The Responsibility to Protect – From Evasive to Reluctant Action?

The Role of Global Middle Powers

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Foreword

The publication of *The Responsibility to Protect – From Evasive to Reluctant Action? The Role of Global Middle Powers* is the conclusion of a series of activities that started in 2011. Among the activities was a dialogue meeting to debate the many issues surrounding the Responsibility to Protect (R2P) concept from the perspective of four middle-power countries – Germany, India, Brazil and South Africa (GIBSA) – which are also aspiring permanent United Nations Security Council (UNSC) members.

The meeting, entitled 'The Responsibility to Protect – Views from South Africa, Brazil, India and Germany', took place on 7 June 2012 at the Institute for Security Studies in Pretoria and brought together some 80 participants. This assembly included high-ranking representatives of the foreign ministries of South Africa, Germany, India and Brazil, diplomatic personnel from these four embassies in Pretoria, representatives of international think-tanks from all participating countries, members of the South African parliament, scholars from Germany and South Africa, and civil society representatives.

In this publication, researchers from leading think-tanks in the four GIBSA countries present a variety of viewpoints on R2P. While the GIBSA countries demonstrate widespread support for R2P, there is no single overriding position. Many of their official standings mirror the arguments on R2P in the global discourse.

Considering the prominent role that GIBSA countries play in their respective regions and their increasing importance on a global level, this publication provides a fascinating insight into their debate on R2P, which, too often, is overshadowed by the views of the permanent members of the UNSC. In addition, two young scholars take a fresh look at R2P and add a new dimension to the on-going dialogue.

The Responsibility to Protect – From Evasive to Reluctant Action? The Role of Global Middle Powers aims to stimulate new thinking and to nurture a common understanding of the use and limitations of R2P. This discussion is urgently needed given that many internal conflicts are still being waged that put civilian populations at risk. We trust that this publication will make a small but important contribution in this regard.

On behalf of the co-publishers:

Dr Wolf Krug
Resident Representative
Hanns Seidel Foundation South Africa

List of abbreviations and acronyms

AMIB	African Mission in Burundi
AMIS	African Mission in Sudan-Darfur
AMISOM	African Union Mission in Somalia
APSA	African Peace and Security Architecture
AU	African Union
BRICS	Brazil, Russia, India, China and South Africa
CADSP	Common African Defence and Security Policy
DPKO	Department of Peacekeeping Operations
ECOMOG	Economic Community of West African States Monitoring Group
ECOSOC	Economic and Social Council
ECOWAS	Economic Community of West African States
EU	European Union
EULEX Kosovo	European Union Rule of Law Mission in Kosovo
G4	Group of Four (Brazil, India, Germany and Japan)
GCC	Gulf Cooperation Council
GDP	Gross domestic product
GIBSA	Germany, India, Brazil and South Africa
HRC	Human Rights Council
HSF	Hanns Seidel Foundation
IBSA	India, Brazil and South Africa
ICC	International Criminal Court
ICID	International Commission of Inquiry on Darfur
ICISS	International Commission on Intervention and State Sovereignty
ISS	Institute for Security Studies

KAS	Konrad-Adenauer-Stiftung
KFOR	Kosovo Force
KLA	Kosovo Liberation Army
LAS	League of Arab States
MIF	Multinational Interim Force
MINURCAT	*Mission des Nations Unies en République Centrafricaine et au Tchad*
MINUSTAH	UN Mission in Haiti
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organization
OAU	Organisation of African Unity
PBC	Peacebuilding Commission
POC	Protection of civilians
PSC	Peace and Security Council
R2P	Responsibility to Protect
RwP	Responsibility while Protecting
SAIIA	South African Institute of International Affairs
SAPSD	South African Protection Support Detachment
UDHR	Universal Declaration on Human Rights
UK	United Kingdom
UN	United Nations
UNAMID	AU–UN Mission in Darfur
UNMIK	United Nations Interim Administration Mission in Kosovo
UNPKO	United Nations Peacekeeping Operations
UNSC	United Nations Security Council
US	United States

Introduction

Responsibility to Protect: The GIBSA Perspective

Malte Brosig

> *"Humanitarian intervention" has been controversial both when it happens, and when it has failed to happen.*[1]

Background

The protection of human rights has been one of the primary purposes (and functions) of the United Nations (UN) since its formation in 1945. From the beginning, however, this has been an up-hill battle, colliding with state sovereignty and clashing with Cold War security agendas.

