IMPLEMENTING THE RESPONSIBILITY TO PROTECT:

NEW DIRECTIONS FOR INTERNATIONAL PEACE AND SECURITY?

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UN Photo/Lois Conner. A view of the mural entitled "War". Two murals entitled War and Peace were presented to the United Nations by Brazil in 1957. The murals, each measuring 34 by 46 feet, were painted by the Brazilian artist Candido Portinari. They are located on the east and west walls of the delegates' lobby on the ground floor in the General Assembly building.

Projeto Portinari has authorized the use of the mural "War".

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Introduction

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This publication considers the evolving discussion on the Responsibility to Protect (R2P) and the Responsibility While Protecting (RwP). It features 12 papers by a diverse collection of military personnel, scholars and humanitarian experts from Brazil and abroad[1]. Although focused primarily on the Brazilian perspective, it touches on issues striking the heart of international peace and security, such as state sovereignty, humanitarian intervention, the protection of civilians and peace-keeping operations. Indeed, the concepts of R2P and RwP are connected to twenty first century thinking on the very nature of the international state system and issues of global governance.

In bringing together professionals from across multiple disciplines, it is hardly surprising that there are areas of both convergence and divergence. One area where all authors agree is that R2P and RwP are ultimately highly political processes, even if they have significant technical implications. In making their contributions, all the authors also acknowledge that this edited volume represents the opening, rather than the closing, of a complex debate. Indeed, owing to generous support from Norway, the present edited discussion paper represents the first scholarly treatment of R2P and RwP in Brazil by Brazilians.

Moving from principles to practice

The precept that state sovereignty is equated with responsibility is now widely accepted as a norm. This is in fact a radical departure from a few hundred years of statecraft which privileged state over individual or col-

lective rights. Known widely as R2P, there are great expectations that the international community will now more readily commit itself to preventing mass atrocities. The question, of course, is not just "whether" to intervene, but "how" and by "whom". Indeed, it is these concerns that motivated the Brazilian proposal - RwP. Brazil's contribution is significant and speaks to a long commitment to non-interventionism and multilateralism. But it is also a bold example of moral entrepreneurship since we live in a world of few norm makers and many norm takers.

The authors agree without exception that prevention is at the core of R2P and RwP, and must remain so. There are underlying legal, moral and ethical imperatives in promoting prevention embedded throughout the principles of R2P and accompanying concepts. In short, R2P advocates the right for prevention and not the right for intervention. It is a reformulation of sovereignty as responsibility. The authors all also acknowledge the necessary challenges and limits of using force to achieve peace and liberal outcomes. Indeed, while acknowledging that force may in some cases be justified, the RwP proposal highlights the critical place of legitimacy in achieving peace and security.

The edited volume focuses not just on the norms and principles shaping R2P and RwP, but also practical issues associated with their implementation. Credible and legitimate peacekeeping and R2P operations depend on effective implementation. On the one hand, field personnel must render distinctions between tactical and strategic protection and assume risks in the short-term for improvement in the long-term. But to do this, they need clear and unambiguous instruction from above. On the other hand, effective implementation requires credible institutions, including the growing engagement of "southern" partners on the ground.

The challenges of application

Notwithstanding great enthusiasm about the promise of R2P and RwP, there are also concerns about its future. Indeed, there are major reservations about the direction of the concept - in particular its politicization and instrumentalization - in the wake of NATO-led intervention in Libya. Some authors are skeptical about the intentions of certain proponents of R2P, but also worry that interventions to "protect civilians" from mass atrocities may in fact have generated new forms of suffering and discontent. Similar concerns emerged in relation to hard military style interventions in Cote D'Ivoire and also the debate around what to do in Syria.

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At a more prosaic level, there are also some anxieties about the future of R2P and RwP as concepts. For example, there are concerns that Brazil itself has launched an important set of reflections on the limits on the use of force, but has not followed-through. Some fear that the dissenters are gaining ground, many of whom criticize R2P and RwP as a form of political manipulation, as trespassing on sovereignty, as a disproportionate act of force, as a new form of colonialism, as reflecting UN Security Council illegitimacy, or worse. As a result, some authors in this edition feel that R2P is in fact more controversial than ever before.

Some common themes

The authors signal a number of ways in which R2P and RwP can be strengthened. At a minimum, as one of the champions of RwP, Brazil must step up its role. While it has given rise to an important public good, the country must also address concerns from proponents and dissenters. Much as its diplomats may wish to "de-Brazilianize" the concept, it may be premature to step away from its contribution. Brazil itself may wish to take steps to establish a focal point on R2P so as to engage more effectively with supporters and detractors alike.

Likewise, the authors signal the importance of controlling or at least guiding the narrative on RwP. At a minimum, its supporters need to emphasize how RwP is compatible with R2P. In fact, RwP operates as a form of "risk mitigation" of R2P - it can be used as an operational sense in relation to Pillars 2 and 3. RwP serves, in a fashion, as a "bridge" or "lynchpin" for avoiding dissent (including reducing claims of politicization and aversion to the use of force). Alongside these issues, RwP proponents must continue deepening the connection with the protection of civilians (PoC) as a coherent and operational concept (especially where invocation of R2P and RwP may be too sensitive). Above all else, they must continue engaging with the concept.

As noted above, all the authors emphasize the need not just to preach about prevention, but also to invest in it. What is needed is more, not less, financial support and attention. Indeed, many of the barriers to a genuine "culture of prevention" are not just technical and financial. They are also normative and political. Preventive diplomacy and conflict prevention has come back in the UN - 2012 was the "year of prevention" - which is a promising sign. But prevention is also prodigiously difficult, and requires making a convincing case for success.

The authors also draw attention to the need for more systemic monitoring and evaluation on the ground where R2P and RwP may be contemplated or underway. This requires moving beyond anecdotes to support authoritative and credible mechanisms to analyze situations in real time and to measure the intended and unintended outcomes of intervention. There are still too many silences in our knowledge about mass atrocities - both in terms of understanding motivations of actors, but also the negative consequences in humanitarian terms. Many authors make a call for more rigorous methods to determine what constitutes "systemic" and "organized" violence. The monitoring of success and failure is critical if the legitimacy of R2P is to be demonstrated.

Another critical area of engagement for taking R2P and RwP forward relates to institutionalization. Indeed, a number of authors highlight the critical place of overlapping layers of inter-institutional cooperation from the international and regional to the national and municipal levels. This may require early warning systems to galvanize action, review mechanisms to oversee interventions, improved procedures for referring and transferring knowledge to the Security Council and General Assembly, and enhanced integrated decision-making, joint planning procedures, and a real commitment to the idea of "no action without consultation".

Finally, the authors underline the critical place of improved south-south linkages and the fundamental (if routinely under--estimated) role of civil societies on questions of R2P and RwP. The authors remind us of the southern origins of R2P and RwP - ideas that have the potential to change the world. Indeed, the UN conference in 2005 was the largest gathering of heads of states and government ever held - and one of the subjects was R2P. A commitment to south-south engagement is not just about spreading good practice and exchanging lessons, but also stepping up active involvement of civil societies in countries like Brazil, India, South Africa, and Turkey and also a wider range of dissenters.

The future of R2P

Both R2P and RwP are dynamic concepts. In less than a decade, R2P has moved from a set of aspirational ideas to an agreed norm in the UN system. Likewise, RwP has made important impacts on the debate. Both concepts are evolving and are likely to continue shaping international discourse and practice for some years to come. The optimists are convinced that states are deepening their commitment to sovereignty as responsibility and are exploring more open approaches to global governance. Realists are concerned with the selective application of R2P and the ways in which it is politicized and in some cases side-stepping the central questions of civilian protection.

The ways in which R2P and RwP are developed and handled both in capitals and on the ground will also influence its future acceptability. Great sensitivity and caution are required, alongside a commitment to expanding awareness and engagement on the subject. The Igarapé Institute is committed to maintaining this discussion. On the basis of a November 2012 workshop on R2P and RwP and on this edited volume, recommendations have been issued to the Brazilian government on some practical steps to clarify the RwP concept. Likewise, future events are planned with Brazil, and other emerging powers, to explore areas of convergence and divergence. An informed and inclusive debate is the first step to coherent and effective action.

1. Normative developments in the Protection of Civilians in Armed Conflicts

Conor Foley

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The term Responsibility to Protect (R2P) was coined by the International Commission on Intervention and State Sovereignty (ICISS), established in the aftermath of NATO's military action during the Kosovo crisis of 1999 and whose report was published in 2001 (Evans and Sahnoun, 2001). It is often described as:

> an emerging international norm, which sets forth that states have the primary responsibility to protect their populations from genocide, war crimes, crimes against humanity and ethnic cleansing, but that when the state fails to protect its populations, the responsibility falls to the international community (International Coalition for the Responsibility to Protect).

The concept was taken up in the UN High-Level Panel on Threats, Challenges and Change report *A More Secure World: Our Shared Responsibility*, of 2004 and the report of the UN Secretary-General *In Larger Freedom: Towards Development, Security and Human Rights for All*, of March 2005. In September 2005, it was incorporated into the outcome document of the high-level meeting of the General Assembly, which contains two paragraphs on the concept (United Nations, 2005). This document was subsequently adopted by the General Assembly in its Resolution 60/1, at the 2005 World Summit. The UN Security Council (UNSC) has also 'reaffirmed' the provisions of these two paragraphs (United Nations - UNSC, 2006). R2P can, therefore, be said to have been endorsed at the UN's highest decision--making levels and to reflect a global consensus, at least in abstract, that people should be protected against such crimes.

However, the efforts to achieve this consensus have largely stripped R2P of its normative content. If the definition of a norm is 'a collective understanding of the proper behaviour of actors' (Legro, 1997), it is difficult to see how R2P fits. The concept has been invoked by Britain's prime minister in relation to the invasion of Iraq (Blair, 2003), Russia's foreign minister in relation to military action in support of South Ossetia, a proposal by France's

foreign minister to forcibly deliver food aid in Myanmar (Ministry of Foreign and European Affairs and Ministry of Defence of France, 2008) and by Britain's defence minister in support of a weakening of the protections of the Geneva Conventions (1949) (Reid, 2006). Such assertions can be rejected as political opportunism, (Evans, 2007) but given that Britain, France and Russia are all permanent members of the UNSC, they cannot be dismissed as irrelevant. It is also significant that R2P was not cited in the text of the UNSC Resolution authorizing the use of force to protect civilians in Libya (United Nations - UNSC, 2011). Others have noted that R2P creates no new rights or obligations and that the UN Outcome Document amounted to saying little more than that the UNSC should continue authorizing, on an *ad hoc* basis, the type of interventions that it has been authorizing for many years (Chesterman, 2011).

> Paragraph 138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

> Paragraph 139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

The basic problem with the R2P terminology is that it elides the distinction between five very different normative concepts. (Stahn, 2007) These are:

1. all States have the primary responsibility to protect their own populations;

2. states which are 'manifestly failing' to protect their own populations have a weak sovereignty defence;

3. other states, acting through the UN, are legally permitted to take non-forcible measures to protect citizens of another state in another territory;

4. the UNSC, acting under its Chapter VII powers, is legally permitted to take forcible measures to protect citizens of another state in another territory; and

5. there is a legal obligation to protect civilians from mass atrocities and, if the UNSC fails to fulfil its responsibility, then this passes to other entities.

The first four of these statements are uncontroversial descriptions of international law and state practice, which long pre--date R2P. The fifth would involve a fundamental reformulation of the relationship between state sovereignty and international law, if it had any legal standing. A section of the original ICISS report (2001) explicitly refers to such situations

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when it discusses 'circumstances when the Security Council *fails to discharge what this Commission would regard as its responsibility to protect*, in a conscience-shocking situation crying out for action' [emphasis added]. However, no such language appears in the Outcome Document. Supporters and opponents of R2P, therefore, often seem to base their analysis of its normative significance on something that is not actually in the agreed text.[1]

In November 2011 the Brazilian Government published a document, 'Responsibility While Protecting' (RwP). This noted that, 'There is a growing perception that the concept of the responsibility to protect might be misused for purposes other than protecting civilians, such as regime change. This perception may make it even more difficult to attain the protection objectives pursued by the international community.' (Permanent Representative of Brazil to the United Nations, 2011) The document argued that there should be greater accountability over the conduct of UNSC authorized Chapter VII operations and that the three pillars set out in the R2P formulation (Ibid., para 4.) must follow a strict line of 'political subordination and chronological sequencing'.(Ibid., para 6.) Even some sympathetic to the RwP concept (Foley, 2012), regard this formulation as overly restrictive. The rest of this paper examines these debates within the context of efforts to operationalize the Protection of Civilians in UN mandated operations.

Article 1 of the UN Charter states its primary purpose to be the collective maintenance of international peace and security.[2] Membership of the UN is open to all 'peace-loving nations' irrespective of the nature of their government providing that they accept the obligations of the Charter. Article 2 states that even the UN shall respect the principle of 'non-interference' in a member state's internal affairs. Article 55 and 56 also state that the UN shall promote 'universal respect for, and observance of, human rights' - which are deemed to contribute to conditions of peace and stability - and that all members of the UN 'pledge themselves to take joint and separate action' to achieve these purposes. These rights have been spelled out in more detail in a variety of international human rights treaties and by the decisions of international courts and tribunals. When the totality of the UN Charter is read together with these legal instruments, it can therefore be argued that states are restricted from inflicting harm on people within their own territorial borders by virtue of the UN Charter. (Rodley, 1992)

There is no reference to human rights in Article 2 of the UN Charter and the only explicit exceptions to the prohibition of the threat or use of force is the 'inherent right of self-defence' recognized by Article 51[3] and operations authorized by the UNSC under Chapter VII.[4] The latter permits the UNSC to use force, in discharging its responsibility for upholding international peace and security, when the pacific methods, envisaged in Chapter VI, are deemed insufficient. For most of the Cold War the UNSC was extremely reluctant to invoke Chapter VII, due to the veto of its permanent members. In the absence of effective leadership, the UN General Assembly took the initiative of authorizing the deployment of peacekeeping missions, which had strictly limited mandates of consent, impartiality, and limited use of force.(Bellamy, Williams and Griffin, 2011) However from the start of the 1990s the UNSC began to take a more expansive view of its responsibilities. A series of resolutions authorized interventions on the basis that gross violations of human rights and humanitarian law, even when confined within the borders of a State, might destabilize peace and security in a region, for

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1 For an alternative, and highly critical analysis, of R2P's significance see Orford, 2011.

2 The promotion of respect for human rights is listed as a purpose in Article 1(3) of the UN Charter, although the wording indicates that it is a more aspirational goal.

3 See the *Caroline case* 1841-42 in Harris, D J., 1998 for more details.

4 Articles 39-42. See also United Nations - ICJ, 1962.

example, by provoking a refugee crisis in neighbouring states (United Nations, 1995). Essentially, Chapter VII was being used to circumvent Article 2. (Roberts, 1993)

The presence of internationally mandated forces in conflict zones raised expectations about what they could achieve - particularly on the part of civilians whose lives were threatened and the aid workers and journalists covering the conflicts in their professional capacities. Very often the UN forces were simply unable to cope. Francis Briquemont, for example, one of the early commanders of the UN force in Bosnia-Herzegovina complained publicly in 1993 about the 'fantastic gap between the resolutions of the UNSC, the will to execute these resolutions and the means available to commanders in the field' (Briquemont, 1993). This complaint has been echoed many times since. The problem was that a military intervention designed expressly to protect civilians from mass killing is fundamentally different from a traditional UN peace-keeping operation. Previously these had mainly been deployed to support negotiated ceasefires and prevent a return to interstate warfare. Multidimensional peace operations became more common in the 1990s and these sought to support stability in countries emerging from civil war. In 1999 the UNSC authorized an operation in Sierra Leone, UNAMSIL, using the following language:

> Acting under Chapter VII of the Charter of the United Nations, decides that in the discharge of its mandate UNAMSIL may take the necessary action to ensure the security and freedom of movement of its personnel and, *within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence taking into account the responsibilities of the Government of Sierra Leone* [emphasis added] (United Nations - UNSC, 1999).

This was the first time that a peace-keeping operation had been specifically tasked with the protection of civilians (PoC) and similar language has been included in the mandates of subsequent operations. The caveats and ambiguities in the resolutions are obvious. Even so, UN missions still struggle to turn the ambitions of their drafters into realities on the ground. A recent review found that 'the presumed "chain" of events to support protection of civilians - from the earliest planning to the implementation of mandates by peacekeeping missions in the field is often broken.'(Holt and Taylor, 2009) Nevertheless it concluded that 'strong leadership can counter-balance some of the tensions in peacekeeping and integrated missions and encourage collaborative work practices under challenging circumstances.'

By 2012, twelve such missions had been authorized[5] and most of the over 100,000 UN personnel currently deployed are operating with PoC mandates. PoC is now debated at an open bi-annual session of the UNSC and this has resulted in a steady stream of statements, resolutions and reports. When the UNSC revised the mandate of the UN mission to the Democratic Republic of Congo (DRC) in 2007, it stated that 'the protection of civilians must be given a priority in decisions about the use of available capacity and resources' (United Nations - UNSC, 2007). PoC is quite distinct from the R2P doctrine. As the Secretary General's report *Responsibility to protect: timely and decisive response*, of July 2012 noted, 'While the work of peacekeepers may contribute to the achievement of R2P goals, the two concepts of the responsibility to protect and the protection of civilians have separate and distinct prerequisites and objectives' (United Nations - UNSC, 2012). A briefing from the Global Centre for the Responsibility to Protect, in 2009, also explained:

> Open debates on PoC have indeed been the only occasions within the formal [Security] Council agenda to reflect on the development of the R2P norm and its practice. Yet the sensitivities around the inclusion of R2P within the protection of civilians' agenda have increased in recent months. There are concerns that the PoC agenda is being needlessly politicized by the

5 UNAMSIL; MONUSCO; ONUB; UNMIL; UNISFA; MINUSTAH; UNOCI; UNMISS; UNMISS; UNIFIL; UNAMID; and MINURCAT.

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introduction of R2P into the Council's work and resolutions on the protection of civilians, as those who seek to roll back the 2005 endorsement of R2P raise questions about the protection of civilians in the attempt to challenge hard-won consensus reached on both issues (Global Centre for the Responsibility to Protect, 2009).

While the practical case for keeping the two concepts analytically separate is clear, the elastic nature of the R2P definition sometimes creates confusion. R2P encompasses the range of measures associated with traditional peacekeeping and the UNSC expressly authorizes the use of force when issuing a PoC mandate. The main textual difference is that R2P is only intended to protect people against certain specified mass crimes when the State in which they are taking place is 'manifestly failing' to do so. This makes it considerably narrower in scope than a PoC mandate and would appear to be a significant step backwards from a standard-setting perspective. An alternative explanation is that R2P remains associated in many minds both with the language of the original ICISS report (2001) and the non-UN sanctioned military action taken by NATO during the Kosovo crisis (1999).

PoC may, however, be emerging as a new normative concept, reformulating how we understand some of the concepts most widely associated with peacekeeping. While the basic principles of consent, impartiality, and limited use of force continue to be reaffirmed by the UN General Assembly, missions in the field are grappling with how to apply these while implementing their PoC mandates.(New Horizon, 2011) During the crisis in Côte d'Ivoire (2010/2011), following the disputed Presidential election, for example, the UN took military action, including bombing the government's heavy artillery and supporting an assault on the Presidential Palace in pursuance of its PoC mandate (International Crisis Group, 2012). Recent events in the DRC when peacekeepers chose not to use force against a rebel force, which captured the city of Goma after it was abandoned by government soldiers, highlight a different aspect of the same dilemma (Reuters, 2012).

The tasks of UN missions with PoC mandates are to strengthen the technical capacities of national institutions to protect their own civilians, provide direct physical protection to civilians in certain limited circumstances, while ensuring that the mission has an overall exit strategy that avoids creating long-term dependence. These tasks must be accomplished simultaneously and, in practice, rarely divide into neatly distinct pillars. The increasing use of PoC mandates does, however, give added urgency to resolving a growing list of basic day-to-day practical questions that UN peacekeeping missions are grappling with, and many of which would also apply to an R2P-type intervention. These include:

- What is the legal status of UN peacekeepers (are they soldiers, police or civilians) and when and to what extent are their activities bound by human rights and International Humanitarian Law (IHL)?

- What does an 'imminent threat' to civilians actually constitute and when can UN peacekeepers use force in response, bearing in mind the different standards contained in human rights law and IHL?

- How should UN peacekeepers distinguish be between combatants (whom they are entitled to engage under IHL) and civilians (who they are mandated to protect in all circumstances)?

- What are the precise circumstances in which UN peacekeepers can detain people?

- What is the relationship between UN peacekeepers and the International Criminal Court and should the former execute arrest warrants of the latter?

- How should UN peacekeepers respond when government forces commit human rights violations or constitute an 'imminent threat' to civilians, bearing in mind the principle of host state consent?

- What are the negative and positive legal obligations of UN peacekeepers to protect civilians and how can they be held accountable if they fail to respect their duties to respect, promote and fulfil certain rights?

- What is the 'legal space' of the human rights treaties, when UN or regional peacekeeping or peace enforcement missions are taking place and what are the extraterritorial obligations of states that are contributing troops and military equipment to these missions should violations occur?

- Can UN missions function without legal immunities and how can mission leaderships exercise effective military command when troop contributing countries place so many national caveats over the deployment of their contingents and retain exclusive jurisdiction over them for any criminal prosecutions?

