptance*, which demonstrated that from 2014 to 2018, states strongly believed in the norm's significance, yet they still questioned the norm's interpretation and the UN's legitimacy, which leaves the norm's validity in between the levels of *moderately high* and *high*. This means that the norm's validity was higher than the norm's facticity over the course of these five years. In other words, the norm's strength during this period originates more from states perception of the norm's status and importance than from states' adherence to the norm.

Taking the levels of facticity and validity together, the former being *moderately high* and the latter *moderately high* to *high*, the norm's overall robustness at t2 arrives in between these two levels. Meaning, from the period of 2014 to 2018, the PoF norm's robustness is found to be on the stronger side of the *moderately high* level (see **Figure 4**).



**Figure 4.** Level of Robustness Prohibition of Force Norm at t2.

It is important to note that the levels of the norm’s validity and facticity are different from the results at t1. The most interesting difference when comparing the findings from 2009-2013 to 2014-2018, is that the norm’s facticity dimension of its robustness *weakened* while the validity dimension *strengthened*. The cases of non-compliance as part of the norm’s facticity more than doubled (from seven to fifteen) leading to nearly a full-level decrease in validity. This heightened level of non-compliance, however, did not lead to a less strong belief in the norm’s validity, but only increased it, for almost a full level. Surprisingly, the norm’s validity seems to have strengthened in a similar volume that the norm’s facticity weakened. This led to the norm’s overall robustness at t2 finishing at the same level of robustness at t1 (as illustrated in **Figure 5**).

These findings signify that Russia’s contestation of the PoF norm in Crimea did not result in a different level of overall robustness. However, this does not mean that it did not affect the norm’s robustness. Instead, it means that the contestation affected the norm’s validity and facticity, yet – rather unexpectedly – in diverging directions. The PoF norm ended up with the same level of robustness before and after Russia’s contestation, not because the contestation had no effects, but because the dimensions of norm robustness did not increase or decrease alongside each other. The PoF norm was affected by Russia’s contestation even though the level of overall robustness did not change.



**Figure 5.** Levels of Robustness Prohibition of Force Norm at t1 and t2.

## Conclusion

This thesis aimed to investigate the connection between norm robustness and the type of norm contestation, or more specifically how the predominant type of contestation by Russia of the prohibition of force (PoF) norm affected the norm's robustness. This study set out to address three issues: to test the framework on norm contestation types by Deitelhoff and Zimmermann; to determine the robustness of the prohibition of force norm; and to bring the international political debate on norms and norm literature closer to each other.

For this purpose, the theoretical framework on norm contestation and norm robustness was elaborated upon, followed by an explanation of this study's methodological considerations. These theoretical and methodological frameworks were then applied to the empirical case study of contestation by Russia and the effects on the PoF norm. The findings as presented in this study demonstrate that Russia's contestation of the PoF norm fit the first type of contestation – *applicatory contestation*, which was expected to lead to an increase in norm robustness. The second section of the analysis consists of an examination of robustness before Russia's annexation of Crimea from 2009 to 2013 (t1) and after (t2), from 2014 to 2018. This analysis showed that the two dimensions of robustness – being facticity and validity – developed in different directions. Because the level of the norm's facticity was on the low side of *high* at t1 (F1) and the norm's validity was on the low side of *moderately high* (V1), the norm's robustness before Russia's contestation was on the high side of *moderately high* (R1) as illustrated in **Figure 5**. In turn, the norm demonstrates to be affected by Russia's contestation, as a change in validity and facticity is observed. It moreover illustrates that the norm's facticity decreased to *moderately high* (F2), the norm's validity increased to *moderately high* to *high* (V2), leaving the average level of robustness based on these two dimensions, once again, at the same level of *moderately high* (R2).

The finding that the facticity and validity of the PoF norm's robustness were both affected but one decreased and the other increased in similar volumes, resulting in the same level of robustness over time, differs from the framework's expectations. Deitelhoff and Zimmermann's framework predicted the dimensions to develop in the same direction and to lead to an increase of robustness based on the applicatory type of contestation that took place (2018, p. 58), which disables this study to affirm the theoretical expectations.