Informed by the tragedy of the Holocaust, the international community quickly adopted the UN Charter. In Article 1 (paragraph 3) of the Charter, the UN made it obligatory for each member state to promote and encourage respect for human rights. Soon thereafter, on 9 December 1948 and one day before the passing of the Universal Declaration on Human Rights (UDHR), the UN adopted the Convention on the Prevention and Punishment of the Crime of Genocide. In Article 1, the UN defines genocide as 'a crime under international law which they [UN members] undertake to prevent and to punish'. In Article 8, the Convention calls on UN members to take 'appropriate [action] for the prevention and suppression of acts of genocide'.

While the adoption of the UDHR marked the beginning of the drafting and implementation of a number of human rights conventions within the UN system and in different regions of the world, there was only minimal progress in the development or enactment of provisions on the protection of individuals or groups against the worst human rights violations, such as genocide, war crimes and crimes against humanity.

Although the era of the Cold War saw many such crimes, they did not trigger a comparable systematic reaction as has been institutionalised in the UN human rights domain. It was only after the massacres in the Rwanda genocide (1994) and Srebrenica (1995), which were perceived as preventable acts of gross human rights violations, that the world community considered reinvigorating norms addressing such acts. The adoption of the Rome Statute in 1998, followed by the establishment of the International Criminal Court in 2002, aimed at prosecuting perpetrators of genocide, crimes against humanity and war crimes (and the crime of aggression after 2017), as happened in Rwanda and Bosnia.

The Responsibility to Protect

In reality, though, the notion of 'sovereignty as responsibility' had entered the 'protection discourse' in the early 1990s. Thus, in 2001, the International Commission on Intervention and State Sovereignty (ICISS) produced its seminal report on what is now called the Responsibility to Protect (R2P). The report prominently underlined the idea of sovereignty as responsibility, drawing a connection between international humanitarian interventions and the limits of the principle of non-interference in circumstances in which a state cannot or does not want to protect its population from genocide, war crimes, and crimes against humanity or ethnic cleansing.

According to the ICISS report, R2P encompasses three pillars, namely:

A **The responsibility to prevent:** to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk.

B **The responsibility to react:** to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention.

C **The responsibility to rebuild:** to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.[2]

Furthermore, the ICISS developed so-called 'precautionary principles', which aim at curtailing potential misuse of military interventions, foreseeing the politically highly contested content of R2P.

The four principles are:

A **Right intention:** The primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering. Right intention is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned.

B **Last resort:** Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded.

C **Proportional means:** The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective.

D **Reasonable prospects:** There must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction.[3]

In essence, the ICISS report attempts to reconcile the existing tension between state sovereignty and the need to remedy the situation of those facing the worst human rights violations. Yet still, R2P remains one of the most contested norms internationally. In legal terms, it was never codified to the extent that classical human rights law is. It does not even have legal quality.

Nonetheless, R2P received significant political acceptance through its integration into the World Summit Outcome Document adopted by consensus in 2005. In this document, R2P was elaborated in paragraphs 138 and 139 in a very condensed form, leaving ample room for further interpretation

and operationalisation in practice. In fact, one can observe a high degree of declaratory consent and acceptance of the principle, but more disputes about its implementation. There is little open opposition against this norm or strategic attempts to dismantle it.

De facto, however, R2P has become a dominant concept without which it would have been impossible to have constructive debates about the intervention in Libya, for instance, or a potential intervention in Syria, for that matter.