This list is not exhaustive and many of the answers to the questions posed are currently being arrived at in a reactive, and sometimes improvisational and contradictory, manner. This poses obvious practical implications for those charged with planning integrated mission strategies, and designing their mandates Concepts of Operations (CONOPS) and rules of engagement (RoEs), as well as for the civilians in countries who are on the 'receiving end' of such operations. Those who argue that the tasks involved in the protection of civilians during a humanitarian, or R2P-type, crisis can be reduced to simple questions of 'political will' and tactical military strategy seem to think that international human rights are best safeguarded by a modern-day Leviathan.[6]

RwP has already significantly moved this debate forward, by focusing on the question of accountability, which lies at the heart of the concerns with R2P felt by many human rights and humanitarian practitioners. No one who has seen the slaughter, chaos and destruction that ill-judged 'humanitarian interventions' have brought to so many places - including Kosovo - in the recent past would wish future such adventures on anyone else. (Foley, 2010) But nor would anyone but a pacifist disagree with the notion that deploying military force may sometimes be the least bad option during a human rights or humanitarian crisis. Finding the space in between will require moving the discussion away from simple sloganeering, to a more analytical, nuanced and rigorous level.

Brazil is well-placed to have initiated this debate for reasons of history, politics and geography. It can also draw on its practical experiences of PoC operations in Haiti, which have themselves informed, and been informed by some of its pacification operations in the favelas of Rio de Janeiro.(Muggah and Mulli, 2012) As importantly, the determined efforts of Brazil's current government to forge south-south linkages means that it can ensure that the voices of the global south become more widely heard in the debate. As Brazil's Minister of Justice, José Eduardo Martins Cardozo, recently commented, the transition from dictatorship to democracy occurred within the collective memory of most Brazilians and so they have a direct empathy with what civilians in the countries in sub-Saharan Africa and the Middle East experiencing violent upheaval are actually going through. (Foley, 2012) RwP complements Brazil's own efforts to reform the UN UNSC and provides an articulate response to those who say its expansion would make little practical difference, or even be a retrograde step for the protection of civilians.[7]

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6 Hobbes, T. (1651) "The English Works, vol. III (Leviathan)", Chapter XXX.: Of the Office of the Sovereign Representative,: 'The office of the sovereign, (be it monarch or assembly,) consisteth in the end, for which he was trusted with the sovereign power, namely the procuration of the safety of the people, to which he is obliged by the law of nature'.

7 This argument was publicly made at a seminar organized by Chatham House and CEBRI in Rio de Janeiro in April 2011 during the Libyan crisis when one of the speakers pointedly asked Brazil's Minister of Defence, 'why should we support you getting a permanent seat on the Security Council if you are just going to abstain when you get there?'.

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2. An Interlocking System of Global and Regional Security for R2P: are we there yet?

Malte Brosig

Introduction

The case of Libya has so far been the most prominent example of a pillar III operation under the concept of responsibility to protect (R2P). While much of the current debate around R2P is focusing on the normative content and conceptual development, this paper investigates an often overlooked but equally important topic, the institutional framework in which R2P is acted out, thus the relationship between the UN, NATO, AU and sub-regional organizations. In this article it is argued that important parts of the criticism formulated after the Libyan intervention do not relate to the substance of the norm but are resulting from an incomplete institutional security architecture. The paper highlights the need to further craft a truly interlocking system of security governance based on comprehensive capabilities, collective responsibility and action.

The Libyan case has provoked some international debate not about the rightfulness of intervention as such or the moral legitimacy of the norm, these remain rather unchallenged, but about the implementation of R2P (Bellamy, 2012). In the case of Libya there was no blue print for action, clearly demonstrating the unfinished nature of the norm. Considering the time pressure under which UN Security Council Resolution 1973 authorizing "all necessary means" was passed international actors had little time to coordinate their positions. In other words, the reaction of international organizations (IOs) to Libya is authentic and indicative of how and what the system can produce if undergoing a hard test.

In contrast to traditional peacekeeping operations which exercise restrain with regard to the use of force and often aim at keeping a neutral position R2P pillar III operations allow the use of military force to engage the aggressor proactively. This may result in high intensity military engagement physically destroying or incapacitating the aggressive forces and as a consequence may even lead to the crumbling of the oppressive regime. Such an

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intervention in the name of the international community remains exceptional and so far has been applied as an instrument of last resort.

The case of Libya revealed very obvious deficiencies, divides and disjunctions in the global and regional security architecture. While the formal and moral legitimacy of NATO's intervention is not criticized the manner in which force was projected with the outright aim of regime change in contrast to a negotiation solution, however unrealistic this was, promoted by the regional actor, the African Union (AU), reinvigorated African resentment against potentially neo-colonial aspirations (Dembinski and Reinold, 2011) and a debate about the Responsibility while Protecting (RwP) resulted from the Libyan intervention (Hamann, 2012). The paper argues that important parts about the controversy around R2P are related to insufficiently interconnected security actors.

Institutional gaps and missed cooperation opportunities

R2P with its three pillar approach assigns states the primary responsibility to protect its citizens from war crimes, crimes against humanity, genocide and ethnic cleansing (United Nations "World Summit Outcome document", 2005). Only if this responsibility has not been acted out domestically responsibility is transferred to the international community which is allowed to use force as an instrument of last resort and when other peaceful means have failed. R2P requires a comprehensive understanding of security and is not confined to the use of force although military intervention still receives the most attention. R2P encompasses instruments of early warning, conflict prevention, mediation, good governance, military enforcement and may even extent into peace building and reconciliation after the end of a conflict. Such a vast array of tasks can only be realized collectively which should place IOs in the limelight of the debate.

However, no single IO is currently able to effectively engage in all of the above mentioned tasks. Much criticism against NATO results from the fact that the mandating organization the UN did not have the military means for a rapidly deployable R2P operation and had thus to delegate the implementation to a militarily more capable actor over which it had practically no oversight control. De facto, all organizations operate under resource scarcity and overstretch. Funding, expertise, equipment, personnel and operational outreach are limited in the case of the UN (Gowan, 2008) and African regional organizations (APSA, 2010) and even NATO. While Europe and Africa have established the most advanced security institutions (EU, NATO, AU) proactively involved in conflict resolution other continents are lagging behind.

There is currently no single world system which could take on responsibility for all those tasked required for an effective implementation of R2P a fact which has been overlooked in the debate too often. Instead different elements are implemented by different actors at different levels. Fragmentation, divisions at regional and global level exist indirectly fuelling criticism against the application of R2P. While the UN could not implement its own resolution and has revealed a significant mandate resource gap, NATO primarily is successful in projecting military force but is less compelling in issues of political conflict prevention or peacekeeping. Africa as the world's most conflict ridden continent has responded to these challenges by developing the African Peace and Security Architecture (APSA).

The APSA comprises of a Peace and Security Council (PSC), a Continental Early Warning System (CEWS), a Panel of the Wise (POW) and a Standby Force (SF). It is connected to a number of Regional Economic Communities (RECs) in Africa and has adopted R2P into its Constitutive Act and deployment scenarios for its Standby Force. Despite this, there was no regional to sub-regional coordination on what action to take in Libya. While the Arab League was promoting the idea of a no fly zone enforced by military means without seeking AU approval, the AU insisted on negotiating peace with Gaddafi

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who aimed at physically destroying opposition groups. In essence, the critic issued against the Libyan intervention at least in parts is a function of insufficient institutional structures which do not fully complement each other.

What is needed is a clearly interlocking system of global and regional governance as called for by Kofi Annan in 2005 (United Nations "In Larger Freedom: Towards Development, Security and Human Rights for All"). Taking the existing resource constrains for the implementation of R2P at all levels of global and regional IOs the solution can only be a collective effort based on strong inter-organizational links (Brosig, 2010). This of course is more easily said than done. Most IOs will remain resilient against too far reaching external links, and the UN will not transform into a world government in the foreseeable future. The Libyan case has shown that traditional principles of coordination between IOs such as elements of hierarchy, subsidiarity, division of labor and the avoidance of duplication of effort appeared as problematic in practice.

Hierarchy versus subsidiarity

The relationship between IOs is in principle non-hierarchal. However, in security issues the UN Charter assigns the Security Council a primary role above regional organizations especially with regard to the use of force. This element of hierarchy is problematic if the UN does not have the resources to implement a R2P mandate or when the Security Council is barred from action due to political disagreements and veto use. In the first case, the lack of implementation resources compromises political oversight of the UN. In the second case, the Security Council might turn into a stumbling block for action at the regional level.

Subsidiarity on the other hand, is the preferred concept of many regional organizations because it empowers regional solutions to regional problems. Subsidiarity builds on the idea that issues should be solved at the lowest level possible and is passed on to a higher level actor if it can tackle the issue more effectively. However, subsidiarity is not automatically a solution in situations of resource scarcity because it moves responsibility from one level to another in an either/or fashion without necessarily ameliorating resource constrains. Hierarchy and subsidiarity are problematic in the sense that they are practically monopolizing responsibility at only a certain actor or level when a collective concerted effort is needed. Both concepts can polarize actors by delimitating zones of influence and power at the cost of efficient and concerted action.

Division of labor versus duplication of effort

Most inter-organizational relations are built on the concept of division of labor in order to avoid the duplication of effort which is usually seen as synonymous with institutional competition while division of labor carries a positive connotation as leading to complementary resource pooling. Both assumptions can be problematic. Although these basic assumptions might be convincing at first sight they are not always leading to desirable outcomes. A conceptual revision is needed. In Libya it was the division of labor between the UN as authorizing institution and NATO as implementing agency which led to criticism of lacking oversight and unduly stretching of the mandate.

An effective pooling of resources should not be exclusively built on developing functional complementary capabilities. If R2P is implemented successfully across all pillars all IOs involved need to establish a comprehensive framework to address the full cycle of conflict prevention, management, mediation, military enforcement, peace building and good governance. This would provide more potential interaction points and equally important would mediate concerns over missing oversight about single actors. Under the condition of existing and significant capability constrains of single actors

the risks of institutional competition are rather minimal. In sum, resource pooling of organizations with comprehensive security capabilities is more effective because it provides for more interaction opportunities with partner organizations and better accounts for the complex challenges on the ground.

Calling for stronger and more effective inter-institutional links

Increasingly links between IOs are becoming more institutionalized. The number of joint meetings between the UN Security Council and regional equivalents is increasing, joint tasks forces and working groups have been established. However, there remains a need for creative thinking about what principles and concrete steps are required to enable a truly inter-locking and effective governance system enacting R2P.

Some basic principles

So far issues of inter-organizationalism are only a niche topic not systematically addressed by IOs or international relations research. From a policy perspective a logical starting position should aim at asking the question how institutional frameworks should look like to effectively achieve a commonly defined purpose, the implementation of R2P. Instead most IO action is reactive to emerging crises based on individual capabilities and interests but without much convergence between actors as the Libyan case has shown. This paper argues that inter-organizationalism should be based on collective responsibility and inclusive problem solving. This can best be achieved if actors have comprehensive capabilities addressing the full cycle of R2P issues.

Under conditions of resource scarcity the duplication of capabilities can be assumed to have largely positive effects because there is only a small basis for competition but the chances for resource pooling are increasing. Furthermore, duplication of effort across various actors combined with effective resource pooling can ideally lead to shared responsibilities and political inclusiveness, conditions which have been missing in the Libyan example. In principle duplication of comprehensive security does not rule out division of labor between IOs. Collective and inclusive action remains intact as long as a division of tasks is not separating actors fully. In a system of truly collective responsibility ownership of a conflict is not exclusive but shared reaching from global to local especially in cases of such severe human rights violations as R2P is confronting. Lastly collective action requires a minimum consensus and conceptual clarity of the norm R2P which is otherwise likely to produce and reinforce divisions between actors. But conceptual clarity must be based on diversity too to account for the desired inclusiveness.

Principles for inclusive and collective action

1. Inter-institutional design should be based on collectively defined purpose;

2. Unity of action and responsibility;

3. No privileged ownership of crisis;

4. No action without consultation;

5. Synchronized and timely decision-making;

6. Mainstreaming interoperability for IOs at all relevant levels;

7. Collective action requires comprehensive capabilities.

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At least seven principles can be identified building a more inter-locking security system. The first principle is based on the need to identify a common social purpose around which actors policies can converge. This principle is important because it refers to the need of actors sharing common goals and through these goals become incentive compatible. The second principle calls for the unity of action and responsibility. Thus action needs to be recognized by all actors involved in order to achieve collective responsibility. Crucially accountability of actors rests on the inclusiveness of action. The third principle further develops this idea by arguing that conflicts cannot be assigned the ownership of an exclusive circle of actors but principally fall under collective ownership. The fourth principle aims at connecting IOs more systematically to each other.

While in most cases there is no clear hierarchy between actors and thus legal obligations to follow interests from external institutions do not exist a basic principle for crafting concerted action would at least agree on the need for mutual consultation before decision-making. Therefore, "no action without consultation" constitutes a fifth principle. Following mutual consultations is the need for synchronized decision-making. Synchronization at least refers to two properties: timeliness of collective response and thematic congruence of decisions. The sixth principle calls for a mainstreaming approach to inter-institutional relations. As the security notion under which R2P operates is fairly vast and cross-cutting a variety of policy fields inter-operability of IOs is in principle not confined to isolated areas but requires an organization--wide response. Therefore the call for mainstreaming interoperability. Lastly achieving effective complementarity requires comprehensive capabilities and a duplication of effort for two reasons: First it increases connectivity among actors. Second, the more resources are shared the higher the degree of collective accountability.

In more concrete terms a number of actions can be envisioned. A joint contingency plan operationalizing a variety of possible scenarios for R2P relevant action should be developed which is identifying a toolbox for action. In order for this toolbox to be applicable an inter-institutional resource mapping exercise would be helpful to locate existing capabilities and gaps and linking resources to tasks. In such a system a modular approach or division of labor could be applied in which certain competences are connected to specific actors. This remains unproblematic as long as the unity of action and collective responsibility remain unaffected.

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3. Responsibility to Protect and the Military[1]

Dwight Raymond

1. Introduction

Most references on the Responsibility to Protect (R2P) stress that coercive military intervention is but a narrow aspect of R2P, applicable only in limited and extreme circumstances.[2] For example, in 2001 *The Responsibility to Protect* Report of the International Commission on Intervention and State Sovereignty (ICISS) distilled R2P into the three elements of prevention, reaction, and rebuilding. Subsequently, the 2005 United Nations General Assembly World Summit Outcome Document articulated what later became known as the "three R2P pillars" consisting of a state's responsibility to protect its population, the international community's commitment to assist states, and the responsibility of member states to respond when a state is failing to provide protection.[3]

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1 Disclaimer: This paper reflects the author's personal opinions and is not the official view of any U.S. governmental organization.

2 R2P may be interpreted as the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe, and that when they are unwilling or unable to do so, that responsibility must be borne by the broader international community. Derived from International Commission on Intervention and State Sovereignty (Evans and Sahnoun, 2001), R2P is normally restricted to the four major crimes of genocide, war crimes, crimes against humanity, and ethnic cleansing. A related, but different, term is the Protection of Civilians (PoC) which may be defined as "Efforts to protect civilians from physical violence, secure their rights to access essential services and resources, and create a secure, stable, and just environment for civilians over the long term." (U.S. Army Peacekeeping and Stability Operations Institute, 2013).

3 Also see Evans, G. (2008). For the UN's framing of R2P, see United Nations (2005); Ban Ki-moon, address on "Responsible Sovereignty: International Cooperation for a Changed World" (Berlin, 15 July 2008), available at: http://www.un.org/News/Press/docs/2008/sgsm11701.doc.htm; and UN General Assembly, *Implementing the Responsibility to Protect: Report of the Secretary-General*, 12 January 2009, A/63/677, available at: <www.unhcr.org/refworld/docid/4989924d2.html>.

- Pillar One: The enduring responsibility of the State to protect its populations, whether nationals or not, from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement.
- Pillar Two: The commitment of the international community to assist States in meeting those obligations.
- Pillar Three: The responsibility of Member States to respond collectively in a timely and decisive manner when a State is manifestly failing to provide such protection.

Despite the emphasis that R2P has much broader aspects, there is nevertheless a persistent and widespread perception that R2P is essentially synonymous with military action in response to mass atrocities. This has unfortunately contributed to resistance to R2P from some quarters, and may also create a tendency to overlook the importance of non-military efforts to mitigate mass atrocities. Military activities (or their threat) can indeed be useful to prevent or halt mass atrocities and, with the caveat that R2P is more than military action, this paper will discuss military considerations within the context of R2P and related concepts such as the Responsibility While Protecting (RwP). It contends that RwP should best be viewed as a comprehensive approach to mitigate significant R2P risks.

2. The Military and Prevention

Mass Atrocity Response Operations (MARO) refer to "military activities conducted to prevent or halt mass atrocities"[4] and closely align with the use of the military in an R2P context. It is important to note that international military resources can be employed in a preventive mode short of a coercive military intervention. Some potential objectives for this use of the military may include:

- Mitigate conditions that make mass atrocities more likely;

- Expose/discredit perpetrators and enablers;

- Establish credibility/capability of international community and potential intervention;

- Protect potential victims;

- Dissuade/stop/isolate/punish perpetrators and enablers;

- Diminish perpetrator motivation or capability to conduct mass atrocities;

- Build/demonstrate international resolve; and

- Convince bystanders and negative actors not to support perpetrators and take constructive action to mitigate mass atrocities.

Prevention includes both long-term "structural" efforts as well as "direct" efforts when a crisis is imminent, and international military forces can contribute to both (Bellamy, 2011). Military structural preventive measures may include security cooperation that can help reduce the likelihood of mass atrocities and identify potential flashpoints, while direct prevention may include using military forces in an emerging crisis to deter perpetrators and shield vulnerable populations. Indeed, military activities may be relevant during all three stages of the ICISS R2P framework and in support of the UN's second and third pillars.[5]

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4 For more information on MARO, see Sewall, S.; Raymond D. and Chin S. (2010).

5 See Raymond, D., Cliff Bernath; Don Braum; and Zurcher K. (2012) for further elaboration on employment of military forces during all stages of a mass atrocity situation. Generally, MARO refers to military prevention and response operations while MAPRO refers to military and non-military efforts, including policies and programs, with MARO as a subset.

Table 1: MILITARY EFFORTS DURING R2P STAGES			
PREVENT		REACT	REBUILD
Structural Prevention	Direct Prevention	Area Security	Establish/Maintain Security
Security Cooperation	Deployments	Shape-Clear-Hold-Build	Peacekeeping
Exercises	Shows of Force	Separation	Enable Humanitarism Assistance
Security Assistance	Preparations	Safe Areas	Support Governance, Rule of Law, Social Well-Being, Economic Development
Monitoring	Force Mobilization	Partner Enabling	Support SSR, DDR, TJ
	Blockades, No-Fly Zones	Containment	Unexploded Munitions Clearance
	Strikes, Raids	Defeat Perpetrators	
	Enable Humanitarism Assistance	Non-Combatant Evacuation	

Potential challenges include differentiating between "prevention" and "response," as there could be overlap between the two (for example, a country may *respond* to a disturbing situation with military forces in order to *prevent* conditions from deteriorating). Additionally, preventive efforts are difficult to organize because of the multiplicity of relevant actors with their own dissimilar interests, objectives, constituencies, attention spans, and lines of authority. Long-term structural prevention strategies may easily be neglected because there will always be other issues that are more urgent. It may be difficult (and inappropriate) to separate mass atrocity prevention efforts from broader contexts and agendas. For example, structural prevention efforts are likely to be conflated with general developmental programs, and there can never be too much development. Some correctly argue that "managing diversity" is an important approach to prevent mass atrocities (Baker, 2012).[6] Finally, mass atrocity situations are likely to be intermingled with other complexities such as conflict situations including insurgencies.

3. The Military and Response

As noted in the ICISS report, response measures are not limited to military ways and means, and military efforts may be significantly less than a coercive intervention, as some of the preventive activities discussed earlier may have continued utility. When robust military force is committed to a mass atrocity situation, there are seven conceptual approaches for their employment (the approaches are not mutually exclusive and can be combined in a variety of ways). All of the approaches have advantages and disadvantages, and have variable appropriateness in different circumstances (Sewall S., Raymond D. and Chin S., 2010).

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6 This theme has also been repeatedly emphasized by Dr. Francis Deng, the former UN Special Adviser on the Prevention of Genocide.

- Area Security - secure a large area with sufficient force deployed in unit sectors.

- Shape-Clear-Hold-Build - systematically secure limited areas and expand when able.

- Separation - interpose forces between perpetrators and victims through the establishment of a de-militarized zone or similar buffer zone.

- Safe Areas - secure concentrations of vulnerable populations such as displaced persons camps or enclaves.

- Partner Enabling - provide advisors, equipment, or specialized support to other actors such as security forces, coalitions, or victim groups.

- Containment - influence perpetrator behavior as necessary with measures such as overwhelming presence, strikes, blockades, or no-fly zones (perpetrators might not be targeted as long as they behave themselves).

- Defeat Perpetrators - attack and defeat key perpetrator assets such as leadership, forces, and logistics to neutralize or remove the capability to conduct mass atrocities.

Military operations are problematic when there is an imperfect mandate or other strategic guidance, and inevitably such direction will to some degree be incomplete, vague, or late. Proactive military leaders will (for better or worse) take action based upon circumstances in the operational environment; cautious leaders given inadequate guidance will refrain from acting. Or, to put it another way, "Some commanders will find a way to do what is necessary; others can always find an excuse to do nothing."

In addition to concerns caused by inadvertent civilian casualties and other collateral damage, military actions have other political impacts. In order to retain flexibility that is inevitably critical for successful military operations, commanders will prefer to expand their freedom to operate, seize and maintain the initiative, and generate options. This implies a tendency to remove or roll back targetable adversary capabilities during fleeting windows of opportunity, and potentially creates political complications. Because of the potential infeasibility of attacking only perpetrators that are directly committing atrocities (especially if operations are exclusively conducted by air forces), it is often desirable from a military standpoint to attack other targets further up the "threat chain" (staged forces, logistics, command and control facilities, military leadership, political leadership). At some point, such targeting will have a political dimension.