These findings do not affirm the theoretical expectations of Deitelhoff and Zimmermann, yet they do not prove the opposite, as applicatory contestation was not found to lead to a decrease in overall robustness either. The norm's validity increased as theorised, but the norm's facticity – against expectations – decreased, with the robustness altogether remaining at the same level. These scholars predicted that the effects on the norm's robustness may be limited when the contestation in question was limited and part of an isolated event (Deitelhoff & Zimmermann, 2018, p. 58). This was nevertheless not the case in this thesis, as contestation was clearly taking place through Russia's non-compliance with the norm and its subsequent justifications. Therefore, the testing of Deitelhoff and Zimmermann's framework on norm robustness and types of contestation led to unexpected results which in turn has implications for their framework.

This study's testing of the theoretical framework provided useful insights into the *empirical* application of the theoretical expectations to a single case study. For instance, throughout the empirical application, the challenge arose of distinguishing the types of validity and applicatory from one another. For instance, when applied to a prohibitive norm as in this study, it was not clear whether the promotion of exceptions to this norm falls under applicatory or validity contestation, though this thesis eventually labelled it as applicatory contestation. The same applies to the differentiation between the norm's validity and facticity as part of norm robustness. For instance, the acceptance of the norm (validity) can arguably be demonstrated by the level of compliance as well (facticity), and the facticity can also be seen in the justifications and third-party reactions that fall under validity. Even the framework's variables of norm contestation and norm robustness seemed to overlap occasionally. Both variables aim to investigate practices of non-compliance, justifications, and debates, and it can therefore be difficult to establish where norm contestation ends, and norm robustness begins. This issue was redressed in this thesis as it examined general engagement with the norm before and after the contestation as part of the norm robustness observations, while the variable of norm contestation only investigated Russia's contestation in Crimea during four months in 2014.

All of this suggests that further research needs to be done to specify the framework on norm robustness and contestation to make it applicable to other empirical cases. This study has made an attempt and invites others to follow. When doing so, the conditions and limits of this thesis should be considered, for instance that a legal and prohibitive norm was

chosen; that it focused primarily on UNSC members, and that the original indicators of Deitelhoff and Zimmermann had to be adjusted leaving certain dimensions unstudied. While these factors are not considered to have affected the overall results of this study, other empirical studies might be able to apply the framework using *all* indicators or to study the wider response of the international community. These implications should be taken as points of considerations for future studies, as this framework provided interesting insights and still allowed this thesis to achieve its objective, namely to study how Russia's contestation affected the robustness of the PoF norm.

In contrast to other norm literature, the framework provided by Deitelhoff and Zimmermann enabled this study to take norm contestation as an independent variable and to examine *how* the PoF norm was contested. It demonstrated that the concept of norm contestation is not simply 'one way' of dealing with norms but comes in different forms. Namely, in the case of Russia's contestation of the PoF norm in Crimea, it came in the form of *applicatory contestation*. Moreover, it allowed for observation of levels of robustness along two dimensions of validity and facticity which in particular has proven to be very insightful, as the dimensions did not increase or decrease hand in hand. Though Deitelhoff and Zimmermann did not theorise that the norm's validity and facticity may change in different directions, the analytical distinction they used allowed this study to observe the difference, which may be very useful for future studies.

The findings of this thesis, especially difference found between the robustness dimensions, also have implications for norm literature. Even though norm scholars tend to agree that facing contestation is inherent to norms (Brunnée & Toope, 2017; Deitelhoff & Zimmermann, 2018, p. 52; Wiener, 2014), the effects of this contestation on the norm are still understudied (Sandholtz, 2019, p. 139). This thesis, in turn, called on norm scholarship to pay more attention not to *if* norm contestation is taking place but to *how* it takes place and to which effects. Moreover, the findings of this study's application of Deitelhoff and Zimmermann's framework validate the need to measure norm robustness along these two dimensions rather than taking robustness as either validity or facticity. It demonstrates that the contestation of a norm can happen in different ways and may lead to the norm strengthening in terms of states' general belief in the norm but weakening in terms of compliance, or vice versa. Future norm studies can benefit from these findings by theorising and analysing the distinction between the subjective and objective element

of a norm (referring to validity and facticity) and how they are affected differently by the two types of contestation.