As the ICISS report aptly notes: '"Humanitarian intervention" has been controversial both when it happens, and when it has failed to happen.'[4] Both will leave important imprints on further consolidation of the norm. Since its drafting by the ICISS and adoption by the World Summit, R2P remains a norm under construction, with all its potential for further consolidation and the risks of misuse and setbacks.

R2P and the GIBSA group

The discourse about R2P has, however, also involved the GIBSA group, comprising Germany, India, Brazil and South Africa. GIBSA has emerged out of the common interests of its members as aspiring global powers and benign regional hegemons, averse to aggression. It is an informal grouping, where the countries involved can organise and formulate their interests. In recent years these less institutionalised groupings, which also include the G20, IBSA (India, Brazil and South Africa) and BRICS (Brazil, Russia, India, China and South Africa), have taken on a larger role in shaping the global agenda.

All four GIBSA countries are established democracies that believe in the effectiveness of a multilateral global order and are inclined towards restraint on the use of force and military power. They are all involved in regional and UN peace missions, and can be described as anchors for peace, democracy and economic development.

For the GIBSA group and in the context of R2P, the year 2011 was a crucial one. Coincidentally, these four countries had been elected by the General Assembly as non-permanent members of the UN Security Council (UNSC) and, through this election, had highlighted their support by many UN member states.[5] As important as the ICISS and the World Summit Outcome Document are for the codification and conceptual development of R2P, 2011 was critical for further development of the norm in practice.

Since 2005, Libya and Côte d'Ivoire have been the only cases in which the UNSC has invoked the non-consensual provisions of Chapter VII of the Charter to mandate the international community to 'use all necessary means' to enforce the protection of civilians. In the case of Libya, the North Atlantic Treaty Organization (NATO) undertook a military campaign to implement UNSC Resolution 1973 (2011), aimed at protecting civilians protesting against the Gaddafi regime. The reaction of the GIBSA countries and the UN to the intervention in Libya reflects the widespread support for, but also the controversy around, R2P practice. Reaction to the intervention in Côte d'Ivoire was similarly polarised.

Although there was no joint GIBSA reaction to the interventions in Libya and elsewhere, the GIBSA group has contributed to the consolidation of R2P by highlighting inherent deficiencies as well as the need for further engagement in a norm-construction process. Such a process of norm building will invariably be reactive to emerging world events, future humanitarian and security imperatives, and the national interests of a diverse range of countries.

Outline of the publication

This publication focuses on the positions of GIBSA countries and attempts to explore their contribution to the further development of R2P. The chapters follow three main themes.

First, they examine each GIBSA country's entry point into the debate on R2P, exploring the domestic context in which the principle has been developed and which has shaped the country's subsequent position on the issue. The relevant analyses look at whether and how a country is helping to bridge the gap between state sovereignty and protection of the equally legitimate needs of those facing the most severe human rights violations.

The underlying questions for analysis include the following:

- Is the tension between state and human security intractable or can it be reconciled?
- Does the application of R2P or its failure mean that either the state prevails at the cost of human suffering or that the sovereign rights of states should be violated in order to ameliorate human suffering, but at the cost of foreign intervention often being guided by domestic political and/or economic interest?

- Is R2P the long-awaited answer to end a period of impunity against the perpetrators of genocide, crimes against humanity, war crimes and ethnic cleansing, leading the international community to rightful and legitimate action beyond just the rhetorical commitment to human rights?

Second, the contributions seek to elaborate the positions and responses of each GIBSA country to specific crises that are either of interest or relevance to that country, the region in which the country is located and/or the international community. Most of the chapters therefore focus on historical cases such as Rwanda, Kosovo and Darfur, in addition to the recent conflicts in Côte d'Ivoire and Libya, as well as the Arab Spring. By contrasting the historical cases with the most recent ones, the publication explores if and how the position of GIBSA countries has changed or is changing over time. Controversial cases such as Libya also reveal the very practical challenges R2P mandates and interventions face within the international community and on the ground. These challenges include the following:

- Are R2P mandates in accordance with the core R2P principles?
- Are those executing R2P mandates acting within the limits of the mandate vis-à-vis proportional use of force, UN command and control of the operations, post-intervention accountability mechanisms, among others?
- Are those who have voiced prominent objections doing justice to the victims of repressive regimes on the ground?
- Can we distinguish between national interests and global responsibility to act in order to stop outrageous crimes?
- And finally, what consequences and implications do these have for the principle of R2P?