Image 1: Threat Chain

| Direct Threat | Imminent Threat | Future Threat | Threat Logistics | Threat Command & Control | Threat Enablers | Threat Leadership |
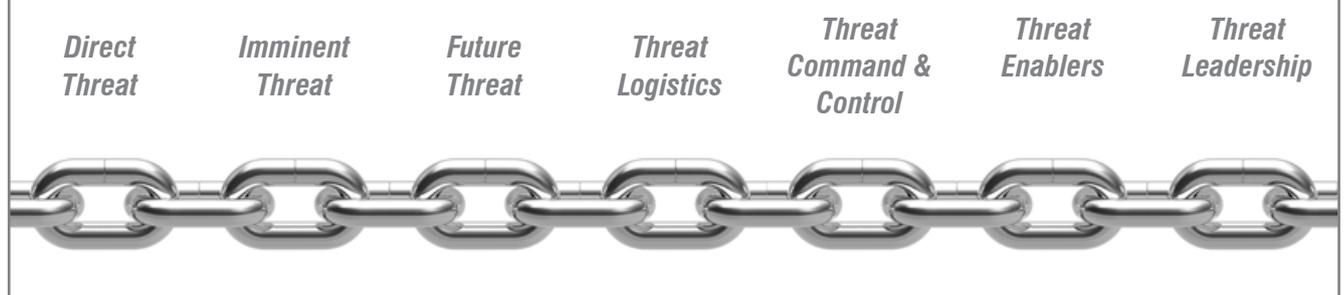
It is also important to plan for, prepare for and effectively conduct the transition to a post-conflict aftermath. Military actors tend to give this consideration short shrift because the "kinetic" phase is more immediate and in any event primary responsibility for the "rebuild" phase rests upon political decision-making and the pursuit of non-military outcomes, with

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the military largely in a supporting role. Note that suitable post-conflict "lines of effort" are probably identical to those during pre-conflict prevention, and should not be overlooked during an intervention. Upon entering a post-intervention re-building period, the international community is invariably in a "prevent" mode regarding future potential mass atrocities.

Image 2: Lines of Effort[7]

PREVENT	REACT	REBUILD
Safe and Secure Environment		
Good Governance		
Rule of Law		
Social Well-Being		
Sustainable Economy		

4. R2P Risks

Preventive and reactive international R2P efforts have numerous risks. The main potential problems generally include the following:

- Ineffectiveness - Efforts may be inadequate due to insufficient resources, ineffective implementation, or because they are too late.

- Unintended Escalation - R2P efforts can result in expanded or protracted conflict and the pursuit of other objectives.

- Collateral Damage - Military actions can result in inadvertent civilian harm. Economic sanctions may also have a greater impact on populations than on the intended targets.

- Anti-Intervention Sentiment - Actors and populations in the country of interest, the international community, and do-mestic polities may oppose R2P efforts because of their extent or nature or a perceived lack of compelling interests to justify action or sustain the necessary political will.

- Quagmire - Because of the likely intractable problems, extended efforts may be required to prevent, react to, and rebuild societies. An intervention that was originally envisioned as short, simple, and straightforward may encounter "mission creep." Failure to address the entire scope of the problem adequately (including a realistic assessment of post-intervention requirements) will contribute to a protracted and potentially futile quagmire.

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7 "Lines of effort" refer to major elements that are necessary and generally sufficient for success. The lines shown here are similar to those pre-sented in numerous documents related to stabilization and reconstruction. See especially United States Institute of Peace and United States Army Peacekeeping and Stability Operations Institute (2009).

- Stalemate - If crises are not decisively resolved or root causes are not redressed, a situation in which the threat of future mass atrocities could exist. This could also result in de facto partition of the host state which may or may not be permanent.

- Losses - Military forces employed in support of R2P will likely suffer casualties, and may be defeated when small forces are quickly committed or are in isolated locations.

- Increased Resistance because of Pride or Nationalism - Actors and populations in the country of interest may increasingly oppose "foreign occupation," even if they do not support the perpetrators of mass atrocities.

- International Community Fissures - International actors may disagree over objectives, mandates, means, implementation, and burden sharing.

- Politicization of R2P Efforts - Civilian protection concerns will likely be interwoven with other political issues. R2P efforts (including humanitarian assistance) will likely have controversial political implications.

- R2P Hijacking - Malevolent actors (including perpetrators) may attempt to cloak their goals with R2P principles (e.g., use Protection of Civilians as an excuse to crush a rebellion or suppress demonstrations).

- Negative Second-Order Effects - R2P efforts can create subsequent problems, including:

  . Negative impact on region;

  . Reluctance to take future action;

  . Deterioration of relations between global and regional actors; and

  . Government collapse (whether intended or not).

- Risks of Inaction - Inaction can be due to lack of political will or flawed decision-making processes. Consideration of the above risks may inspire caution, inertia, and inaction. Collective action might not happen if it is conditional upon a UN Security Council Resolution which is blocked by a permanent member.[8] In addition to considering the risks that may arise from taking action, it is always important to weigh the risks of inaction or token efforts when civilians are at risk from mass atrocities.

5. Responsibility While Protecting (RwP)

After the 2011 Libya intervention, the "Responsibility While Protecting (RwP)" concept emerged due to concerns about potential deviation from UN Security Council mandates, civilian casualties resulting from military operations, and NATO's reporting to and communication with the UN during the operation (Hamann, 2012). While it has been welcomed by many, RwP has been skeptically interpreted as, at best, essentially equivalent to adherence to the Law of Armed Conflict/International Humanitarian Law (LOAC/IHL) or, at worst, international backsliding to create further institutional impediments to R2P.

As discussed earlier, R2P entails a wide range of risks. RwP could be constructively applied as a comprehensive approach to implement R2P effectively and mitigate these risks. RwP measures could include but would not be limited to:

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8 The requirement for UN Security Council authorization is a highly contested topic. See discussion in Evans, G. and Sahnoun M. (2001), pages 47-55.

- Adherence to LOAC/IHL;

- Planning and preparation for likely contingencies, branches, and sequels;

- Routine coordination between OSAPG and national focal points for mass atrocity prevention;

- Effective coordination between a "deputized" political authority (e.g., a regional organization, coalition, or national government(s) and UN Secretariat;

- Exchanges of liaisons between the UN and the military force as well as its own political authority (when a military force is not subordinate to the UN);

- Efficient reporting (what has happened, what is happening, future intentions);

- Timely supplemental UNSC Resolutions as the situation evolves;

- Preparation for post-intervention transition, which may include a provision for temporary Executive Authority if such a requirement is likely;

- Quick termination of military operations and withdrawal of forces, if directed; and

- Continual nurturing of all lines of effort addressed earlier (safe secure environment, good governance, sustainable economy, rule of law, social well-being) which are commonly applicable during all R2P stages (prevent, react, rebuild).

6. Conclusion

It is commonly accepted that mass atrocity prevention is preferable to response; less commonly understood is that R2P includes prevention and that military efforts can play a role in both. It is important to learn from previous experiences (including Libya and other cases), as the possibility of future military intervention unfortunately still exists. Moreover, a credible international intervention capability (particularly if demonstrated in the past) can deter future perpetrators, and reduce the need for actual future military intervention. RwP can be a helpful concept to shape R2P efforts effectively (including military measures) and mitigate the risks of action and inaction. The key challenge is that efforts to reduce some types of risk will inevitably generate others, and an effective RwP approach will have to balance these multi-faceted risks appropriately.

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4. Peacekeeping, R2P, RwP and the Question of the Use of Force

Carlos Chagas Vianna Braga

The establishment of the United Nations (UN) and its Charter in the immediate aftermath of World War II represented significant accomplishments in the attempt to maintain world peace and resolve conflicts. Nevertheless, the question of the use of force on behalf of the international community, especially in relation to protecting civilian populations, has yet to achieve normative consensus or common ground by this very community.

The approval of the concept of Responsibility to Protect (R2P), during the 2005 United Nations Summit (UN, 2005) by 191 of the member countries is widely regarded as one of the most promising steps in establishing a new norm. The perception of the recent (ab)use of R2P in the case of Libya[1], however, proved to be a major setback. On the one hand, a political bias of the intervention, "*regime change*", was made clear at the outset. On the other hand, it was not very clear whether the objectives regarding the protection of the population were really achieved or if the situation had turned out even worse than before.

Consequently, many countries, particularly those constituting the Global South, perceive that the application of R2P in Libya was manipulated by geopolitical interests and did not fulfill its humanitarian ideals of protecting civilians. As a result, the international community is again deeply divided and the Security Council paralyzed and incapable of reaching a minimum consensus during the crisis currently developing in Syria.

In September 2011, concerned with the political and humanitarian implications of Libya and Syria, Brazil presented the innovative concept of Responsibility while Protecting (RwP). It can and has been argued that RwP complements R2P and aims to assert more international control and transparency during interventions, while deeply focusing on the perspectives of success in protecting populations when compared with the risks of degrading the humanitarian situation even further.

1 Although the UN mandate authorizing the intervention in Libya did not directly mention R2P, there was a perception among the majority of the actors that the intervention was being conducted under the general concept of R2P.

The purpose of this brief paper is to discuss the question of the use of force, applied on behalf of the international community, to protect civilian populations. In order to achieve this purpose, it will first propose a basic theoretical framework. It then considers the "evolution" of the use of force, from traditional peacekeeping to humanitarian interventions. Subsequently, it focuses on the possible implications of more recent developments, such as R2P and RwP. Finally, it concludes with some considerations from a practical field perspective regarding the use of force.

A Theoretical Framework

Peacekeeping is not war. This assertion may sound obvious to most people. Nevertheless, it is actually not so simple, especially when considering developments during the last decades regarding increasing levels of force applied on behalf of the international community. Two concepts are, therefore, essential to the present discussion: the 'use of force" and "political power".

According to some definitions the "use of force" consists of violent means applied by a politically controlled military system (Kjeksrud, 2009). The use of force is intrinsically related to political power. Norberto Bobbio understands that what distinguishes political power from other forms of power is exactly the possibility of the use of force (Bobbio et al., 1987). Max Weber considers that the political character of a social group can only be defined by a means which is specific and crucial to its essence: the use of force (Weber, 1999).

Thus, either in war, peacekeeping, or humanitarian intervention, the use of force will have a political purpose. In peacekeeping, the higher the levels of force are, more political and, consequently, closer to war it will be.

Blurring the Boundaries. Where are the boundaries between war and a robust peacekeeping operation or a humanitarian intervention which resorts to intense levels of force? It is possible to argue that occasionally, the boundaries are so blurred as to be impossible to identify. Depending on the approach or level discussed (political, strategic, tactical, etc.) and depending on the perspective (intervening actors or target state), different analysts often find very conflicting answers regarding those boundaries. The following declaration, from British General Sir Michael Rose, Commander of UNPROFOR, when addressing pressures from the US government to increase the use of force, are illustrative:

> If someone wants to fight a war here on moral or political grounds, fine, great, but count [the United Nations] out. Hitting one tank is peacekeeping. Hitting infrastructure command and control, logistics, that is war, and I'm not going to fight a war with white-painted tanks. (Barnett, 1995)

Absolute War. For his part, Clausewitz defined war, in the beginning of the 19th century, as "*an act of force to compel our enemy to do our will*." (Clausewitz, 2007). Furthermore, he maintained that "*war is simply a continuation of political intercourse, with the addition of other means.*" (Clausewitz, 2007) Almost one hundred years later, in 1919, Weber seemed to agree with him, affirming that "*for politics the decisive means is force.*" (Weber, 1919) War may be characterized, therefore, as a political phenomenon in which the use of force plays a key role.

In his attempt to provide a more precise understanding of war, Clausewitz developed the concept of absolute war, a kind of abstract, perfect, and pure model in which war consisted of a single blow of infinite force. Nevertheless, he acknowledged that real war was never absolute, due to an array of factors that contribute to moderate the levels of violence (Clausewitz, 2007). Among them, Clausewitz identified war as a:

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(…) paradoxical trinity - composed of primordial violence, hatred, and enmity, which are to be regarded as a blind natural force; of the play of chance and probability within which the creative spirit is free to roam; and of its element of subordination, as an instrument of policy, which makes it subject to reason alone. (Clausewitz, 2007)

As a continuation of politics, once the political objectives were attained, there would be no reason for a war to continue. Besides, uncertainty, chance and an omnipresent friction would act in moderating the levels of violence. In short, Clausewitz understood that, as a phenomenon of the human nature, war may be limited or unlimited, but never absolute (Clausewitz, 2007).

Absolute Peacekeeping. Peacekeeping, by contrast, had its initial conception only after World War II (Bellamy; Williams, 2010). It was envisaged exactly as a tool to prevent, manage, or to resolve violent conflicts (UN, 2008), and therefore to preserve peace. As such, peacekeeping, when compared to war in terms of use of force, was supposed to be situated on the other side of the spectrum. It was based in three underlying principles: impartiality, consent and, most importantly in the present discussion, non-use of force (Bellamy; Williams, 2010). While fully observing those three principles, peacekeeping could be apolitical.

Using the same logic of Clausewitz, one can argue that those principles simply represent an ideal and abstract form that do not actually exist in practice. Indeed, the very presence of foreign troops in uniform in a host nation already represents an act of force. It would also be impossible to reach a level of complete consent among all players and, due to its human nature, the peacekeeping force would never be entirely impartial or completely apolitical.

Therefore, in order to guide this discussion, this article proposes the concept of **absolute peacekeeping** (Braga, 2012), as a model of ideal, abstract, and perfect peacekeeping operation in which the three underlying principles are fully observed, leaving the levels of use of force in absolute zero. Of course, as mentioned, this model is virtual and unachievable, exactly like *Clausewitzian* **absolute war**. **Absolute war and absolute peacekeeping** would be positioned on opposite sides of the spectrum of the use of force. Real war and real peacekeeping are both situated inside this spectrum (see figure below).

Figure 1. Use of Force Spectrum: Peacekeeping x War (Braga, 2012)
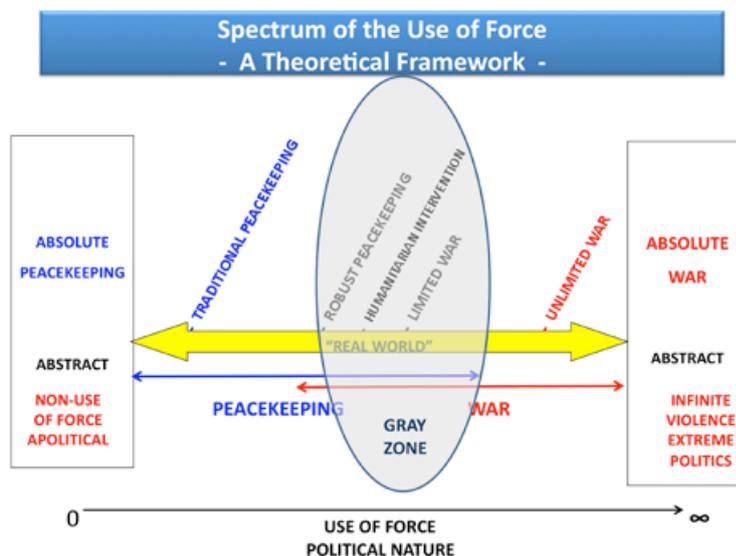
The Spectrum of the Use of Force. Depending on the levels of violence (or force) involved, a conflict would be closer to war or peacekeeping. By using increasing levels of force, the conflict tends be more political and to resemble war. Identifying the boundaries poses a major challenge. Nevertheless, one can argue that, under conditions of intense use of force, labeling a conflict as war or peacekeeping will also be, most of the times, a political decision and a matter of discourse. The abstract concepts of absolute war and absolute peacekeeping are located at completely opposite sides of the spectrum of violence. Nevertheless, real war and real peacekeeping are never absolute. A number of factors contribute to moderate the levels of violence in the first case and to include violence in the second one.

"Evolution" of the use of force after World War II:
From Traditional Peacekeeping to Humanitarian Interventions

The preamble of the Charter of the United Nations, stating the determination "*to save succeeding generations from the scourge of war*", established a clear dichotomy between war (as evil) and peace (as good). This dichotomy is aesthetically represented in the "*War and Peace*" murals by Brazilian painter Portinari, which are located at the main entrance of the United Nations Building in New York.

Nevertheless, the Charter was not fully successful in maintaining peace. Therefore, traditional peacekeeping, although not present in the Charter, was originally conceived, shortly after the Second World War, as a tool to solve conflicts without resorting to the use of force. In order to assure the approval of all five permanent members of the Security Council, early peacekeeping operations did not include prescriptions to use force, except in self-defense.

In reality, the already mentioned basic principles of peacekeeping, known by some authors as "*the holy trinity of peacekeeping*", (Bellamy; Williams, 2010) were established during this period: non-use of force, impartiality, and consent. Traditional peacekeeping tried to adhere, as much as possible, to these principles. Consequently, traditional peacekeeping also tended to be more apolitical. According to Hammarskjöld formula, the UN would temporarily intervene within states with "*no effect on internal politics*" (Pattison, 2012).

As the international scenario evolved, especially during the 1990s, new demands and opportunities and more intensive use of force were both acknowledged and even encouraged. As a result, peacekeeping, in some cases, got more political and the boundaries with war-making became more blurred. The greater the levels of force applied in peacekeeping operations, the more political it tended to be and more blurred the boundaries with warfare became.

The political uses of contemporary peacekeeping are evidence in how contemporary operations introduce expressly liberal institutions into host nations. The model of contemporary peacekeeping operations reflects the prevalence of liberal peace theories which contend that democratic states, with market economies, are less subject to conflicts (Bellamy; Williams, 2010). Consequently, the structure, the functioning and the behavior of peacekeeping operations bear aspects that are typical of liberal theories. Roland Paris affirms that:

> without exceptions, all peace building missions in the post-Cold War period have tried to 'transplant' liberal democratic institutions and values to the peripheral host nations. (Paris, 2002)

Therefore, independent of the degree of optimism or pessimism, one can argue that key elements of liberalism are present in contemporary peacekeeping: multilateralism, international institutions, democracy, free trade, and rule of law. In

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general terms, then, most contemporary peacekeeping missions will also feature, to a certain degree, a political element. As already discussed, this political orientation may be emphasized or not, depending on the levels of force necessary to accomplish the objectives.

The concept of robust peacekeeping, especially the authorization to use force in the defense of the mandate, represented an important step in increasing the levels of force in UN peacekeeping. As noted by the UN (2008):

> the use of force by a United Nations peacekeeping operation at the tactical level, with the authorization of the Security Council, to defend its mandate against spoilers whose activities pose a threat to civilians or risk undermining the peace process. (UN, 2008)

This concept was first outlined in the *Brahimi Report (UN, 2000)*. In 2008, the *Capstone Doctrine* gave the definition an official veneer, contributing to reduce the resistance of many countries in participating in more robust Chapter VII operations. All these operations could, consequently, be classified as peacekeeping, attenuating the national and international political costs of taking part in a peace enforcement operation (Kjeksrud, 2009). On the other hand, this situation naturally blurred the boundaries between peacekeeping, peace enforcement and war-making. Nevertheless, peacekeeping operations still demanded the observation of the two of the other initial principles: impartiality and consent.

The use of force, on the other hand, turns even more complex and controversial when an actor, a group of actors or even the international community as a whole decides to intervene, using force, regardless of the consent of the host nation, to protect its own population. Those situations have initially received the general designation of "humanitarian interventions". The concept of humanitarian intervention is fundamentally different from humanitarian assistance, not necessarily in relation to its ends, but owing to the means involved. Humanitarian interventions may be defined as armed interventions of a state, group of states or international organizations in the territory of another state, in order to repress violations of human or humanitarian rights (Sandox, 1992).

Humanitarian interventions use force to achieve objectives and involve, therefore, critical political aspects. During the last decade, the term humanitarian intervention acquired a negative connotation, especially due to its political (mis)use by more powerful countries. In 2004, for instance, Beat Schweizer, former Deputy Director-General at the International Committee of the Red Cross (ICRC), alerted that "*the ´humanitarian label´ has been increasingly used by Western governments to legitimize a new and sometimes controversial security agenda.*" (Schweizer, 2004)

Humanitarian interventions ultimately generate two basic questions that go unanswered. First, to what extent can the use of force effectively ensure the protection of a certain group of civilians rather than contribute to worsen the humanitarian situation of the same group or even other groups? As stated by Andrew Linklater, "*humanitarian wars cause misery and human suffering, however noble the intentions are.*" (Linklater, 2007) The result of the equation can certainly be an exponential degradation of the humanitarian situation, the exact opposite of the supposed purposes of the intervention. Second, what are the political considerations that lead to the decision to use force to protect certain groups and not to protect others? For Mohamed Ayoob, humanitarian interventions ultimately establish in practice a system of "selective security", operated by Northern countries, rather than a desirable collective security (Ayoob, 1995).

R2P, Libya, and RwP

The ICISS proposed, in 2001, the concept of Responsibility to Protect (R2P) following a demand from the UN Secretary--General who emphasized the need for a minimum international consensus regarding the protection of populations facing mass crimes and atrocities.). One of the basic ideas outlined in the ICISS report was that "*the principle of non--intervention yields to the international responsibility to protect.*" (ICISS, 2001)

After some initial resistance and some modifications, R2P was finally adopted by the UN World Summit in 2005. R2P emphasizes the preventive character of the protection of populations and the responsibility of the state, while seeking a consensus to act in humanitarian crises:

> Clear and unambiguous acceptance by all governments of the collective international responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Willingness to take timely and decisive collective action for this purpose, through the Security Council, when peaceful means prove inadequate and national authorities are manifestly failing to do it. (UN, 2005)

In 2009, UN Secretary-General Ban Ki-moon presented R2P as a three-pillar approach: primary responsibility of the home country, responsibility of the international community to support the government of the country, and responsibility of the international community to take action if the government manifestly fails in protecting its population. R2P can be interpreted as an important attempt to reduce the political character of interventions and to grant them more legitimacy. Although R2P proponents such as Gareth Evans frequently advocate that "*humanitarian interventions are dead*" (especially due to the negative connotations of the expression), they also admit, when confronted, that R2P third pillar, when used, may ultimately result in a humanitarian intervention (Evans, 2012).