Lastly, these findings also have implications on the prohibition of force norm itself. The findings of this study, on the one hand, affirm the labels of (relatively) ‘strong’ or ‘robust’ that have been ascribed to the norm by other norms scholars norm (Brunnée & Toope, 2017, p. 2; Sandholtz, 2019, p. 142) as the norm’s robustness was found to be *moderately high to high*. The norm generally guides states’ actions and norm addressees seem to believe in the norm’s legitimacy, as should be the case for a peremptory norm. At the same time, it can be argued that the norm is circumvented surprisingly often and easily for a peremptory norm (Sayapin & Tsybulenko, 2018, p. 15), that – when broken – can cost lives and hinder peace. The claims made by states in international discourse pointing to the increase of violations of the PoF norm ever since Russia challenged the norm (UNSC, S/PV.8262, 2018), were not proven to be wrong. If one were to base a norm’s strength on the level of compliance solely, then the PoF norm can indeed be considered to have suffered a loss of robustness after its contestation by Russia. The norm’s robustness is moreover impaired by a lack of consensus on the norm’s meaning-in-use and a lack of belief in the UNSC’s ability to uphold the norm. Previous contestation of the norm has resulted in a broadening of the norm’s scope with blurry lines between violations and legitimate exceptions to the norm. Whether this mode of contestation and lack of change in robustness is common for norms in general, requires further research comparing the PoF norm to others.

However, Russia’s contestation did lead to states’ commitment to the norm being voiced more often and more vigorously. States do not have a common interpretation of the norm, yet they have expressed their desire for one, expressing what behaviour they consider to be acceptable and what they do not. They have expressed their concerns about the UN’s ability to uphold the norm, but also their desire for the UN to do so, which demonstrates that states have not lost faith in the norm or the organisation. Accordingly, Russia’s contestation was followed by less compliance with the norm but a stronger belief in the norm’s legitimacy. Therefore, this study answers the “Who killed Article 2(4)?” question (Franck, 1970, p. 809) by concluding that Russia has not killed the PoF norm, nor did any other actor.

It remains unsure what the future practice of international relations has in store for norms underpinning the world order, including the prohibition of force norm. The fact that many of these norms were designed to meet the circumstances almost eighty ago, but are to be applied to the contemporary international order and current means of warfare, demonstrates the need for norm approaches that consider their meanings-in-use as well as their contestation. Norms can be interpreted differently according to the actor, but also according to times and to the context they are applied to, which invites further research that studies contestation beyond the practices of actors. For now, however, this study believes that the norm scholarship in IR can still greatly contribute from further studies on the link between norm contestation and norm robustness. This thesis especially invites further empirical studies to apply the concept of norm contestation as this study has – considering norm contestation not to be limited to disapproval of the norm or to the actor’s intentions, but instead to be expressed in many different and unexpected ways.

In the end, this study first demonstrated that Russia’s contestation of the PoF norm took place through *applicatory contestation*, which eventually strengthened the norm’s validity but weakened its facticity, leaving the norm’s robustness at the same level as before Russia’s contestation – being *moderately high*. While the framework on norm robustness and types of norm contestation proved to be very insightful, its predictions were not affirmed. However, these findings highlighted the significance of the analytical distinction between the norm’s robustness in terms of validity and facticity. Secondly, this study concludes that, during the period under review, the PoF norm is not eroding and definitely not dying. Even though the PoF norm is clearly contested, it is alive and well. Last but not least, this thesis resorted to IR’s norm literature, as well as to international debates engaging with norms – bringing international relations as a field of study and as a practice closer together.

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