Third, the contributions formulate policy recommendations for current and potential future crises. They explore how GIBSA countries should respond in cases of humanitarian emergencies. Is it possible and how should they coordinate their positions in institutions such as the UNSC? What should a successful R2P intervention look like? What conditions should be met? Which lessons of either bad or best practice can be learned in the wake of the most recent cases in Libya and Syria?

The publication is organised into five sections. The first chapter, by Alex Bellamy, provides a general overview of the contested nature of R2P. Bellamy argues that R2P has been contested since its inception but has shown resilience against its critics by surviving yet another crisis (Libya and Syria). Referring to UN Special Adviser on the Responsibility to Protect, Edward Luck, Bellamy identifies the 'risk of relevance' to be one of the greatest challenges for R2P. He points out that the problem is not its irrelevance or its outright inapplicability, but the missing international consensus around how this principle should be executed when confronted with cases such as Libya and Syria.

In his chapter, Festus Aboagye analyses South Africa's partly ambiguous position towards R2P. Aboagye explains the different positions – discourse and practice – South Africa appears to have taken as a consequence of various factors, such as erratic international norm building, diversity of conflict situations and, above all, a demonstrated policy stance towards state sovereignty as opposed to human security. Aboagye asserts that South Africa has been constructive in the development of R2P, including the principle in the crafting of the African Peace and Security Architecture. However, in the more recent cases of Côte d'Ivoire and Libya, South Africa was averse to the use of force, which it perceived as a pretext to legitimise implicit regime-change agendas by Western countries on the African continent.

Lars Brozus's chapter clearly portrays Germany as deeply committed to being a middle power rooted in multilateral efforts to maintain peace and conflict prevention within the UN, and more so at the regional European level. In Brozus's view, Germany's role can be summarised as being a somewhat constructive international donor and norm entrepreneur, but only a reluctant military power. On the one hand, Germany has been instrumental in the ICISS discourse and is a major donor to the UN budget. On the other hand, however, its foreign policy has not been free of contradictions. While Germany actively supported NATO's operation in Kosovo (1999) without having a UNSC mandate, it did not support NATO's operation in Libya despite explicit Security Council endorsement.

Brazil and India are among the most dynamically growing economies in the GIBSA group and increasingly engage in more assertive foreign policies. Both countries are at the threshold of becoming important global players, capable of actively shaping, if not setting, the international agenda. In the case of Brazil, Eduarda Passarelli Hamann discusses the gap between Brazil as a

global economic power but not yet as a forceful global actor. She observes that Brazil was initially reluctant to engage extensively in peace operations or military humanitarian interventions, but is now making an important contribution to the still evolving norm of R2P by highlighting scope conditions for the application of R2P. These conditions have been summarised under the heading of Responsibility while Protecting (RwP).

Lastly, Dipankar Banerjee's chapter on India once more addresses the ambiguous relationship between, on the one hand, India's insistence on state sovereignty and non-intervention in domestic affairs and, on the other hand, the country's active role as one of the leading troop contributors to UN peace operations. However, while India vehemently rejected NATO's operations in Kosovo and Libya (but did not vote against them in the UNSC during its term in 2011), it has been predisposed to intervene in neighbouring countries and has used R2P rhetoric to legitimise its foreign and security policy.

In addition to the expert opinions, this publication features student contributions in order to widen the dialogue between the global expert community and young aspiring scholars. The two students, Katharina Wolf and Carl-Wendelin Neubert, presented papers at the R2P dialogue meeting held in Pretoria in June 2012, which allowed for lively debate among all the contributors to this publication. In the summaries of their presentations, published herein, Wolf and Neubert outline their views on R2P, its shortcomings and possible solutions. Their innovative ideas regarding legal and intercultural aspects of R2P provide a fresh view and enrich the discussion about the R2P initiative.