The central questions regarding the use of force naturally surface in the application of the third pillar. For example, the use of R2P in Libya demonstrated that the concept could not prevent political (politicized) humanitarian interventions. Furthermore, it is still not clear whether it was successful in protecting populations or whether the intervention instead created a much more complicated humanitarian situation, with thousands of refugees and human rights abuses from all sides.[2] Conflicting reports are still surfacing. The consequence of the Libyan intervention was to degrade the nascent legitimacy of R2P.

Against this backdrop Brazilian proposal of Responsibility to Protect (RwP), presented in 2011 represents an important innovation in an attempt to prevent the careless, indiscriminate, and especially political proliferation of humanitarian interventions. One of the main aspects of RwP is the sequential approach regarding R2P pillars[3]: the second pillar would only take place after the first one; and the third pillar would only take place after the others have failed. RwP primarily defends the enhancement of prevention and peaceful settlement of disputes, so that the use of force would occur only in exceptional cases, necessarily authorized by the UN Security Council (UN, 2011). In such situations, force would be employed within clearly established boundaries and military action should not, under any circumstances, cause greater damage than those who sought to avoid. Thus, one can argue that RWP and R2P are complementary, and should always be considered together.

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2 Furthermore, the fall-out now has regional implications, including in Mali, Algeria, and across the Sahel.

3 During the Seminar, some speakers argued that Brazil had withdrawn from this sequential approach. Nevertheless, no official document or declaration was ever presented by Brazilian representatives.

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The Brazilian initiative generated immediate reactions, since it was interpreted as a move to limit the freedom of action of the great powers. Thus, it encountered immediate support from many countries of the Global South and faced strong initial resistance from the P3 (US, France and UK). Over time, and especially with the stalemate and paralysis of the UN Security Council in relation to the case of Syria, the Brazilian initiative came to be considered more seriously even by P3, once it represented a possibility of restoring the minimum consensus lost in the aftermath of the Libyan crisis.

From a use of force perspective, the main aspect of either R2P or RwP is naturally the third pillar. It is within the third pillar that force will ultimately be employed. With its emphasis on prevention, R2P intends to have more international legitimacy than former humanitarian interventions when using force. The intervention in Libya proved, nevertheless, that R2P was insufficient. RwP aims, not only to restore legitimacy, reducing its possible political component, but also to make sure that all available resources are exhausted before force is finally authorized. Furthermore, RwP, in cases in which force is finally authorized, is deeply concerned with the monitoring, control, and limitation of its use and in avoiding complicating the humanitarian situation even further.

Use of Force: Some practical field considerations

This paper is not advocating total lack of use of force in peacekeeping. That would be a utopian assumption, disconnected from present challenges in the real world. Beginning with a strict military approach, it is important to acknowledge that, in order to face current challenges, a well-trained military force must be capable of conducting activities across almost the full spectrum of military operations. Those activities may range from emergency humanitarian assistance to high-intensity operations with a concentrated tactical use of force. Therefore, at the tactical level, an adequate balance of kinetic (combat) and non-kinetic continues to be paramount. At the strategic level, some authors would classify this balance as "smart power".[4] In many instances, the use of force represents an important tool, especially in discouraging occasional spoilers of the peace process and in the protection of civilians at the tactical level. Furthermore, the robust and proportional use of force, whenever necessary, constitutes an essential instrument, in order to assure the credibility of the military force and, consequently, of the whole peacekeeping mission.

Nevertheless, beyond certain levels, the use of force ceases to contribute to the success of the mission and creates major distortions. In terms of the humanitarian situation, it may result in scenarios even worse than the ones that allegedly triggered the operation. The final consequence is that an operation that was originally conceived to be peacekeeping and/or third-pillar R2P/RwP may rapidly bear most of the characteristics of a war. Mandates with strong political and major use of force requirements should, therefore, be avoided. Peacekeeping is certainly not the adequate tool to address those problems. The levels of political use of force that can turn peacekeeping into war and the boundaries between peacekeeping and war may be so blurred that precisely identifying them turns to be, as shown in this brief paper, almost impossible.

Furthermore, recalling the aforementioned peacekeeping-war spectrum, one may arrive at paradoxical situations, in which intervening actors are, from their own perspectives, conducting a robust peacekeeping and/or R2P/RwP operation, while the target nation is, in its own view, waging a war, sometimes even unlimited war (in *Clausewitzian* terms) for the survival of the state (or regime). Humanitarian problems could then turn much worse than in the initial scenario, since from the perspective of the head of the targeted regime (especially totalitarian ones), the survival of the state (or regime)

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4 Joseph Nye defines the term as "the ability to combine hard and soft power into a winning strategy."

will have absolute priority over humanitarian considerations (witness, for example, Muammar Kadafi's behavior during the Libyan crisis and, currently, Bashar Al Assad in Syria).

The intense use of force, even at the tactical level, also tends to create obstacles and other collateral consequences. First of all, at the highest political and diplomatic level, as already discussed, many countries are not comfortable in participating or even legitimating operations which requires higher levels of use of force. Additionally, in the field, many '*peace partners*'[5] are unwilling to operate together with a military component that is resorting to a high levels of force, contributing to complicate the humanitarian situation even further. Some organizations, such as the ICRC recognize that neutrality, impartiality and independence are paramount for success in their own mandates and, of course, consider close cooperation with a military component that is resorting to increased force far from being neutral (UN, 2009). Besides, the use of force also creates problems of its own, in terms of infrastructure, power, water, health and food.

There are other practical consequences at the level of the military force. UN peacekeeping symbols, such as blue helmets and white vehicles, have been created with the intention of permitting all parties to readily identify UN peacekeepers, representing a protective measure. This changes, however, when peacekeepers resort to the use of force. If peacekeepers are using force consistently, normally it is because other parties are also using force against them. In such cases, blue helmets and white vehicles represent easy targets rather than bestowing protected status, as originally conceived (Braga, 2010).

In conclusion, if on the one hand it is hard to deny the importance of the use of force for the success of contemporary peacekeeping and/or third-pillar R2P/RwP operations, especially in the protection of civilians. At the same time, the use of force beyond certain levels submits all participants to war-like procedures and generates distortions in all levels, from the international politics to the tactical level. Beyond a certain point, the negative results tend annihilate the beneficial ones. James Der Derian alerts to the risks of a dangerous belief that the use of military force "*can supernaturally solve the most intractable political problems*" (Der Derian, 2010).

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5 Such as the international organizations and non-governmental actors, with humanitarian purposes, which are also present in the field, during the peacekeeping mission.

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5. Implementing R2P: A vision for how military force might be applied[1]

Carlos Augusto Godoy Júnior

Introduction

The "**responsibility to protect**" (R2P) (and "**responsibility while protecting**" - RwP) concept sets out a key principle to enable the international community to prevent atrocity crimes. Since its emergence, however, there have been intense discussions over how to put the principle into practice. Some aspects of the concept remain unclear, including how to undertake, as the last resort, the use of military force. These issues must be considered within the boundaries set by R2P which seek at all costs to avoid the use of force for other reasons than ceasing mass atrocity crimes.

The use of force, therefore - including possible military action by the international community, given growing international reluctance to accept grave threats to peace and security, including mass crimes against defenseless populations - have to be thoroughly analyzed and comprehended.

Even so, the exhaustion of less sovereignty-intrusive means than military force actions will depend on the effectiveness of political and diplomatic tools. Ultimately, the military must be aligned with other activities and be prepared to act, at the last resort, in such a way that it causes minimum damage to life and property.

In the next paragraphs there is a general overview of the concept of the use of force, the sequence of measures to be followed in a R2P situation before betaking to the military force and the principles, for more controversial they might be, which are the boundaries to the proper use of force.

Then, a specific perspective over the use of force is explored, presenting some military operational issues and concerns that need to be fulfilled to a successful use of the military force in a R2P operation.

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1 Disclaimer: This paper reflects the author's personal opinions and is not the official view of the Brazilian Army or armed forces.

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Brief reflection on the use of force

There is no clarity in UN resolutions and reports on R2P of a force intensity level-based sequence to be followed to guide a military engagement. Indeed, there is no clear guidance about how precisely the international community should "**respond collectively in a timely and decisive manner when a state is manifestly failing**" to provide protection to its population from the four crimes listed in the first of the three R2P pillars. The three pillar strategy states only that military force is just one of the "timely and decisive tools" that an international coalition can apply.

It should be noted that the use of military force often involves a high expenditure of human and material resources. It also necessarily entails the possibility of generating damage that can worsen the effects of the crimes committed against victimized populations. The hasty resort to the use of military force can generate extremely damaging medium-term consequences, as seen in recent history, both for troop contributing countries and states involved[2].

Given the implications of coercive military force in relation to state sovereignty and collateral effects, it is right that it should be understood as the last and most extreme resource for an R2P intervention. Indeed, it should only be contemplated if all the following conditions - as strongly emphasized in the RwP concept - are fulfilled:

1. The inability or unwillingness of the state involved to protect their populations from genocide, war crimes, crimes against humanity and ethnic cleansing - hereafter referred to as "**4 crimes**" (first pillar of the concept);

2. The exhaustion and inefficiency of all measures triggered by the international community to support the state involved in the execution of its responsibility to protect (second pillar);

3. If, despite the international community applying applicable means from the range of peaceful, non-coercive and non--military coercive possibilities contained in the UN Charter, the 4 crimes continue being committed.

To uphold what is established under the second pillar of R2P also can involve the use of military force. In this pillar, through a combination of persuasion and partnership, and with the explicit consent of the state involved, the employment of troops to prevent the ongoing occurrence of any of the "4 crimes" (as in a preventive deployment of troops, after the acceptance of the host state), or even to support the establishment of security structures.

With regards to the use of military force, acting coercively, under the third pillar of R2P (considering exhausted all the less aggressive possibilities for its exercise), in the next section, several aspects that must be considered will be presented.

At the outset, it is essential to obey the following limitations on the use of force imposed by the international community, as established at the World Summit Outcome Document of 2005 (principles for military intervention contained in the Just War Theory). The principles include

- Just cause, when it is necessary to intervene to stop a massive violation of the human rights of certain populations;

- Legitimate authority, represented here by permission of the Security Council of the United Nations,

- The right intention, that is, stopping human suffering or mass loss of life;

- Proportionality, which implies the use of means compatible with the level of the threat;

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2 The 2003 invasion of Iraq represented an extreme example of high expenditure of resources and life losses, both for the coalition and the local population. The 2011 operation in Libya also turned away from its objectives generating intense social damages to the locals.

- Probability of success or balance of consequences, which implies that the force only must to be employed when the action has a likelihood of success and the resulting benefits will outweigh the damage entailed, and

- The strength to be used as a last resort, after the exhaustion of all peaceful and non-military options.

Also present in international law, **necessity** is another principle that must be met for the authorization to the use of force. This is because it justifies its use, in the case of an emergency situation, through an extraordinary action to protect the essential interests that are in danger of irreparable damage. Similarly, the use of force should always show strict adherence to the International Human Rights Law (IHRL) and International Humanitarian Law (IHL).

Some of these principles, however, carry a great deal of subjectivity, particularly when it comes to the "**last resort**", the "**right intention**" and "**proportionality**". By turning to a recent historical event (the international intervention in Libya, based on the contradictory criteria of **last resort** and **proportionality**)[3], in compliance to the concept of R2P, it is essential that a chronological intensity level-based sequence of measures be thoroughly applied before the resort to the use of military force, in order to avoid its premature deployment, its use to pursuit civilian targets (revealing interests which are not consistent with the aims of R2P) and the use of equipment in such intensity that it will cause irreparable harm to the population to be protected and the public property of the state involved. And this probably will render impossible, in the medium term, the efforts to the *responsibility to build*, also included in the concept of R2P. Indeed, these are amongst the highest concerns we have to consider when applying military power in such a situation.

The use of military force must obey a progressive scale of intensity to be employed. When authorized by the UN Security Council, considerations of the use of force must, in a broad sense, also account for different modes of application. Indeed, Chapter VII of the UN Charter establishes distinct degrees that could be applied: with **lesser intensity**, demonstrations of force, terrestrial/aerial or naval blockades, preventive deployments of troops, enforcement arms embargos and, with **greater intensity**, military operations themselves. The problem, from the perspective of the military, is to evaluate, under the aforementioned **principle of balance of consequences**, what will be the cost for delaying an effective attack (forceful action while mindful of its excess or abuse), *versus* employing a lesser degree[4] of force that might allow the continuation of the aggression to the assets which should be protected. Perhaps, the level of the threat to the assets one wants to protect may bring the answer to this question.

Using Military Force in R2P Operations

The use of military force in the interest of the international community will most likely persist as *robust peacekeeping missions or peace enforcement operations*. Robust peacekeeping operations (however controversial the definition of robustness may be) are deployed with the consent of the state (or the "parties") involved and should be understood as peacekeeping forces that are able to use force, at the operational level, to protect themselves, ensure freedom of movement and prevent situations that generally hinder or obstruct, by the action of opposing forces, the implementation of a given mandate. Meanwhile, peace enforcement operations do not require the explicit consent of the state involved, and

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3 The members of the coalition agreed that there would be military support to Gaddafi opposition forces but the military deployment of forces was sees as disproportionate. The use of inadequate means demanded heavier military effort to achieve the operation goals. There was clearly a contradiction on the **last resort** and **proportionality** criteria.

4 Less intrusive military measures, as no-fly-zones, have proven to be insufficient. Although such measures were in place, ethnic cleansing occurred in Srebrenica and Kosovo.

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often require powerful measures in the use of force at the strategic level to achieve the political goal of the mission. While the concepts are similar, the level of threat to justify Peace Enforcement Operations is significantly higher.

It is necessary to define, in a consensual, accurate, comprehensive and detailed manner, which situations and circumstances may allow the use of military force under R2P. And once such a situation is determined, it is then critical to specify what the types and limits of military action are likely to be. The effectiveness of the military force to be employed also depends on other conditions that should be defined:

- Configuration (structure, troop strengths, equipment),

- Readiness level (the ability to be deployed on a short notice basis),

- Training (suitable for the necessities presented during R2P missions),

- Mandates (clear and precise in describing the political aims, which must conform to R2P, the extent and limits to the use of the means under Chapter VII, the means of controlling the use of force and how it will be controlled),

- Rules of engagement (clear, accurate and proportional to the type of mission that will be accomplished, to the aims proposed under the mandate and appropriate to the configuration of the military force) and,

- Mechanisms for civil-military coordination (which provide the highest degree of coordination and cooperation between the elements present in the theater of operations).

A number of operational conditions must also be met. Indeed, these include the **issuance of specific operational guidelines on the protection of civilians; establishment of concepts of military and police operations; and standardization of doctrine and training focused on R2P**. These needs grow in importance when one considers that military actions undertaken to protect civilians have specific aims which distinguish them from peacekeeping or peace enforcement operations. Protection operations will generally require a higher force capacity to achieve quick success, with minimal loss of civilian lives and a low rate of material damage, in order to gather public support and help in the efforts of post--conflict reconstruction.

Another related topic is the **negotiation of a memorandum of understanding between troop contributors and DPKO for these specific operations**. The negotiations leading to those agreements should ensure that the troops to be deployed have the capabilities required to implement the R2P operations' mandates (aiming at the provision of support to troop contributors, so that they are able to deploy better-prepared troops). A theme for further reflection is how to prepare troops for this type of mission. Indeed, they demand rapid deployment, since the time they may be required cannot be easily predicted and may require years of investment with the possibility of non-deployment.

The protection of civilians, although it presents conceptual differences with regards to R2P, also bears some similarities. Indeed, it may be possible to train future military forces for the execution of both operations so that courses are shared and simplified. This could also enhance activities undertaken by military forces when confronted with changes in the operational theatre. Indeed, precisely such a change occurred in Libya in 2011 when the Security Council adopted Resolution 1970 to cope with a situation that falling within the R2P concept, and then, as the country descended into civil war, the Council issued Resolution 1973, invoking protection of civilians.

Conclusion

Military force is the most extreme and consequently the last resort to protect civilians. It is important to for decision makers to carefully consider the field perspective when planning complex operations: this requires assessing the volatility of the situation on the ground.

Troops have to be able to face different threat levels because the possibility of an increase on the demand to force and population protection levels, that cannot be precisely predicted, will be always present in a R2P-type operation. Due to this, decision makers have to carefully consider the military commanders assessments, providing them with a properly equipped and manned force[5].

Once there is a political decision to task a military force to execute an R2P operation, the use of force control mechanisms should be evaluated in relation to the demands that a successful operation entails with adequate and timely disbursement of resources. The balanced solution will allow the deployment of a proportional force, capable to timely and decisively control the theatre, protecting the populations against mass crimes.

Even where there may be consensus in an R2P operation where military force is sanctioned, it is essential that instructions be clear, precise and realistic. There must be an attempt to, avoid ambiguities and opaque language, so that the use of force might be best suited to the quick achievement of the objective of the mission whether robust peace keeping or a peace enforcement operation. Only then will it be possible to ensure minimal loss of life and damage and to accomplish the task with the minimum use of force.

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5 The apprehension of the decision makers to deploy a no proportional force in the peacekeeping mission in the former Yugoslavia led to an insufficiently equipped and manned force, unable to adequately accomplish its protection tasks.

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6. The Doctrine of Responsibility to Protect and the Use of Force

Per M. Norheim-Martinsen

Introduction

To date, the debate on the Responsibility to Protect (R2P) has largely been about the big questions - whether the use of military force can be justified in instances where human lives are at risk, even if it means attacking sovereign states. In this context, the Brazilian initiative on Responsibility while Protecting (RwP) represents a welcome reinforcement of the fundamental principles of international law in R2P. Perhaps more importantly, RwP introduces an "alternative discourse", as some choose to put it, which makes it possible to disentangle R2P from the precedents set by the situations in Libya and Syria - and thus hopefully save it from the current impasse (Hamann, 2012). As a rescue operation to salvage what is left of R2P, a renewed emphasis on its core principles is absolutely necessary.

However, the problem with this largely normative debate is that we tend to lump all the different categories contained in R2P - genocide, war crimes, ethnic cleansing and crimes against humanity - into one basket. At the same time, military force is treated indiscriminately, as a blunt tool to be used as a last resort once all other options are exhausted. Yet to be able to identify the utility of force in protecting civilians, we need to distinguish between different forms of violence against civilians, and why they are being *attacked* in the first place (Beadle, 2011). Only then can we find the right type and amount of force to *protect*. The question is not how many bombs must be dropped, or how robust a force needs to be, but *how* force can be used to create a *condition* in which civilians are protected from harm. This ultimately means forging a stronger link between the concepts of Protection of Civilians (PoC) and R2P.

The link between R2P and PoC

The concepts of PoC and R2P share the same normative foundations. But whereas R2P concerns *jus ad bellum*, the right to go to war, PoC concerns *how* civilians can be better protected in war, regardless of the reasons for doing so. As such, PoC exists separately from the debate on R2P, insofar as

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it is a moral and legal imperative under international humanitarian law. Nevertheless, protection of civilians is a relatively new task for military forces. Accordingly, there exist few doctrines, guidelines or concepts for protection, even if it is an important objective in the mandate in most UN operations today.

Historically speaking, protection as a principle and objective in war emerges out of what Rupert Smith has dubbed a move from industrial warfare to war amongst the people. In today's wars, "civilians are the targets, objectives to be won, as much as an opposing force", to use Smith's own words (Smith, 2005). In these wars, we are no longer faced with enemies in the traditional sense, but perpetrators for which violence against civilians is a strategic choice. To find utility of force in these situations, we need to know *why* they choose to attack civilians in the first place.

Sun Tzu formulated the famous proverb "Keep your friends close, but your enemies closer" some 2000 years ago. Contemporary scholars have also started to look into the particular dynamics of certain forms of violence against civilians, most notably genocides, to start formulating appropriate military responses. The Mass Atrocity Response Operation (MARO) project developed by the Carr Center for Human Rights Policy at Harvard Kennedy School is one pertinent example in this regard.[1] However, a broader approach developed by researchers at the Norwegian Defence Research Establishment (FFI) is a good starting point for drawing out some key points, which may serve to highlight the diversity in violence against civilians and their response (See Beadle, 2011; Kjeksrud and Ravndal, 2010; Kjeksrud et al., 2011).[2]

Logics of violence against civilians

In general, we can distinguish between two different logics of violence. First, there is the ends-based logic, where the perpetrators attack civilians as an end in itself, because they 'have to do so' to achieve their goals. This is typically seen in genocide (Rwanda) or ethnic cleansing (Milosevic in Kosovo). Second, there is the means-based logic, where the perpetrators merely attack civilians as a means to achieve something else. This is typically seen in insurgencies (Afghanistan), where indiscriminate attacks on civilians may simply serve the purpose of weakening their trust in the state, or an intervening force to provide them with what they need. The particular dynamics between insurgency and counter-insurgency (COIN), such as the importance of winning hearts and minds, have received renewed attention with the operations in Afghanistan and Iraq.

Then again there are armed conflicts in which the logics of violence are not so clear cut, and this may also change over time. But as a rule of thumb, experience shows that there is little point in trying to ameliorate or contain a perpetrator who has already decided that he must destroy or expel a certain group of the population. Indeed, using diplomacy, or in other ways trying to convince the perpetrator to stop the violence, will only allow him more time to carry out his mission. In these instances, civilians are often better protected indirectly, by using offensive tactics to deny the perpetrators the capacity to attack, instead of offering physical protection to the population. Overwhelming and resolute use of force may in these instances work well.

However, if the perpetrator uses violence primarily as a means to destabilize the security situation, excessive use of force will only lead to more civilian casualties. Seeking to destroy the enemy militarily, or forcing him into submission by provoking confrontations, will inevitably lead to loss of civilian lives that would otherwise not have occurred. In these

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1 See Sewall S., Raymond D. and Chin S. (2010).

2   For a brief description of the project, see <www.ffi.no/no/Prosjekter/CHIPS/Sider/default.aspx>.

operations, winning the support of the people is the end for which military forces fight. In these situations, civilians are better protected directly through physical presence on the ground, and working through alternative channels to force a political solution to the conflict. In these situations, the less force you use the better.

The case of Libya

Notwithstanding the differences in how the situation was perceived by various onlookers, Libya may serve as a useful example for highlighting the dynamics between why perpetrators attack civilians and appropriate military responses. Faced with the situation in Libya, the initial assumption was that to protect civilians from attacks by the Ghadafi regime would primarily involve defensive use of force in line with the mandate, which stipulated the enforcement of a no-fly zone, defence of Benghazi by denying Ghadafi's forces the right of free movement on the ground, and enforcement of the arms embargo by deploying naval vessels outside the Libyan coast. The hope was that Ghadafi would eventually be compelled to enter into a political settlement.

However, this was before the realization that the regime was fighting its own people, which Ghadafi and his peers seemed compelled to destroy to secure its own survival. In this situation, direct protection of the population by way of airpower was at best insufficient, while *indirect protection* was only possible through defeating the regime militarily through offensive use of airpower, the only military instrument available to the intervening force.

In both perspectives, the decision to explicitly avoid the deployment of ground forces - although quite understandable for reasons of avoiding allegations of an invasion in the guise of protection - went against some of the very few best practices we have on military protection of civilians. Although one should be careful to say that the collation had no choice but to remove the regime in the end, an alternative reading of the situation suggests that the way in which the coalition was mandated to use force was ultimately the wrong recipe for this type of situations, and that this left the intervening force with very limited options for protecting civilian Libyan lives as the conflict evolved. The problem was not the use of force itself, but the way in which force was used, which, in turn, reflects our continuing lack of understanding of the utility of military force for protecting civilians.

Concluding remarks: Lessons for R2P and RwP

If we take these insights and apply them to the current debate on R2P/RwP, some key points stand out. First of all, a point raised at several junctures in the contemporary debate about R2P is the implicit sequencing of the Brazilian RwP initiative. Although caution is always advisable in situations where the use of force is considered, the principle that force should first be used once all other options are exhausted does run the risk of new grave protection failures in situations where we are up against perpetrators who follow ends-based strategies of violence, typically genocide or ethnic cleansing. Responsible use of force while protecting should also mean timely deployment of robust force when needed.

This leads onto a second point. Better appreciation of the utility of force in protecting civilians would be necessary for the development of appropriate mandates for eventual future R2P operations. Indeed, better results in protecting civilians in existing operations would also increase the legitimacy of R2P. At the moment, we have little grounds to believe that R2P operations will actually produce the results we want.

Nevertheless, there is currently an increased focus on the development of doctrines and guidelines for protecting civilians. With the attention that RwP has got, and considering the legitimacy that follows from being a non-aggressive

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state, Brazil has a unique opportunity to set the agenda for R2P *and* protection in the future. This should also include highlighting the utility of force for protecting civilians, even if it means, at times, a robust and timely military response.

Finally, Brazilian Armed Forces in action in the UN peacekeeping mission in Haiti have in periods been faced with considerable challenges of protecting civilians in what must be seen as a difficult environment, including urban violence, vast human suffering from natural disasters, and a difficult political terrain (Norheim-Martinsen, 2012). This should suggest that Brazil has also much to offer in terms of best practices for protection on the ground. This could serve as a point of departure for cultivating the link between PoC and R2P, and hopefully move the debate onto a more practical track.

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7. Fighting for Their Lives: R2P, RwP and the Utility of Force to Protect Civilians[1]

Max Kelly

Despite its endorsement at the 2005 United Nations (UN) World Summit, the controversy surrounding the 2011 military intervention to prevent atrocities in Libya demonstrates that the *Responsibility to Protect* (R2P) remains deeply contentious. Many member states believe that the use of force by members of the NATO-led coalition exceeded the mandate provided by Security Council resolution 1973 (2011). Similar objections have been raised regarding the actions UN peacekeepers took to end Laurent Gbagbo's attacks against civilians in Abidjan in April 2011. As a result, the legitimacy of using force to uphold R2P is being questioned, even when authorized by the Security Council.

Brazil's *responsibility while protecting* (RwP) concept reflects many of the objections raised to the operations in Libya and Cote d'Ivoire, and proposes a series of guidelines for both when and how force should be used to prevent atrocities in the future. Some of the proposed guidelines restate long--standing international law, or principles that appeared in the original 2001 ICISS report. Others - such as requirement to exhaust all peaceful means before resorting to force - have proven at least as contentious as the aspects of R2P it seeks constrain.

More fundamentally, while RwP raises a number of *substantive* questions about the consequences of military interventions to prevent or halt atrocities, it proposes *procedural* solutions to address them. In doing so, RwP misses the key lesson of the last two decades of crises in peacekeeping and atrocity prevention: the credibility and legitimacy of the United Nations depends on its ability to respond effectively. It follows that UN procedures should be designed to enhance that effectiveness - that form should follow function.

This lesson is repeated over and over in UN reports on the organization's abject failure to effectively respond to atrocities during the 1990s.[2] Con-

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1 The views expressed are those of the author and do not reflect the official policy or position of Booz Allen Hamilton, the Department of Defense, or the U.S. Government.

2 For examples, see the International Commission on the Balkans (1996), United Nations

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sistently privileging procedure over effectiveness, those failures threatened to discredit the UN as the competent authority to address challenges to international security, and led to the creation of the R2P norm. And notwithstanding R2P's adoption and evolution, the crisis of legitimacy has continued essentially unbroken for UN peacekeeping. Under-resourced peacekeeping operations continue to struggle with how they can and should apply force to protect civilians in a range of challenging political and security environments.[3]

This is not to suggest that improving procedure and effectiveness are inherently contradictory goals. Certainly in a UN context procedure and effectiveness are interdependent, and better decision-making at the Security Council would contribute to better outcomes in the field. However, if procedural guidelines for the implementation of R2P are intended to support rather than undermine the fundamental goal of protecting civilians, they should be designed to enhance the effectiveness of responses. First and foremost, this requires analysts and decision-makers to understand the nature of the threat to civilians and realistically assess how it can be mitigated.

By these criteria, RwP and the associated critique of recent operations ignore the hard lessons of recent decades about what is required to effectively protect civilians and prevent atrocities. Assertions that operations in Libya and Cote d'Ivoire exceeded limited mandates to protect civilians; that all peaceful means should have actually been attempted[4] before resorting to force; and that any use of force should be governed by a 'do no harm' approach demonstrate a fundamental disconnect between the political dialogue around R2P and the realities on the ground.

To develop a coherent approach to operationalizing R2P in the future, the policy community will have to overcome fundamental misconceptions about the utility and limits of military force to protect populations under threat. This paper will address those misconceptions in three interconnected areas. First, it will explain how a closer analysis of why perpetrators are attacking civilians can help assess when and how to use force to stop them. Second, it will discuss the general requirement to combine offensive operations that neutralize the source of threats with defensive operations to protect civilians. Finally, it will discuss the fallacy of applying the 'do no harm' principle to R2P given the risks and uncertainty inherent in any military operation.

To understand when military force may be necessary and how it can be employed to protect civilians, policy makers and military commanders alike need to begin with an understanding of the strategic logic behind the violence. The goal of any operation to protect civilians or prevent or halt atrocities is to prevent perpetrators from carrying out their intentions. As depicted in Figure 1, this can be accomplished through a combination of military and non-military means to:

- Reduce the vulnerability of the population;
- Alter the perpetrator's intent to commit atrocities;
- Reduce the perpetrator's capability to commit atrocities.

In most scenarios it is impossible to completely eliminate the vulnerability of the population to attack. However, developing an effective strategy requires deciding whether to focus on changing a perpetrator's intent or eliminating its

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(1999), United Nations (1999)-1 and Holt V. and Taylor G., with Kelly, M. (2009).

3 For further details, see "Case Study 2: United Nations Organization Mission in the Democratic Republic of Congo" in Holt V. and Taylor G., with Kelly, M. (2009) and Boutellis, A. (2012).

4 As opposed to assessed for their feasibility, viability and effectiveness in addressing the threat to civilians based on a detailed understanding of the situation.

capability to attack civilians. Selecting the most effective approach depends on understanding the perpetrator's motives.[5]

For some perpetrators, violence against civilians is *instrumental to their goals*: it's not the only way to achieve them, but perpetrators perceive it as the best or easiest option. In such cases, the threat of coercive force (or other measures) may deter the perpetrator from continuing the attacks. Alternatively, limited operations to raise the costs of attacks against civilians may compel the perpetrator to find an alternative way to achieve its objectives.

For other perpetrators, violence against civilians is *intrinsic to their goals*. Examples include sectarian violence, ethnic cleansing, and genocide. In these cases, regardless of reality the perpetrator has come to view the very existence of a portion of the civilian population as a threat to its interests and set about destroying it. In these cases, much greater levels of coercion are likely required to compel the perpetrator to reevaluate not only its methods, but its fundamental goals as well. Where perpetrators prove unwilling to change their intent or are assessed as entirely committed to continuing the attacks, nothing short of outright defeat of the perpetrator's capabilities will suffice to end the threat. Similarly, where attacks against civilians are *intrinsic to an armed actor's existence*[6] anything short of outright defeat is unlikely to mitigate the threat.

In reality it can be difficult to clearly define where perpetrators fit on this spectrum, and motives can differ across factions or levels of command. Notwithstanding that ambiguity, carefully assessing why a perpetrator is attacking civilians can be critical to understanding what will be required to mitigate or end the threat, to include the level of force that will be required, how it should be applied, and the risks of escalation or retaliation against civilians. This in turn should inform both the political strategy to resolving the crisis, and more specifically how a military operation mandated to protect civilians balances between tactical and strategic approaches to achieving that goal.

Operation Unified Protector (OUP) in Libya provides an example of how an operation can evolve over time as the assessment of the perpetrator's motives changes.[7] OUP initially focused on the tactical protection of populations at risk in Benghazi and Misrata. This reflected an assumption that Qaddafi's decision to use massive violence against Libyan civilians was purely instrumental - a means to quash the rebellion. As the siege of Misrata continued, OUP shifted to an approach that mixed tactical and strategic protection, targeting Qaddafi's capabilities more widely and seeking to compel Qaddafi to a negotiated solution.

OUP's assessment of the regime changed as the crisis dragged on over months of inconclusive fighting and Qaddafi rebuffed diplomatic overtures to find a political solution. Moreover, Qaddafi's orders reflected an unwavering intent to attack civilians who supported the rebellion. OUP widened its target set again to include strategic command and control, reflecting the conclusion that the threat to civilians would only end with Qaddafi's defeat. As the commander of OUP, Lieutenant-General (ret'd, Royal Canadian Air Force) Charles Bouchard explained,

> There were some out - exits ramp for this regime, if this regime had chosen. This regime could have chosen to stop the violence and sit down. In fact, we talked in the early days of creating an environment for diplomacy and dialogue to take place, so that we can find a way out of this without having to resort to kinetic actions…But the regime insisted, until its last possible moment, to inflict casualties…I guess you could paraphrase it by saying, you know: ***regime collapse if necessary, but not***

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5 For a fuller explanation of this typology of motivations and examples, please see Kelly, M. with Giffen, A. (2011).

6 As in groups dependent on forced recruitment, forced labor, criminal exploitation, or looting to sustain their continued existence.

7 For a timeline and extensive discussion of various aspects of OUP, see Johnson A. and Mueen S. (Ed.), (2012).

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necessarily regime collapse, in terms of accomplishing the effects that we set to do [emphasis added].[8]

Figure 1: Tactical and Strategic Approaches to Protection of Civilians
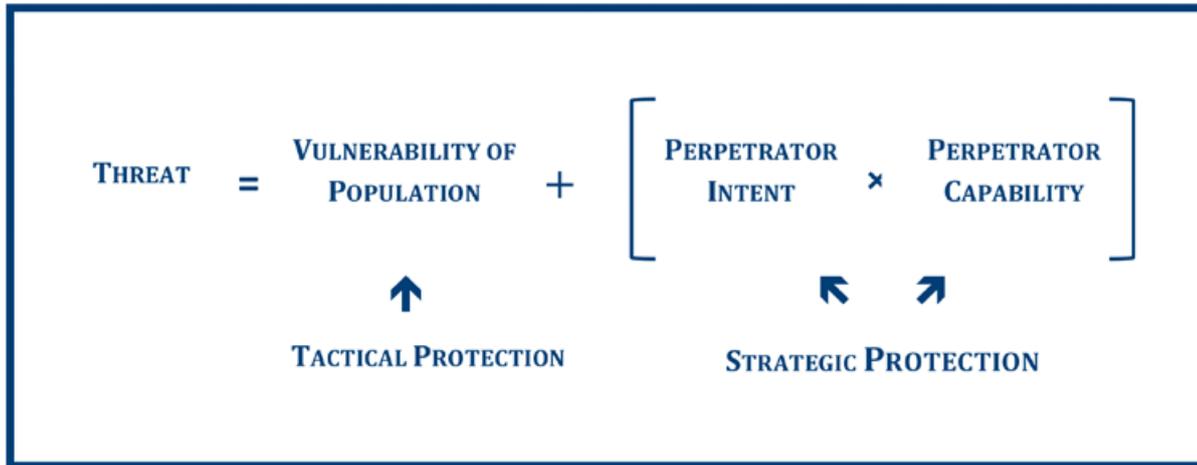
The political controversy generated by the evolution of operations in Libya and Cote d'Ivoire among others is evidence of a persistent disconnect between the policy level where Security Council mandates are crafted and the operational level where military operations are designed and implemented. The broad political objectives of 'protecting civilians' or 'preventing atrocities' are not easily translated into military objectives around which operations can be planned. Such broad 'objectives' are really conditions or end-states, and a detailed understanding of the situation and considerable operational art are required to align both military and non-military ways and means in order to achieve them.

With regard to military force, commanders are faced with a choice of two broad approaches:
- Tactical protection that prevents attacks in a particular time and place; or
- Strategic protection designed to neutralize the threat more broadly and prevent additional attacks in the future.

As depicted in Figure 1, tactical protection focuses on reducing the vulnerability of the civilian population, typically through establishing either a static or mobile defense. Unless the population can be physically isolated from potential perpetrators[9], there are never enough military resources available to defend all civilians, everywhere, all the time. As a result, this approach has significant shortcomings.

Gaps in defensive operations inevitably leave some civilians vulnerable to attack at least some of the time. By ceding the initiative to the perpetrators it gives them the opportunity to find those gaps or even bypass defenses measures altogether. Even more importantly, tactical protection only lasts as long as the operation continues; if the perpetrator is still intact when the operation ends, the population is left vulnerable to future attacks.

On the other hand strategic protection involves using offensive operations against perpetrators to neutralize the source of both current and future threats to the population. However, forgoing the defensive measures associated with tactical protection in favor of exclusively employing a strategic approach can leave civilians vulnerable to attacks in the short

8 Bouchard, C. (2012).

9 Even then, static defenses are not generally considered sufficient. For a discussion of UNPROFOR 'safe areas' and 'heavy weapons exclusion zones,' see '7. Bosnia : from white painted tanks to air strikes' in Findlay, T. (2002).

term. Moreover, if the threat to civilians is the existing government, strategic protection may involve regime change with all the associated political and operational implications.

In reality, effective operations to protect civilians typically require a mixed approach involving defensive operations to protect civilians where possible coupled with offensive operations to neutralize the threat. A mixed approach is more than the sum of its parts. The synergy between defensive and offensive operations seizes the initiative from perpetrators and makes it more difficult for them to launch attacks on civilians, while applying strategic pressure to change their intent or - where necessary - defeat them outright.

Each approach has political implications, but policy makers' lack of understanding about how military force can be applied to protect civilians or halt atrocities undermines the development of coherent responses. Instead, they are often either disappointed by the limited impact of what appear to be large resource commitments[10] or are surprised when what they thought were limited objectives result in ambitious and wide-ranging operations.[11] The key is improving the communication between the policy level and the operational level so that policy makers understand the implications of their objectives not only with regard to the quantity and type of military resources required, but also how those resources will be employed. Operational commanders need to make it clear to policy makers that military operations to protect civilians have to be embedded in a political strategy that has a clear vision of the desired end-state, even if that end-state evolves over the course of the operation.

Further evidence of the disconnect between policy makers and operational realities is the proposal to assess the conduct of operations at the operational and tactical level according to the 'do no harm' principle. Originating with the medical profession's Hippocratic oath, its most basic interpretation in the context of international security and development is to be attentive to the unintended consequences of well-intended actions. While such caution is inarguably relevant for military operations, advocates of RwP have reinterpreted the principle as a rejection of *any* risks or human costs associated with the use of force to protect.[12] Under this approach, any civilian casualties or undesirable consequences constitutes an unacceptable violation of the legitimizing principle of the military operation - essentially a rejection of iterative cost-benefit analysis. Reinterpreted in this way, adopting the 'do no harm' principle would be a formula for inaction and ineffectiveness.

The use of military force always involves accepting risk and uncertainty in the short term in order to improve conditions over the long term. It is a gamble - a carefully considered gamble, but a gamble nonetheless because the outcomes are never guaranteed. No military, no matter how sophisticated or well trained can guarantee that there will be no civilian casualties as a result of operations, even operations designed to protect.

In fact, the military operations that have proven most effective at improving security conditions for civilians have often been among the most aggressive. For legal, ethical, and strategic reasons they take all possible measures to avoid

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10 UNPROFOR, UNAMSIL, MONUC, and UNAMID - among the largest Post-Cold War UN peacekeeping operations - have all been criticized on these grounds.

11 As in Security Council resolution 1973 (2011) and Operation Unified Protector with regard to Libya, and Security Council resolution 1975 (2011) and UNOCI with regard to Cote d'Ivoire, for example.

12 For example, Ambassador Maria Luiza Ribeiro Viotti, Permanent Representative of Brazil to the United Nations argued that, "Our collective point of departure should resemble the Hippocratic principle of *primum non nocere* - first, do no harm - with which doctors are so well acquainted. That must be the motto of those who are mandated to protect civilians…we must aim for a higher level of responsibility. One casualty is one too many, no matter how noble the intentions." See Permanent Representative of Brazil, (2011).

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civilian casualties, while accepting that some may be unavoidable in the chaos of combat. In Congo, the willingness of the UN peacekeeping operation to use force has varied considerably. When it has restricted itself to a defensive, reactive posture, both civilians and peacekeepers proved more vulnerable to attack. In contrast, sustained military campaigns against rebel groups matched with efforts to mitigate the humanitarian consequences of those operations have improved civilian security over the medium term.[13]

The surge of U.S. forces in Iraq in 2007 provides an even clearer example of accepting risks to improve security for the population.[14] Strategic and operational leaders recognized that a political settlement would not be possible while civilians on all sides were dying at the hands of terrorists, insurgents, and sectarian militias. To create space for a political solution, additional troops were deployed and operations redesigned to emphasize population security. Yet over the same period, U.S. and Coalition close air support sorties jumped from 1,770 in 2006 to nearly 3,000 in 2007[15]. Civilian casualties directly attributed to Coalition forces and crossfire roughly doubled over the same period.[16] Despite that, the net effect of these operations was a huge improvement in the overall security of civilians. The increase in civilian casualties caused by the U.S.-led Coalition was the unavoidable consequence of the operations that were required to break the intensifying cycle of sectarian killing and terrorism.[17] Although the legacy of those operations is debatable, most analysts agree that they created an opportunity for a political settlement, and that without them the systematic violence would only have intensified.

Figure 2: Improvements in Civilian Security In Iraq following the Surge

Source: MNF-I CJ5 Assessments SIGACTS III Database (Coalition Reports only) and (Coalition and Iraqi Reports) as of December 1, 2008. Does not include civilian deaths due to accidents unrelated to friendly or enemy actions.

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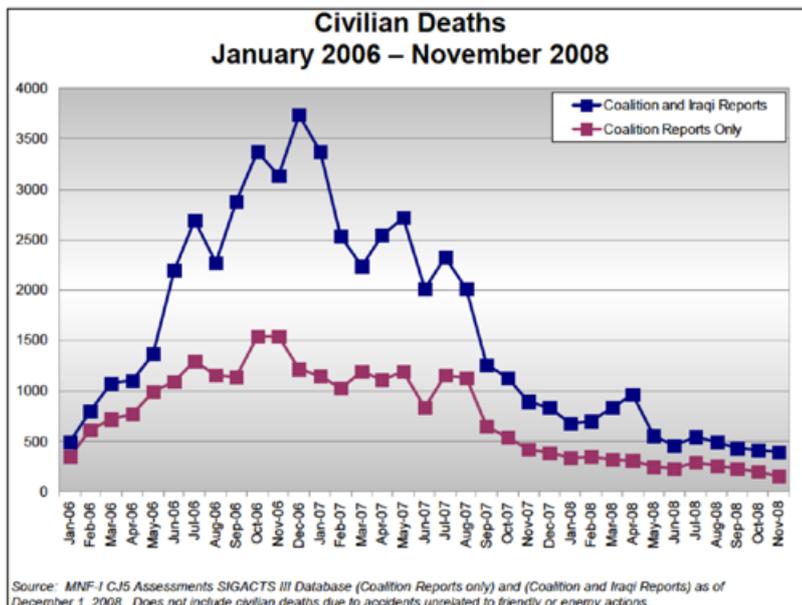
13 Long-term results have generally been more elusive, in large part due to inadequate political and peacebuilding efforts to consolidate the security gains accomplished through military operations.

14 This argument pertains exclusively to the 'Surge' of U.S. forces in Iraq in 2007, not the initial invasion in 2003.

15 United States Air Forces Central Command - Combined Air and Space Operations Center (CENTAF CAOC) on 5 December 2007, quoted in Anthony, C. (2009).

16 Iraq Body Count via Kahl, C. (2008).

17 See Biddle S., Friedman J. A. and Shapiro J. N. (2012).

Adopting a 'do no harm' approach that requires operations designed to protect to never put civilians at risk is simply unrealistic. It ignores both the complexity of situations in which force may be required and the inherent uncertainty of military action. This is not to suggest that policy-makers should ignore issues related to the implementation of Security Council decisions. Rather, they need to understand that the use of force to protect civilians and prevent atrocities will always involve risks, including for the civilians that we hope to protect. Military operations may even make things worse in the short term in order to prevent a larger loss of life and improve the situation in the long run. On the one hand, this should only reinforce the idea that military action is a last resort. On the other, policy makers should not delude themselves that force is always the worst option. As Rwanda, the Balkans and Sierra Leone all demonstrated, there are cases where nothing short of timely and decisive military intervention is sufficient to halt the violence.

Moreover, even where measures short of military action are assessed as realistic options to address the crisis, their effectiveness often depends in part on a credible threat of force. As the 1996 International Commission on the Balkans concluded,

> Diplomacy not backed by power is tantamount to hollow gesturing. It is the punch of power that lends conviction to the suasion of diplomats. Where it is lacking, the well-meaning are left to the mercy of the reckless, and brute force rather than reason sustained by might determines the outcome of conflict.[18]

Operationalizing R2P and 'protection of civilians' mandates will always be politically contentious, particularly when it requires the use of force. Building a stronger international consensus about when and how to respond to threats against civilians can only be achieved through a greater understanding of the nature of those threats, and of the utility and limits of different tools - including military force - to address them. Efforts to move the political debate forward should focus on engaging with these substantive issues rather than creating more elaborate procedures to constrain or delay responses. Ultimately the institutionalization of R2P will not be judged by the elegance of its form, but its effectiveness in preventing future atrocities. It is not clear how RwP would contribute to that goal.

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8. Brazil as a norm entrepreneur: the Responsibility While Protecting

Oliver Stuenkel

The broader context

Brazil's decision to introduce the concept of Responsibility while Protecting (RwP) marks, irrespective of its ultimate success or failure, a milestone in the process of multipolarization. Emerging powers no longer merely seek to obtain a seat at the table, but they attempt to turn into agenda setters of the global debate. This process is bound to cause friction, for developing new terms or concepts is a sign of independence and unpredictability - thus disappointing those in the West who had hoped that rising powers would turn into 'responsible (and docile) stakeholders', graciously filling the space established powers had reserved for them.

-Despite their recent relative decline, established powers still firmly control the agenda of the international debate - we still live in a world clearly divided between rule makers and rule takers. In the eyes of the traditional rule makers, rule takers can either immediately embrace existing norms, or they can reject them - the latter which causes them to be seen as dangerous revisionist powers with subversive intentions (Stephens, 2010). What 're-visionist' means is subject to change. For example, while emerging powers used to be fully in line with the mainstream in the global debate about sovereignty, their - largely unchanged stance - is today seen as revisionist by the global rule makers who have successfully turned the Responsibility to Protect (R2P) into a global norm.

The West is inviting emerging powers to assume global responsibility and engage internationally, but the fact that Beijing, Delhi and Brasilia prefer to engage on their own terms has caught many in the United States and Europe by surprise. The initial rejection of RwP in many Western capitals must be understood in this context (Wright, 2012) - there are, it must be said, few instances of constructive proposals for global norms emerging in the Global South, and thus Brazil's initiative was seen by many as an attempt to obstruct the debate rather than a genuine attempt to enrich the conceptual discussion about humanitarian intervention. It is the first time Brazil projected itself internationally as a creator of global norms, seeking to adopt global 'thought leadership'.

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All the arguments and proposals that appear in the RwP concept developed by Brazil have been made, in one way or the other, in the past - the novelty was much more Brazil's decision to bring them together under the RwP header and support them explicitly in their entirety. Still, there was a strong surprise element in Brazil's initiative, considering that the country's reaction to R2P had been, initially, quite negative. Then foreign minister Celso Amorim described it as just another pretext emerging powers would readily use to pursue their economic interests with military force (Spektor, 2012).

The specific context

The origin of the concept of RwP must be seen in the context of the year 2011 - the year in which R2P was for the first time applied, first in Côte d'Ivoire, then in Libya. The UN Security Council (UNSC) did so in a historic composition of having all the BRICS present (Brazil, India and South Africa as non-permanent members, China and Russia as permanent ones). None of the BRICS voted against Resolution 1973 (Brazil, China, India, Russia and Germany abstained). Despite their decision to abstain, the result was seen at the time as a subtle signal of general support for humanitarian intervention in Libya. Yet this support among emerging powers quickly turned into rejection when it became clear that NATO was using its mandate to protect civilians as a mandate for regime change, thus clearly misinterpreting the spirit of the resolution (Gowan, 2011). In addition, NATO disobeyed the arms embargo by supplying Libyan rebels with arms and de facto acting as the rebels' air force in the conflict (Gowan, 2011). The bombing in Libya stopped not as soon as the rebels took control of Tripoli, but only when Muammar Gaddafi was killed. It was during this time when Brazil's moderately supportive rhetoric changed and adopted a highly critical tone, falling in line with Russia's assertions that the intervention in Libya was just another chapter of Western imperialism. The way NATO intervened had led to a hardening of positions. In the West, it was seen as a great success, in the Global South as a step back. The result, in the words of Michael Ignatieff, was a return to the 1990s, when the world could decide between inactivity in the face of mass killings (as seen in Rwanda) and humanitarian intervention outside of international law (as seen in Yugoslavia) (Ignatieff, 2012).

RwP can thus be seen as an attempt to bridge the widening gap that had emerged in the aftermath of the Libya intervention.

Reception in Western capitals

The initial reception in the West was marked by skepticism. This was, first of all, due to accusation that the concept note lacked detail which opened too much space for speculation. Its opponents quickly called it a plot to delay meaningful action against the mass atrocities in Syria. How, they asked, could such a short and generally worded concept paper be of any use, now that the world needed to take swift action against the Assad regime?

This narrative was strengthened by Brazil's previous decision to abstain, on October 4, 2011, from the European UNSC resolution condemning Syria. Given that the RwP concept paper was so vague, it was natural for analysts around the world to look back and measure it by Brazil's recent behavior in matters related to humanitarian intervention (Luck, 2012). The European proposal contained only symbolic threats and explicitly excluded the use of military force, so Brazil's stance was seen as a sign that it stood closer to Russia and China on the matter than to the West.

The second reason for the rejection in Western capitals was the fear that RwP would make intervening quickly - if the circumstances required it so - too difficult, as satisfying the long list of demands was too cumbersome. The rigid sequencing was particularly strongly criticized during early debates in New York (Brazil distanced itself from it later on).

In addition, article 11 h and I of the Brazilian concept paper states: "Enhanced Security Council procedures are needed to monitor and assess the manner in which resolutions are interpreted and implemented to ensure responsibility while protecting; The Security Council must ensure the accountability of those to whom authority is granted to resort to force." This led to worries among NATO countries that the UNSC would have a say in ongoing R2P operations - something almost impossible to find support in the West. It is worth remembering that the United States finds it even difficult to coordinate military action with NATO, so giving all UNSC members a say is seen as a non-starter.

The third reason for skepticism was that, among Western policy makers, Brazil was acting irrationally and driven by the anger of being relegated to the sidelines during the intervention in Libya. Brazil's and India's requests for information had been arrogantly brushed aside by NATO with the implicit argument that Brazil and India had no business in the rather serious business of war (Benner, 2012).

This points to the fourth reason for skepticism. With Brazil insignificant hard power and inexperience in armed international conflict, Western powers feel that Brazil has no business in assuming a leadership role in important global security questions. What do Brazilian diplomats know, they ask, about what it means to send fighter jets into combat? Few Western commentators realized the great potential RwP had serious potential to bridge the gap between Global North and Global South. Quite to the contrary, Western analysts have argued that RwP could even increase the wedge between the West and the rest.

Reception in the Global South

The reaction in the Global South to RwP has been far more muted than in the West. Dilma Rousseff mentioned the concept during the 2011 IBSA Summit, yet it did not find its way into the final declaration of the meeting, indicating South Africa's and India's skepticism. Rejection in China and Russia was even stronger, and Brazil failed to introduce RwP into the final declaration of the 4th BRICS Summit in Delhi in March 2012. Brazil had thus successfully created an idea both the West and the emerging powers rejected, albeit for the opposite reasons. RwP was seen in the West as tactic to obstruct action. In the Global South, by contrast, policy makers were reluctant to accept any idea that seemed to limit the concept of sovereignty. Rejection in China and Russia seemed vindicated when Brazil supported resolution 66/253 B against Syria on August 3rd, 2012, strengthening those in Moscow and Beijing who thought of RwP as a Western plot to trick emerging powers into accepting Western imperialist intervention.

Lost momentum

More than a year after the launch of the concept, the time to follow-up and flesh out the concept is generally thought to have passed. The Brazilian government decided not to turn RwP into the foreign policy signature issue of Dilma Rousseff's first term. This became clear when the Brazilian President declined to explain the issue better during her opening speech of the UN General Assembly in September 2012. In a debate on the sidelines of the UNGA about RwP, Brazil was markedly absent.[1]

Looking back, it seems clear that upon launching the concept, there was a window of opportunity during which Brazil should have elaborated a more specific proposal to create momentum. Brazil would have had to develop a diplomatic

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1 Conversation with a Head of Mission to the UN, August 2012.

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campaign to garner support for the idea. For example, South Africa and India could have been potential candidates to support the concept. Rather than being "Brazil's concept", it could have become "IBSA's concept". Yet Brazil declined to assume leadership in the matter, and RwP never achieved what R2P did - to turn into a household name of the public international relations debate. In theory, a country other than Brazil could have taken up this role - yet given the lack of a more specific description of what RwP entails and how it applies to the Syria crisis, no other country took the chance. It is unlikely that RwP stands a serious chance of being the subject of a global debate, now that it has lost the Brazilian government as its sponsor.

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9. The Responsibility While Protecting: Linchpin or Trojan Horse?

Patrick Quinton-Brown

Since the adoption of the Responsibility to Protect (R2P) at the 2005 World Summit, the principle has made substantial progress as an emerging norm (United Nations, 2005). However, despite its broad appeal, reception by some UN members has been imperfect: over twenty state dissenters continue to raise objections to R2P, thwarting its normative development and obstructing a global consensus on the legitimacy of international intervention.

The recent behaviour of Brazil, however, may give cause for some optimism. After an initial period of criticism, Brazil has emerged as an active contributor to the ongoing R2P debate with its introduction of the "responsibility while protecting" (RwP) proposal. Largely seen as a response to the perceived shortcomings of the 2011 Libyan intervention, RwP offers policy suggestions intended to improve future interventions, which might advance international agreement on R2P's controversial third pillar.

How should major powers, academics, and civil society perceive the impact of Brazil's proposal on R2P's normative growth? One useful method of assessing this impact is to place RwP in the context of "R2P dissent". By doing so, it becomes evident that RwP represents a solution to some of the alleged problems of R2P and thus may spur agreement from some of the current critics of intervention. At the same time, it also becomes clear that RwP will need to address important ambiguities and concerns before it can gain the approval of major R2P supporters such as the United States. This section will outline the contours of R2P dissent and its relationship with RwP, observations which derive from a larger research project.[1]

In order to evaluate the international reception of RwP, it is first necessary to map the broad thematic objections to R2P as they appear in the UN and official statements. Although rhetorical positions do not always match states' actions in the field, this is the most reliable approach to measure a state's position on international intervention. The six themes of R2P dissent appear with varying degrees of emphasis and complexity. Notably, these themes are

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1 See Quinton-Brown, especially 1-21, for a full analysis of the six themes of R2P dissent. These categories are the result of an analysis of R2P opposition as presented in government statements, UN debates, and transcripts since 2005.

interrelated and prove useful as a framework for understanding the areas of R2P that need clarification or reform. The six thematic challenges of dissent facing R2P today are:

- *Politicization, Misuse and Abuse;*
- *Traditional Sovereignty and Non-Interference;*
- *Aversion of the Use of Force;*
- *Postcolonial Ideology; and*
- *Security Council Illegitimacy;*
- *Early Warning Capacity.*

All R2P dissenters have at least once publicly criticized R2P on the grounds of its *politicization*, *misuse and abuse*.[2] This theme refers to the belief that R2P suffers from selective use and misapplication when it is politically expedient for powerful states. R2P is seen as a tool for national political agendas first, and the protection of civilians second. For instance, why is R2P implemented in Libya but not in Sudan or, as multiple dissenters have alleged, in Palestine? Moreover, this theme embodies the fear that states may abuse R2P language in order to justify unnecessary regime change. Accurately or not, the 2011 Libyan intervention has become the orthodox example of this problem amongst dissenters.

Next, the *traditional sovereignty* theme refers to the historical conception of sovereignty not as a responsibility, but rather as a right. Generally, this view of sovereignty respects a Westphalian vision of international relations where the principle of non-interference challenges the legitimacy of foreign intervention, even if intended to prevent mass human rights abuses. Some dissenters that ascribe to this theme, such as Algeria, assert that R2P is at therefore odds with the UN Charter.[3] Others, such as Russia and China, more vaguely request that R2P implementation respect the territorial integrity of states involved. Both assertions are contradictory to the internationalist understanding of sovereignty present in R2P as we know it today.

The third theme is perhaps most relevant to RwP. In brief, it emphasizes that prevention is always better than cure. It also touches on issues reminiscent of classical just war theory, namely last resort, proportional response, military necessity, and distinction of combatants.[4] If military intervention is necessary, it must in no way aggravate tensions on the ground or cause more harm to civilians than it was authorized to prevent. This theme reflects the sentiments expressed by Brazilian President Dilma Rousseff, who presented a similar critique in her opening address to the UN General Assembly in 2011.[5] It is also worth noting that the wars in Iraq and Afghanistan are frequently cited as evidence of how interventions can go wrong.[6]

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2 For a list of these dissenter states as suggested by official statements, see Quinton-Brown 7-8. A summary of thematic objections organized by dissenter state can be found on 11.

3 Algeria has even suggested that R2P is illegal on this basis. See United Nations – GA (2005) 7-10.

4 Although absent in the 2005 World Summit Outcome Document, just war theory is reflected in the threshold criteria and other precautionary criteria that appeared in the original 2001 "Responsibility to Protect" report. See Evans and Sahnoun, (2001), chapter 4.

5 In her opening address to the General Debate of the 66th Session of the United Nations General Assembly, she stated, "The world suffers today from the painful consequences of interventions that aggravated existing conflicts. They allowed terrorism to penetrate into places where it previously did not exist, gave rise to new cycles of violence and multiplied the number of civilian victims. Much is said about the responsibility to protect; yet we hear little about responsibility in protecting." For the full UN transcript, see Rousseff, 2011.

6 North Korea made this comment most memorably in the 2009 General Assembly debate on R2P. See United Nations – GA (2009b) 18.

When invoking statements under the umbrella of *postcolonial ideology*, dissenter states tend to draw historical allusions to the ages of colonialism in order to discredit the principle as a tool for imperialism. Critically, the theme identifies a trust deficit spawned by past cases of foreign occupation.[7] Based on this framework, postcolonial dissenters erroneously depict R2P as a North vs. South debate, in effect ignoring the clear stances of R2P support taken by states such as Rwanda, Kenya, and other members of the Global South.[8]

The idea that intervention is only as legitimate as its institutional authority forms the basis of the *Security Council illegitimacy* category of dissent. In this case, states such as India, Pakistan, and Algeria assert that R2P's institutional authority, the Security Council, is losing its international legitimacy due to its dated composition and veto regulations. Their prescribed solution is a reform of the council's membership structure in order to unfreeze it from a post-1945 context. Also worth mentioning is the S5 proposal, which has asked the permanent members of the Security Council to withhold the use of their veto powers in cases of genocide, crimes against humanity, and "grave breaches" of international humanitarian law.[9]

The final theme of dissent relates to the need for an early warning capacity in the UN in order to ensure interventions are never again "too little, too late." This theme is unique in the sense that it illustrates a constructive willingness to engage with the R2P idea, despite the fact that it has been stressed by states that tend to oppose R2P. Notably, Ban Ki-Moon has elaborated on what an early warning system might look like in his second, third and fourth reports on the Responsibility to Protect.[10]

Thus, if these themes represent the official objections to R2P, does RwP engage any of these concerns? The short answer is yes, which provides an important explanation for RwP's success in international reception amongst R2P dissenter states.

Most notably, RwP makes R2P more swallowable for states submitting to the critique of R2P's chronic *politicization and abuse*. Though it may be impossible to guarantee that R2P will not be abused for political reasons beyond the protection of civilians, measures can be taken to reduce risk. The major point here is that RwP reduces risk of abuse by stipulating that intervention strictly abide by the letter of the resolution mandate conferred by the Security Council. This entails the creation of a supervision mechanism for resolution interpretation. In effect, then, RwP attempts to rule out regime change unless a change of regime is explicitly endorsed in a resolution.

On another level, RwP addresses the *aversion of the use of force* theme. It reaffirms that prevention is R2P's most im-

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7 Pakistan identified this "trust deficit" between R2P supporters and opponents at the General Assembly's International Dialogue on the Role of Regional and Sub-Regional Arrangements in Implementing the Responsibility to Protect. See Permanent Representative of Pakistan to the United Nations.

8 Venezuela has notoriously made the charge, for example, that the growing consensus on R2P has only been achievable by means of Western "media totalitarianism", a process through which neocolonial states use the influence of international broadcasting and lobbying to manufacture international consent. See United Nations – GA (2009a) 24.

9The Small Five (S5) comprise of Switzerland, Costa Rica, Jordan, Liechtenstein, and Singapore.
See United Nations – GA (2012) 1-4.

10 In March 2006, a preliminary list of indicators was submitted to the Commission on Human Rights in the form of the Report of the Secretary--General on the Implementation of the Five-Point Action Plan and the Activities of the Special Adviser of the Secretary-General on the Prevention of Genocide. See United Nations – ESC, (2006).

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portant pillar and stresses main tenets of classical Just War theory, in particular its second set of criteria, jus in bello. Although not a new idea per se, injecting jus in bello into the World Summit's limited definition of R2P, which unfortunately made no mention of right conduct within war, has yet to be championed. RwP therefore bridges an important gap between R2P as it was understood in 2001 and 2005. This theme could be better addressed, however, if Brazil provided more detailed suggestions on how to implement effective early warning or how to build domestic capacity in order to avert crises before they happen.

It might be possible to argue that RwP engages with the *postcolonial critique* considering that RwP is the brainchild of a member of the Global South. Further, its provisions on the use of force and its monitoring-and-review mechanism theoretically limit the ability of Great Powers to exploit small states during an intervention. However, RwP alone will not ward off the historical connotation between R2P and the ages of colonialism. This theme reflects an ideological stance on part of its associated dissenters, meaning that its refutation is distinctively challenging.

Thus, RwP engages two broad critiques that have been employed by R2P dissenters since the release of the 2005 World Summit Outcome document. It will fully not put them to rest, of course, but it does propose a revised vision of R2P implementation holding these objections in mind. In this sense, it becomes clearer why emerging powers such as Russia, China, India, and South Africa have received Brazil's proposal at least partially favourably.[11]

What the six themes of dissent do not explain, however, is RwP's reception by UN members such as the United States, which are not yet convinced of its merit. Despite being visible supporters of R2P, some Western governments have not become visible supporters of RwP. What, then, are the concerns of these RwP dissenters? The official statements of RwP dissenters such as Australia, Germany, France, the Netherlands, and the United States suggest three main concerns:

1. chronological sequencing and political subordination of the R2P pillars;

2. mission micromanagement by the Security Council; and

3. a restriction on regime change as a means of ending conflict.

To these states, RwP's call for a strict line of political subordination and chronological sequencing appears untrustworthy. As Germany has pointed out, such a policy in practice could conflict with the preparedness of member states to take timely and decisive response.[12] Moreover, the United States has posited that diplomacy should never be seen as exhaustive and can always work in tandem with military coercion.[13] This is one explanation as to why some Western officials interpret RwP as a Trojan horse intended to delay intervention. It is worth mentioning that Brazilian Ambassador Maria Luiza Viotti has recently announced that Brazil supports "logical" sequencing, not the establishment of arbitrary checklists.[14] Still, both policymakers and researchers refer to Brazil's policy paper, which has not been updated in accordance with Brazil's recent clarifications.

11 Several states offered positive reactions to the RwP proposal during the General Assembly's informal interactive dialogue on "The Responsibility to Protect: Timely and Decisive Response" in New York on 5 September 2012. For official and unofficial transcriptions of members' statements, see International Coalition for the Responsibility to Protect, (2012).

12 For Germany's complete statement, see Permanent Representative of Germany to the United Nations, (2012).

13 For the official American statement, see United States Mission to the United Nations, (2012).

14 In September 2012, she reiterated, "sequencing should be logical, based on political prudence." For her complete statement, see Permanent Representative of Brazil to the United Nations, (2012). For Brazil's original policy paper, see Permanent Representative of Brazil to the United Nations, (2011).

The second issue raised is a fear of military micromanagement. For example, will RwP require intervening powers to deliver regular updates to the Council in order to ensure operations are in strict accordance with the resolution mandate? Brazil has yet to fully elaborate on what its monitoring-and-review mechanism may look like in practice, and this forms a key weak point in its proposal. As Gareth Evans points out, intervening powers will not appreciate their military operations to be managed with a "1000-mile screwdriver" (Evans, 2012).

Above all, however, the regime change issue risks becoming the crux of future tensions over RwP. The rhetoric surrounding RwP's creation, often in reference to Libya, seems to imply that effective implementation of the proposal will ensure regime change is never again achieved through intervention. To the United States, Britain, and France, however, this may be counterintuitive to the logic of R2P. After all, in some scenarios, the sovereign authority itself may deliberately slaughter its own population. If the cause of mass atrocities is the sovereign, then, by definition, implementing R2P means that the regime in power must go. In the case of a future Rwanda, for example, could the international community really trust a criminal regime to refrain from massacring again?

The question of regime change must be further contemplated by Brazil. Rather than taking an absolute stance on the issue, the international community would be better off if it agreed that regime change be considered on a case-by-case basis. This points to the need for a mechanism to ensure regimes are only toppled when their continued existence risks the further commission of mass atrocities beyond reasonable doubt.

In conclusion, international reception of the Brazilian proposal has been both positive and negative. The good news for R2P proponents is that RwP can promote trust for intervention amongst R2P dissenters. It does so by appealing to two of the six broad themes of R2P dissent. If Brazil wants its new idea to stick, however, it will have to win the support of its skeptics. In order to gain the approval of those states less favourable to RwP, Brazil will need to address concerns regarding its chronological sequencing of pillars, potential for micromanagement of military operations, and implications for regime change. After doing so, it is clear that the Brazilian proposal can play a key role in broadening and deepening global consensus on R2P. RwP is not the Trojan horse that some have made it out to be, but rather is best seen as a linchpin between current R2P supporters and dissenters.

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10. Implementing the Responsibility while Protecting After the New Report by the UN Secretary-General on Responsibility to Protect

Paula Wojcikiewicz Almeida

Introduction

The Responsibility while Protecting (RwP) formula was proposed before the UN General Assembly (UNGA) by President Dilma Rousseff in September 2011 as a response to alleged excesses committed during the implementation of UN Security Council (UNSC) Resolution 1973 regarding Libya[1]. Less than a year later, Brazilian diplomats are pleased that the concept of RwP was included in the last UN Secretary-General (UNSG) report on the *Responsibility to Protect* of July 25th, 2012. The presence of RwP demonstrates that the Brazilian initiative was absorbed into the UN agenda and to a large extent welcomed by the international community despite some uneasiness expressed by certain member states[2].

One should evaluate, however, whether the Brazilian proposal represents a real innovation, or if it tends to reproduce the basis already established in the concept of R2P, as initially envisaged in 2001. Should RwP be considered only a repackaged version of R2P or is it an important step in the develop-

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1 The origins of the 1973 resolution lie in events that spread across the Middle East and North Africa in the preceding months. The so-called Arab Spring began in Tunis on 3 January 2011 when a 26-year old vegetable seller set himself on fire in protest at the way his vegetable cart had been confiscated by a local policewoman. His actions sparked massive protests that spread across the region. See Williams (2011).

2 The reception of RwP in the United States and some European countries was negative - they insisted on the success of the Libyan intervention and dismissed the initiative as an attempt to delay or to block intervention when necessary to prevent mass atrocities (Spektor, 2012), (Stuenkel, 2012). Rousseff did not manage to achieve alliances with other BRICS countries in pursuit of Brazil's interest in promoting the RwP agenda. China, Russia, and India did not back the Brazilian proposal, despite the fact that these countries have shown themselves to be less reluctant regarding intervention in a foreign state under the auspices of the UN Security Council. However, the principle of RwP resonated well with countries from Southeast Asia and Africa (Asia Pacific Centre for the Responsibility to Protect (APC R2P), 2012). See, for more details: The Economist (2011) and Klemmer (2012).

ment of R2P? This article highlights a number of fundamental questions related to the RwP formula which has been considered the Brazilian major contribution to the debates regarding the use of force within the UN. Divided into two sections, it recalls the core elements of RwP (I) before analyzing the main challenges which may jeopardize its implementation (II).

The core elements of RwP

The 2011 Brazilian concept paper that circulated for discussion before the UN emphasized the subordination and strict chronological order of the three pillars of Responsibility to Protect (R2P)[3]. However, this interpretation appears contrary to the intention of the former UNSG Kofi Annan in his report "Implementing the Responsibility to Protect" of January 2009[4], and has been widely criticized because it could lead to inaction or delay, which would be irresponsible[5]. These criticisms have led Brazilian diplomatic representatives to be more careful with their words and to affirm that the three pillars of R2P must follow a logical and not chronological sequence, which is based on political prudence and not on arbitrary checklists.

Brazilian diplomats aimed to offer a new perspective on R2P by proposing a set of fundamental principles, parameters and procedures. The first principle and parameter outlined in the Brazilian RwP proposal is focused on prevention, since the UNSG Ban Ki-Moon declared 2012 as the "year of prevention". The restatement of this principle only reiterates the arguments already put forward in the R2P debate from 2001 and then emphasized by the UNSG in his last report[6]. There is a preference for the prevention of the four R2P crimes and violations, but Brazil presented no suggestions as how to strengthen either the state or UN capacities for prevention.

One cannot deny that building capacity of national governments to protect their populations is an essential component to implement R2P's three-pillar framework. Therefore, Brazil should move on from debating the importance of preventive measures to taking concrete steps to implement R2P at the national level. Indeed, the UN member states must be prepared to act from a preventive perspective, based on Chapters VI and VII of the Charter. Brazil should embrace the Focal Points initiative, launched in September 2010 by the Global Centre for the Responsibility to Protect in association with the governments of Denmark and Ghana, which aims to support international cooperation through the creation of a formal network[7].

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3 See point 6 from the annex in Permanent Representative of Brazil to the United Nations (2011).

4 In United Nations (2009), the Secretary-General stated that "there is no set sequence to be followed from one pillar to another, nor is it assumed that one is more important than another. Like any other edifice, the structure of the responsibility to protect relies on the equal size, strength and viability of each of its supporting pillars (p. 2). And added: "all three must be ready to be utilized at any point" (Item 12, p. 9).

5 See Luck (2012), Evans (2012) and International Coalition for the Responsibility to Protect, (2012).

6 The International Commission on Intervention and State Sovereignty had already stated, in its priorities, that prevention is the most important dimension of the responsibility to protect and that the "prevention option should always be exhausted before intervention is contemplated, and more commitment and resources must be devoted to it". The report affirmed that the responsibility to prevent and react "should always involve less intrusive and coercive measures being considered before more coercive and intrusive ones are applied". According to the document, the precautionary principle entails the following measures: right intention, last resort, proportional means, and reasonable prospects (pp. XI and XII). See also statement by Megan Schmidt in International Coalition for the Responsibility to Protect (2012).

7 This initiative aims to institutionalize R2P at the national level and to build a Focal Points network to facilitate coordination at the international level. Governments were asked to designate a national Focal Point on R2P and to support international cooperation on the issue through the creation of a formal network. For more information about The Focal Points Initiative see Global Centre for the Responsibility to Protect (2012).

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Apart from the prevention debate, which should permeate every action taken on the basis of R2P, the Brazilian proposal could be unified around three main concerns: first, the adoption of criteria to guide the decision-making process about the use of force within the UNSC; second, the adoption of criteria to guide the implementation of a resolution authorizing the use of force by states mandated; and finally, the creation of a monitoring and review mechanism for the implementation of UNSC resolutions by member states, in order to ensure that the mandate given by it is duly respected[8].

The challenges of implementing RwP

Regarding the first concern outlined in the Brazilian RwP proposal - criteria to guide the decision-making process at the UNSC - Brazil has highlighted the particular importance of a legal, operational and temporal limitation for the UNSC to authorize the use of force to avoid actions *ultra vires*[9].

These criteria, however, are not new: they result from the *Report on the Responsibility to Protect* prepared by the ICISS of 2001[10] and from the Report by the UNSG of 2005[11]. They also derive from an interpretation of the UN Charter, notably Articles 40-42, which indicate that the UNSC should be guided by the principle of proportionality. Still, the Charter confers considerable discretion to the Council with regard to the proportionality of its measures for the aims pursued[12]. It is an old debate, pre-dating the responsibility to protect, and has always been under scrutiny in cases involving authorization of the use of force[13].

Should the proposed criteria be subject to a binding resolution of the UNSC or a non-binding resolution of the UNGA? Or thirdly, can criteria be adopted in the form of informal guidelines that the UNSC should take into consideration when making decisions to authorize the use of force under Chapter VII? In the case of rigid criteria, it is highly unlikely that the UNSC or the UNGA would adopt such criteria for two reasons: one which is the official discourse on such restrictions, which states that each situation requiring the use of force is different and requires flexibility; the other has to do with the general and historic origins of the UNSC, which was designed by the Charter to have very broad powers and to be subject to very few express limitations[14]. Moreover, a non-binding approach would hardly be effective in limiting the UNSC when acting on the basis of Chapter VII. As stated by the UNSG in his last report, templates are to be avoided as each situation is different.

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8 See Evans (2012)-1.

9 See point 5 from Permanent Representative of Brazil to the United Nations (2011).

10 See Evans and Sahnoun (2001).

11 See statement by H.E. Mr. Gary Quinlan, Ambassador and Permanent Representative of Australia to the United Nations, in International Coalition for the Responsibility to Protect (2012).

12 Krisch (2002).

13 Statement by Hon Gareth Evans, Co-Chair of the Global Centre for the Responsibility to Protect, in International Coalition for the Responsibility to Protect (2012).

14 By virtue of Chapter VII of the UN Charter, the SC enjoys very broad powers as a reaction to the failure of the League of Nations sanctions system . After the failure of the League, states decided to create an organization with strong coercive powers to be able to immediately counter threats of war. The central organ within the organization would be empowered to reach the main goal of peace maintenance and should have broad freedom of action, as proposed in Dumbarton Oaks - see "Article 43" and "Introduction to Chapter VII" in Frowein and Krisch (2002).

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The absence of criteria for decision-making and for drafting UNSC resolutions has implications for the interpretation of such resolutions. Indeed, the openness and lack of precision of resolutions lend themselves to different interpretations. Moreover, the absence of a standard procedure to ensure that UNSC resolutions are legally well-drafted has a direct impact on their interpretation process[15], which is why the use of ambiguous terms should be avoided - even if such ambiguity was intentional to maintain flexibility and to adapt to the discretion of member states[16]. An example of this is the use of term "all necessary means" when drafting UNSC resolutions, which makes it even more difficult to interpret and to control any actions taken ultra vires. In order to avoid ambiguity, the UNSC could establish sunset clauses and/or substantial limitations specified in the resolution authorizing the use of force[17].

In reference to the adoption of certain criteria to guide the implementation of a resolution authorizing the use of force, Brazil asserted that the use of military action must be limited according to the letter and spirit of the mandate given by the UNSC or the UNGA. In addition, the use of force must be judicious, proportionate[18] and limited to the objectives established by the UNSC. The Brazilian key proposal concerns the creation of a monitoring and review mechanism for the implementation of UNSC resolutions by member states. This measure will ensure the legitimacy of any action authorized by the Council by enabling the wider membership to be properly informed about, and maintain scrutiny of the way in which its mandates are actually implemented[19].

Debates about implementation are as old as the United Nations. But how to control state actions under Chapter VII of the UN Charter when acting on the basis of R2P? Brazil's proposal is vague in this sense. In order to evaluate possible excesses committed by member states mandated by the UNSC, one must first analyze the terms of the resolution in question. An authentic interpretation is borne by the UNSC or by an organ authorized by the latter to do so[20]. The International Court of Justice (ICJ), as the main judicial organ of the UN, can only perform this task indirectly or incidentally since the Charter does not allow for any automatic review of the Council's decision[21]. Attempts have been made to identify the applicable rules for the interpretation of the UNSC resolutions, notably the ICJ Advisory Opinion regarding Namibia of

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15 As stated by Michael Wood, "legal input can be somewhat haphazard" (Wood, 1998).

16 See Ibid, pp. 80-81. The European Union recognized that its legislation must be drafted in clear, unambiguous and coherent terms and uniform principles of drafting and layout must be applied. In order to meet the aim of better law-making, on 8 June 1993 the Council adopted a resolution on the quality of legislative drafting and on 16 January 1996 the Commission adopted general guidelines for legislation.

17 This proposal was presented by Alex Bellamy during the round-table co-organized by FGV, The Stanley Foundation, and The Global Centre for the Responsibility to Protect, entitled "Responsibility to Protect: What's next?", Rio de Janeiro, August 23, 2012.

18 Although proportionality was included in the ICISS report, there had not been enough public discussion about how to apply it, for fear of jeopardizing the fragile compromise reached in 2001 concerning R2P. According to Louise Arbour, the Security Council is not exactly the form of choice for the delicate application of a very complex proportionality test, which is properly done in courts of law after years, in Arbour, (2012). See also Evans (2012).

19 Statement by Gareth Evans in International Coalition for the Responsibility to Protect (2012).

20 As pointed out by the Permanent Court of International Justice (PCIJ), "it is an established principle that the right of giving an authoritative interpretation of a legal rule belongs solely to the person or body who has the power to modify or suppress it" (United Nations - ICJ, 1962 and Permanent Court of International Justice, 1923).

21 The Security Council was not conceived of as *legibus solutus* or unbound by the law, as held by the Appeals Chamber of the ICTY in the *Tádic* case (United Nations - ICTY, 1995). See Alvarez J. E., (1996); Cronin-Furman K. R. (2006) and Orakhelashvili A. (2007).

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June 21st 1971[22] and the discussion concerning the applicability and relevance of the criteria established by articles 31 and 32 of the Vienna Convention on the Law of Treaties to the acts adopted by the UNSC[23].

In any event, Chapter VII resolutions should, in general, be narrowly interpreted[24], and they must include the establishment of a monitoring and reviewing mechanism capable of evaluating any action ultra vires on the ground. Existing mechanisms within the UNSC could be strengthened to provide detailed information about military action taken in the field by authorized States or multinational operations. More specifically, the Council could issue an express reporting demand on those states or regional organizations seeking to implement its Chapter VII mandates in R2P situations[25].

First however, it appears that such a mechanism could be used to discourage states to implement UNSC mandates on the basis of the R2P. Secondly, double standards should be avoided, that is to say, more restrictive rules for the use of force in R2P situations than in other situations requiring the use of force in general. Finally, every attempt to control implementation of UNSC mandates by other organizations or coalitions of the willing will be difficult for the reasons already highly debated on the doctrine[26]. States did not place contingents of armed forces at the disposal of the Council. As the UN did not have the capacity to exercise the coercive military action provided under Article 42, a finalistic interpretation led to a system of substitution during the 1990s. The action was then decentralized, making the UN exposed to national interests and agendas.

This reality shows that the expectations of monitoring decentralized actions by member states should be limited in practice. If there are general limitations on the delegation of Chapter VII powers, including a precise definition of the scope of the delegated powers and an effective supervision of their implementation by a delegating body[27], these limitations may not apply in practice to operations authorized by the UNSC[28]. The UNSC has sometimes limited itself to authorizing the use of force in broad and imprecise terms, as became apparent in the aftermath of the Second Gulf War[29]. Only recently has the UNSC opted for more precise definitions of the aims of the operations, establishing time limits and reporting requirements[30].

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22 The ICJ stressed that one should consider "the terms of the resolution to be interpreted, the discussions leading to it, the Charter provisions invoked and, in general, all circumstances that might assist in determining the legal consequences of the resolution of the Security Council" (United Nations - ICJ, 1971).

23 See Wood, (1998) and Papastavridis, (2007).

24 Krisch,(2002) and Papastavridis., op. cit., p. 107.

25 This proposal was made by Alex Bellamy during a round-table co-organized by FGV, The Stanley Foundation, and The Global Centre for the Responsibility to Protect, entitled "Responsibility to Protect: What's next?", Rio de Janeiro, August 23, 2012.

26 As pointed out by Robert Kolb, "the choice between complete inaction and imperfect action was made", in Kolb (2010).

27 According to Nico Kirsch, "further limits on the delegation of powers are not expressly provided for in the Charter but can be deduced from general principles and from the object and purpose of the SC's delegation authority" (Krisch 2002, op. cit., p. 713). According to article 53, the regional organization authorized to use military force on behalf of the UN must submit full information to the SC. The same obligation applies to states when they are authorized to act individually or in coalitions.

28 See "Commentary on Article 42" in Frowein and Krisch (2002).

29 See United Nations - UNSC (1990).

30 See, e.g., United Nations - UNSC (1996); United Nations - UNSC (1997); United Nations - UNSC (1999).

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Conclusion

In conclusion, the Brazilian proposal has already caused much debate at the UN. It demonstrated that concerns expressed by other member states are to be taken into account in the future, as recognized by the UNSG in his last report. The country continued to discuss RwP on several occasions and seized these opportunities to stress what has been considered its major contribution to the debates within the UN[31].

If the Brazilian initiative was introduced to the UN agenda, being included in the last UNSG report of July 2012[32], some fundamental questions regarding its implementation remain unanswered: how to establish criteria for limiting the action of the UNSC in the absence of a mechanism to control the legality of its resolutions? How to control the use of force by states authorized under UNSC resolutions? Which will be the competent authority that will monitor mandated states? How would it be composed and what would be the effectiveness of its decisions? Even if the existing monitoring mechanisms were expanded, they would still be subject to the good will of the Council.

As recognized by the UNSG report, improving decision-making and reviewing implementation are useful catalysts for further discussion. And how to move forward? How to translate words into deeds? The solution is far from simple and Brazilian diplomats made it clear that the country's intention is not to further develop the practical mechanisms that should be instituted. RwP is therefore faced with the same structural challenges of R2P, which jeopardize its implementation.

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31 See Viotti (2012); Statement by Ambassador Antonio de Aguiar Patriota, in International Coalition for the Responsibility to Protect, (2012) and Evans (2012)-2.

32 United Nations - UNSC (2012).

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11. Predictable evolutions, normative engagements, and their implications for South American countries' engagement in peacekeeping and peacebuilding operations

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This paper sketches the argument that the evolution of global political affairs will demand more effective, flexible, and legitimate frameworks to deal with international interventions aiming at protecting basic human rights. It will also point out recent evolutions in South America that may help inspire this new framework. The implications for preparing civilian capacity to operate under such complex conditions are obvious. My hope is that this article will be useful because it offers arguments that may enhance our dialogue on the need for consolidating synergies between security and development.

Three main factors point to a fundamentally new situation in global politics that affect PKOs:

1. the redistribution of power in favor of individuals and organized groups;

2. the deepening interdependence of economies and societies, which requires effective and legitimate global governance, particularly due to growing perceptions of scarcity; and

3. the progressive consolidation of normative concerns with fundamental human rights, which imposes serious political dilemmas on governments.

The next sections discuss these trends, which are intertwined and mutually influential. Finally, the argument illustrates the concern with promoting permanent links between security and development efforts with a brief discussion of the South American countries' participation in PKOs.

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The redistribution of power in favor of individuals and organized groups

The gap between citizen's expectations regarding their future and their leaders' capacity to fulfil them is certainly among the most complex political challenges to international peace and to regional security in the world. The revolts of the Arab Spring, the protests in Europe, the unrests in Asia, the civil wars in Africa, the violent conflict in Gaza, all these unrests have multiple causes and serve the purposes of diverse political organizations. The one aspect they share is some degree of relation to socioeconomic conditions. Worst still, the increase in global population in the years to come will deepen the rising prices of food and of energy, creating new socio-political tensions.[2]

Scarcities have always been present, we know, but only a few people were conscious of them and of their dimension. This has changed. Now individuals have easy and cheap access to sources of information and to data on current world trends. Governments may try to censor their citizens and to manipulate their accounts of the root causes of difficult times, but these expedients are less effective nowadays. Because information is abundant and cheap, sooner or later individuals understand that their basic needs are unsatisfied and push for political change. If nothing happens, people revolt. If they do, they help inflate expectations. Citizens then start to ask for better conditions, for decent public services, and for appropriate political behavior. As societies democratize, or at least acquire greater awareness of their condition, the need for redistributing wealth becomes urgent and more evident. Though the advice is far from new, the need to reconcile economic growth with a sense of fairness in order to achieve political stability sounds as contemporary as ever: "Where democracies have no middle class, and the poor are greatly superior in number, trouble ensues, and they are speedily ruined" (Aristotle, 1962).

In short, we are dealing with a moveable target, which continuously expands. It expands in substance and in nature. Peoples want more than security and welfare for themselves; and they want the same thing for their progeny. They judge their current situation in comparison not only with their past, but also with the conditions observed elsewhere (Friedman, 2005). The politics of change is there, but we lack institutions to cope with popular demands. As a result, the sense of injustice leads to unrest. As Hinde points out, "We need a morality that does not depend on an external transcendent force. (…) That means in practice a new outlook on the world in which morality has a higher status than it has at present, and where individuals see it as their duty to maintain its rules and values" (Hinde, 2011). And this process has gone global. One generation ago, few people travelled around the world and relatively little information on alien standards of living circulated among societies. This has changed dramatically and the long-term trend points to even larger and cheaper access to information. As a result, as it has become evident in North Africa, citizens are more powerful in relation to their rulers, a trend that James Rosenau has documented by the end of the Cold War (Rosenau, 1990).

Coping with enhanced interdependence

One generation ago it was not clear, in less developed countries, the extent to which the standards of living portrayed in US and European movies were real or achievable. Now this information is available to hundreds of millions of citizens all over the world. Even in countries whose governments have consistently proved to be effective in repressing social

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2 These long-term trends appear in tables and graphs in the World Bank Global Monitoring Report (GMR) 2012 and in the scenario documents prepared by the EU Institute for Security Studies in 2011 entitled Global trends 2030 – Citizens in an Interconnected and polycentric world, and by the US National Intelligence Council in 2012 entitled "Global Trends 2030: Alternative Worlds".

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movements, such as China, Egypt, Syria, and Russia, people revolt. Skilful leaders soon understood that their survival depends on promoting economic growth and national and social cohesion. However, these expedients are limited. Raising inequalities, corruption, and failures to effectively create economic opportunities impose permanent challenges on leaders, who no longer can solve political dilemmas borrowing against the next generations or shifting away the responsibility for structural inefficiencies.

Because peoples have become more educated, politicians face greater difficulty in convincing their societies that their national problems mainly result from the evil behavior (or intentions) of foreign countries. This may explain, partially, why the number of wars has decreased in the last years, but not the levels of domestic violence (Stockholm International Peace Research Institute - SIPRI, 2012). Because economies have become deeply interdependent, societies understand that their futures are intertwined, for better or for worse.[3]

Interdependence grew within the frameworks of governance created during the Cold War years, which favored the expansion of the liberal model and the creation of a relatively solid apparatus for global economic growth (Ruggie, 1982). But at the end of the Cold War it became clear that free trade alone cannot sustain economic growth indefinitely. It was also evident that economic growth was not enough. Societies require other basic common goods, as successive UN conferences have shown, and as the Millennium Development Goals (MDGs) program symbolizes. At the same time that the MDGs respond to such demands, they promote these objectives and universalize the agenda of development. The fact that some of these goals have been achieved ahead schedule points to their political sensitivity (World Bank, 2012). But 2015 is at reach and despite social pressures it is unclear whether they will be replaced by sustainable development goals (or some other iteration) recently proposed at the Rio + 20 Conference in 2012.

So far what is evident is the lack of legitimate governance in a deeply interdependent and tense world community. The economic crisis showed the limits of expansionary fiscal policies, public debts, and austerity prone solutions. Apparently, the only political scapegoat is through innovation, for the environmental and other intergenerational costs - traditionally used to alleviate tensions - are already too high. Perhaps this process is not new, but it certainly has never been so fast and so complex. And appropriate political responses have never been so complex and difficult to figure out and to implement.

Greater concern with human rights imposes political dilemmas on South American governments

What are the implications of the changing global order on the interests and responsibilities for South American countries? What role do they see for themselves in this context? Is there a consensus on the current norms and concepts or an emerging norm from the region? Answers to these questions are unclear, but they are nevertheless worth exploring.

South American countries have participated in PKOs since the 1950s. While not a novelty for Argentina, Brazil, Chile, Peru and Uruguay, these countries displayed a renewed enthusiasm with peacekeeping in the 1990s, albeit for different reasons. In their processes of democratization, it was interesting for some to shift the military's interest abroad, offering them a noble and financially compelling mission that could keep them busy while civilian elites sought to consolidate

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3 Shapiro and Alker edited in 1996 one of the first (and most thoughtful) collection of essays on the limits of governments to assert their authority while adjusting domestic demands to parameters created at a new and more complex international political space.

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democratic institutions and practices at home. PKOs also helped finance the acquisition of defense equipment and the training of military personnel, while allowing them to show national flags with little risk of war-fighting.

It is also important to keep in mind the broader context in which these enthusiastic engagements occurred. To begin with, one may consider that the traditional divide between troop contributing countries (TCCs) from the south and financial contributing countries (FCCs) from the north remain. While the top 10 providers of assessed contributions to UN PKOs accounted for 81 per cent of the US$ 7.84 billion budget between 2011-2012 (United Nations - DPKO, 2012), the largest 10 TCCs offered over 59 per cent of troops on the ground (United Nations - DPKO, 2012-1). And among these countries there was not a single South American. Put together, the region accounts for roughly 7 per cent of troops in PKOs, with a modest financial contribution for the UN budget to this end (Ibid.).[4]

In spite of their contributions to debates during C-34 negotiations and at the UN Security Council, South American countries are hardly key players when it comes to PKOs. Perhaps the most striking example of the ways in which they seek to leverage influence is Brazil's recent initiative to reflect on the conditions that should shape interventions conducted on the grounds of the concepts of "Responsibility to Protect" and the "Protection of Civilians". Indeed, the idea to establish clear(er) conditions for interventions, argued in the technical note on the "Responsibility while Protecting" (Permanent Representative of Brazil to the United Nations, 2011), has already called the attention of specialists and is informing diplomatic discussions on the issue.

Despite their small monetary and troop contributions, South American countries assume they have something to say about this subject. This is not just because they adopt similar political views, notwithstanding each country's particular motivations to join a given PKO, but also because of their robust engagement in Haiti since 2004. Analysts and practitioners took note of Haiti, but have taken less heed of the ability of countries across the Latin American continent to avoid the occurrence of unrest warranting a PKO, much less promoting social inclusion and maintaining economic growth. Because they have been victims of interventions in the past, South American countries tend to engage - or condemn - international interventions in general on the grounds of analogous political arguments. They favor UN-sanctioned and sponsored PKOs and are increasingly focused on strengthening UNASUR, which may inform their involvement in the foreseeable future.[5]

Perhaps South American countries show innovative attitudes towards PKOs because, facing adjustments at home, they take with them a profound and genuine understanding of challenges outside of their neighborhood. Many countries recognize the importance of not just promoting stability, but also inherent in tackling tackling socio-economic needs and injustices in political and institutional settings that are far from conducive to promoting inclusive economic growth or democratic governance. This is not an easy endeavor, as Acemoglu and Robinson show (Acemoglu and Robinson, 2012). Where durable and positive social change has occurred, it has tended to evolve from within, as an endogenous process. But now norms, parameters and in some case institutions impose themselves from abroad. The fact that South American countries share an experience, co-operating on a horizontal basis, helps distinguish their approach from "one--size-fits-all models" previously promoted by international organizations and PKOs.

4 South American countries ranked from 12th (Brazil, with 2,227 troops) to 90th (Colombia, with 25 troops), according to the same source.

5 Besides Haiti, the common response to events in Paraguay has shown a great degree of political coherence, as have the coordination of efforts to offer a cope with Venezuela. Argentina and Chile already have a joint brigade to engage in PKOs and the training centers in the region share doctrines and preparation techniques, aiming at creating a common approach to this subject.

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It is not possible to assess this contribution, though, if one does not understand the peculiarities of South America as a region. The idea of a sub-regional community, committed with specific values and objectives, partially informs these countries' engagements in PKOs. Regional practitioners and scholars tend to conceptualize South America as a region with greater cohesion and sense of identity than analysts from abroad, who often think in terms of Latin America or Iberoamerica. Commonly associated with neo-colonial discourses, such concepts oversimplify a complex reality and downplay nuances inherent in each sub-region of the Americas. They also ignore the prevailing high levels of informal solidarity amongst governments, particularly in regard to common threats such as drug and human-trafficking.[6]

For example, the dynamics observed in the Caribbean, bar Cuba and Haiti, are relatively homogeneous, but differ radically from those prevailing in South or Central America. Even in South America, the political evolution in the Andean countries significantly differs from those performed by those in the Southern Cone. Among other reasons, it is important to differentiate these sub-regions because processes in one of influence the others. As the concerted participation of South-American countries in MINUSTAH illustrates, these countries improve their shared identity by jointly operating in Haiti, particularly within the framework of the 2x9 arrangement. They share information and avoid redundancies, saving money and reducing the opportunities for corruption of mismanagements. They organize common efforts in situations of crises but maintain their national projects, serving their bilateral interests. They articulate positions in other political fora while strengthening the UN and, when there are responsive attitudes, the OAS, which explains, among other achievements, Haiti's active reinsertion in the international community at large.

The last two decades in South America have witnessed important improvements in socio-political and economic terms. The entire region has become more democratic, although institutions in each country differ in their relative transparency and strength. Throughout the region, there have been important efforts to reduce social inequalities and to increase political participation, including of the indigenous peoples, who have never before participated effectively in their countries' political lives. Ecuador and Bolivia illustrate this movement more importantly, but it can also be seen in Venezuela, Peru, Colombia, and Brazil. Despite the obvious ideological differences in the proposals for articulating the integration process South American countries eventually reached a consensus within UNASUR, which is gradually providing political stability to sustain economic growth and social inclusion in the long run.[7]

From this peculiar geopolitical standpoint, and compared to other parts of the world, South America emerges as a stable region, relatively marginal to key international security threats, whose members diverge only marginally on key issues. Moreover, these minor differences of views have often been solved through diplomacy. Countries historically tended to adopt legal solutions to their differences, relying on multilateral institutions to face regional & global challenges. Finally,

6 Lima and Coutinho (2007) and Faria and Barão (2012), among others, explain the integration from the point of view of each country in South--America and from Mercorsur's. Morais (2007) summarizes the logic inherent in the Initiative for the Integration of Infrastructures in South-America (IIRSA) projects, which involves 12 South-American countries (the whole continent, except France) in 510 projects budgeted at US$ 74,5 US billion. Periodically, the Inter-American Development Bank follows the implementation of the projects listed in the Strategic Action Plan (2012) set up by the South-American Council for Infrastructure and Planning, which builds in works such as Antunes' (2007).

7 The "Bolivarian Alliance for the Peoples of Our America" and the "South American Community of Nations" diverged in ideology, but both helped promote regional integration, especially in energy, transportation and communications infrastructures. Under the "Union of the South-American Nations" – UNASUR, which came into force in March 2011 and involves all South American countries (bar France), 9 councils articulate common decisions on a wide range of issues, from health and social development to energy, finance, and defense. In regard to the economic growth of the region, in Mid-2012 CEPAL expected to maintain the pace through the year and to improve it in 2013, despite the negative impact of the world crisis (Comisión Económica para la América Latina - CEPAL, 2012).

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though their primary motivation to engage in PKOs vary, they all search for greater prestige in their international relations, mistrust international interventions, deal with budgetary constraints, and aim at improving civil-military relations.

As a result, they stress the need for operations to be sponsored by the UN. Despite Chile and Argentina´s support to NATO's operations in the 1990s, particularly in Bosnia and Herzegovina, their involvement in NATO's initiatives has vanished, particularly since the Lisbon Summit, in 2010, when NATO adopted a new strategic concept that reorganized its cooperation with third parties placing South American countries in a distant priority. This focus on UN-sponsored PKOs also relates to the growing consensus regarding the high political costs of NATO's operations in Afghanistan and Libya. From a South-American perspective, NATO has served advance particular interests of traditional powers, which is a dangerous precedent. This may open room for future actions decided on terms other than a legitimate universal view of the limits to international interventions. As a result, even before acute humanitarian crises, these countries stress their engagement on attempts to enhance peace and prosperity across the globe under the auspices of the UN, assuring the adequate levels of legitimacy both at the domestic and at the international levels.

Concluding remarks

According to the former Foreign Minister of Brazil, "there is no political security without economic security, and there is no sustainable economic security without social justice" (Amorim, 2011). Amorim's words summarize South America's current challenges and its approach to PKOs. Having struggled with political institutions that prevented their peoples from fully enjoying democracy, prosperity, and social justice, these societies now embraced this agenda and work thoroughly to fulfil its promises. The spread of information technologies deepened interdependence among economies and societies, favoring the empowerment of individuals, who now request public services from their governments. As a result, a homogeneous universal agenda of democracy and welfare constrains governments across the globe, demanding effective and legitimate governance both at the local and at the global levels. As the world population grows and more people demand higher levels of consumption, perceptions of scarcity increase in a process that addresses prevailing normative concerns with fundamental human rights. But this imposes serious political dilemmas on governments, whose performance is now evaluated on the basis of international parameters.

Such dilemmas are more and more evident in PKOs. Indeed, PKOs themselves symbolize the encounters between a progressive side of the emerging global order, with its ideal international standards and practices, and the more secular local dynamics shaped by traditional institutions that perpetuate poverty, social exclusion, and authoritarian rule. Exclusionary institutions are precisely what turned these ill-governed states into fragile communities, whose governments failed in organizing productive, prosperous, and inclusive polities. But the politics of inclusion now clashes with them, from the outside. The important novelty in this process is the entrenched concern of the emerging international society with fixing these problems, previously encapsulated in the Westphalian concept of sovereignty. Another important novelty in this process pertains to initiatives conducted by South American countries both at home and abroad, particularly in Haiti. By promoting social inclusion, sustainable economic growth, and by deepening democracy, while sharing this experience with less developed countries, they set a standard for international cooperation that may build bridges between the rich and the poor, unleashing the essential force of a new imagined morality that may shape the emerging global society.

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12. Responsibility to Protect in 2022: Building the Politics of Non-Indifference and the Architecture of Prevention

Simon Adams

Raphael Lemkin had to invent a whole new word - genocide - to come to terms with the magnitude of the Nazi's murderous campaign against the Jews of Europe. One significant result of that reconceptualization was the 1948 UN Convention on the Prevention and Punishment of Genocide. But over the following fifty years our ability to make good on the promise of "Never Again" embodied in the Convention was dismal. Every time the world was faced with the actual reality of genocide it faltered. It failed to stop the "killing fields" in Cambodia during the 1970s. It failed to stop the genocide in Rwanda in 1994. It failed in Srebrenica, Bosnia, in 1995. But these failures provoked rethinking and eventually progress.

In 2001 the International Commission on Intervention and State Sovereignty (ICISS), led by Gareth Evans and Mohammad Sahnoun, developed the concept of the Responsibility to Protect (R2P). R2P's core idea is that all governments have an obligation to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. It is primarily a preventive doctrine. However, R2P also acknowledges that we live in an imperfect world and if a state is "manifestly failing" to meet its responsibilities, the international community is obliged to act. It is not a right to intervene but a responsibility to protect.

Drawing upon the ideas of South Sudanese scholar and diplomat Francis Deng, R2P is predicated upon the notion that sovereignty entails responsibility (Deng et al, 1996). The African Union's Constitutive Act of 2000 included article 4(H), signalling a similar shift from the politics of non-intervention to the politics of non-indifference with regard to mass atrocities on the continent. The impact this had on policymakers and opinion shapers outside Africa, and upon the development of R2P, is often underestimated.

R2P was unanimously adopted at the 2005 United Nations World Summit - the largest meeting of world leaders and heads of state ever assembled. In the eight years since then we have made tremendous progress. Libya and Syria have provided R2P's biggest challenges to date, although there have

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also been intense debates about R2P with regard to Cote d'Ivoire, Sri Lanka, Kenya and elsewhere. These cases are difficult precisely because they raise issues of accountability and potential coercive measures to halt mass atrocities. Nevertheless, we should keep in mind that the Security Council still invoked R2P more often in the months after resolution 1973 on Libya was adopted, than it had done in the five years beforehand.[1] In this context, UN Secretary-General Ban Ki-Moon's words at a September 2011 ministerial roundtable on R2P are especially relevant: "I would far prefer the growing pains of an idea whose time has come to sterile debates about principles that are never put into practice."

As we develop a vision of what we want R2P to look like ten years from now, perhaps we should concentrate upon four key areas where we need to make progress if we want to uphold R2P's promise to humanity.

1. Institutionalizing Atrocity Prevention

Since 2010 the governments of Ghana, Costa Rica, Australia and Denmark, in association with the Global Centre for the Responsibility to Protect, have asked that states appoint a senior official to coordinate national preventive and protective strategies for halting mass atrocity crimes. These officials would also collaborate through an international network of "R2P Focal Points" to enhance efforts to anticipate, prevent and respond to mass atrocity crimes.

Twenty-three countries have already appointed Focal Points and more than forty states attended the second meeting of the R2P Focal Points network in September 2012. States who have currently appointed Focal Points include Argentina, Botswana, Cote d'Ivoire, Germany, Guatemala, Netherlands, Switzerland, United Kingdom and United States. In early 2012 the Global Centre for the Responsibility to Protect also co-hosted with ECOWAS (Economic Community of West African States) a major regional forum on R2P in West Africa. There is real and genuine enthusiasm for the Focal Points idea as a means of building an architecture for early warning in a region with an unfortunate history of mass atrocities and conflict.

Central to the advancement of R2P by 2022 will be a more developed early warning system for prevention and response via a global network of national R2P Focal Points within governments.

2. Prudential Criteria

In the midst of ongoing debates about Syria, Libya and R2P, in November 2011 Brazil delivered a paper to the UN Secretary-General regarding the "responsibility while protecting" (RwP). The core of the Brazilian initiative is an argument for always preferring prevention over armed intervention. The Brazilian initiative also called upon the UN Security Council to give serious attention to key criteria before agreeing to any use of military force. Some of those criteria are articulated in more detail in the ICISS report of 2001, in the UN Secretary-General's 2004 High Level Panel Report on Threats, Challenges and Change, and in the Secretary-General's In Larger Freedom report of 2005. They include: seriousness of threat, proper purpose, last resort, proportional means and balance of consequences.

While some fear that the criteria might be used to institutionalize inaction at the UN Security Council, that should not be the case if they are properly embraced as informal guidelines rather than a bureaucratic impediment to "timely and decisive" action. The criteria could be used to help frame and explain decision making on the Security Council. As Gareth

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1 This includes UN Security Council resolutions. Between January 2006 and January 2011 (ie: prior to the Libya crisis) there were three UNSC resolutions that referenced R2P. Resolutions 1970 (26 February 2011) and 1973 (17 March 2011) invoked R2P with regard to the crisis in Libya. After 1973 was passed there were four more resolutions in 2011 that used R2P language - resolutions 1975, 1996, 2014, 2016. They concerned the situations in Cote d'Ivoire, South Sudan, Yemen and Libya. There were also several separate UNSC press statements and presidential statements during 2011 which made reference to R2P.

Evans noted in a recent speech, "it is not so much a matter of holding member states in some way legally to account: it is a matter of recognizing that unless the courts of rationality, public opinion and peer group understanding can be broadly satisfied, then destructive cynicism and skepticism about these interventions is bound to grow."

3. United Nations Reform

The world of 2012 is radically different from the world of 1945 when the UN was formed. Several of the Cold War super-powers have declined in global importance while new "emerging powers" have risen from within the developing world. In this context, the call for reform of the Security Council, principally by expanding its permanent membership, is not only logical but imperative for the future relevance of the UN. While we can debate the number of permanent members and the issue of veto rights, the need for structural change is undeniable.

By 2022 we must have a radically reconfigured Security Council. Some new candidates for permanent membership seem obvious because of their size, power and influence within their respective regions - such as Turkey or Indonesia. Similarly, IBSA (India, Brazil, and South Africa) is a dynamic grouping made up of three of the most vibrant democracies in the world. All three IBSA countries have demonstrated their capacity and desire to serve as permanent members of a reformed and expanded UN Security Council. But their track record on R2P so far has been uneven. While Brazil has engaged in an impressive way with its "responsibility while protecting" initiative, South Africa and India seem caught between their moral impulses, their complicated histories and the uncomfortable implications of the "BRICS" alliance with China and Russia. It is still not completely clear what kind of world the IBSA countries want and how they are going to help remake it.

R2P already has strong champions in the developing world. There is a need to keep R2P as a central part of their vision as they help reform the UN.

4. The Veto and Mass Atrocities

In March 2011 the "Small 5" (S5) submitted a detailed plan for reform of the working methods of the UN Security Council. The S5 - Switzerland, Costa Rica, Jordan, Liechtenstein and Singapore - submitted the draft resolution with an annex that included twenty recommendations. The S5's eventual withdrawal of the resolution was due to diplomatic pressure exerted by the powerful five permanent members (or P5) of the Security Council: China, France, Russia, United Kingdom and the United States. This was a defeat for those who want a more effective and democratic Council.

Of particular importance in the S5 proposal was the recommendation that the P5 refrain from using their veto power to block action aimed at preventing or ending genocide, war crimes, ethnic cleansing or crimes against humanity. During 2011 and 2012 we have seen the veto of China and Russia used on multiple occasions at the Security Council to block any attempt to hold the Syrian government responsible for mass atrocity crimes that it is committing against its own people. Hopefully by 2022 an agreement on a veto moratorium, as envisioned by the S5, will be firmly in place. The international community's ability to prevent or halt mass atrocity crimes should not be contingent upon the partisan interests of the permanent members of the Security Council.

Conclusion

Finally, by 2022 the international community needs to have fundamentally weakened impunity via the International Criminal Court and strengthened the notion of sovereignty as responsibility. Within the UN the debate now is about how R2P should

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be meaningfully implemented, rather than whether such a responsibility exists. No one wants to go back to situation of the 1990s - of the hopeless dithering over Bosnia, or the shameful failure in Srebrenica or Rwanda - when the world was incapable of adequately responding to mass atrocities. Misuse of R2P debases the concept. Clarity of purpose, proportionality and precision remain essential. But the crucial challenge is to strengthen the politics of non-indifference.

The Responsibility to Protect is not just a concept to be discussed in the abstract. Right now there are people in Syria, Sudan, the Democratic Republic of the Congo, in Burma/ Myanmar and elsewhere, who are continuing to face the reality of mass atrocity crimes. Regrettably, other populations will face similar threats over the next decade. But will the world be able to respond more effectively?

Rwanda and Srebrenica shaped our understanding of mass atrocities in the 1990s and the magnitude of the UN's failure to live up to a core promise to protect all human beings from crimes that offend our common humanity. Syria and Libya will shape how we think about these issues for the next few years. And the over-arching lesson is simple; our ability to respond adequately is still fundamentally a question of political will.

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