Katharina Wolf makes an important contribution to the R2P discourse by pointing out that, in order to be accepted globally, norms need to go through a localisation process in which domestic and non-state actors are integrated into what can best be called a continuous norm-construction process. Neubert focuses on measures aimed at preventing R2P situations, including preventive peacekeeping, preventive interim administrations and indirect sanctions. Elaborating on a UN early-warning system necessary to detect potential grave human rights violations, Neubert advocates bolstering R2P's impact through political and institutional support from within the UN.

Endnotes

1 ICISS, 'The Responsibility to Protect', Report of the International Commission on Intervention and State Sovereignty, Ottawa, December 2001, p 1. Available online: http://responsibilitytoprotect.org/ICISS%20Report.pdf [accessed 20 July 2012].
2 Ibid, p xi.
3 Ibid, p xii.
4 Ibid, p 1.
5 H Petersen & S Thielges, *The 2011 GIBSA Conference on the United Nations Security Council Positions, Demands, Shared Interests*. Berlin: Stiftung Wissenschaft und Politik, 2011.

1

R2P – Dead or Alive?

Alex Bellamy

Introduction

From almost the day it was born, some analysts have been predicting the death of the Responsibility to Protect (R2P) principle. When the International Commission on Intervention and State Sovereignty (ICISS) handed down its report that coined the phrase 'responsibility to protect', a month or so after the 9/11 attacks on New York and Washington, DC, few outside the ICISS itself thought that R2P would gain much political traction. That it did was largely due to the tireless campaigning of some of the commissioners, especially Gareth Evans, and the support it received from the then United Nations (UN) Secretary-General Kofi Annan.

Still, few seriously thought that the R2P principle would be formally adopted by states. Nonetheless, thanks to the on-going efforts of Annan and Evans, working with a group of like-minded states, R2P was adopted unanimously by Heads of State and Government at the 2005 UN World Summit. Even then, however, critics continued to argue that the principle was dead – 'an international irrelevance'; 'nothing but sound and fury signifying nothing'.[1]

Next, the principle was reaffirmed by the United Nations Security Council

(UNSC) in Resolution 1674 (2006). After an admittedly long struggle, the UN General Assembly agreed on a resolution to continue consideration of the principle (A/63/308, 7 October 2009) and on its implementation in 2009. The UNSC reaffirmed the principle again in 2009 (Resolution 1894), and the UN established a Joint Office for the Prevention of Genocide and the Responsibility to Protect.

In the field, the R2P 'lens' was used to guide the international community's diplomatic response to post-election atrocities in Kenya in 2008, but faltering efforts to resolve the humanitarian crisis in Darfur – widely seen as a spectacularly failed test case for R2P – led to more suggestions that the principle was 'dead'.[2] However, R2P was thrust to the fore in 2011 as the UNSC took measures to resolve humanitarian crises in Libya and Côte d'Ivoire.

Some member states complained that the UN/France in Côte d'Ivoire and the North Atlantic Treaty Organization (NATO) in Libya had exceeded their limited mandates to protect civilians in those countries by forcibly changing the regimes there. They pledged to take a harder line in future by resisting efforts to apply coercive measures on states thought to be failing in their responsibility to protect their own populations. According to those who continue to predict R2P's demise, one of the immediate consequences of this new harder line was the international community's failure to find a meaningful consensus on the situation in Syria. Syria, they now argue, will kill R2P.

This chapter suggests, however, that R2P is not about to die. Indeed, it is not even on life-support. Instead, R2P has become critical to the way in which the international community perceives and responds to crises relating to genocide, war crimes, ethnic cleansing and crimes against humanity (hereafter 'genocide and mass atrocities'). This can be seen not just by looking at when the language of R2P is actually used but by noting that when crises erupt, the protection of populations from atrocity crimes has become a central priority for the international community.

Simply put, the legitimacy of the UN and its field missions today rests largely on its capacity to protect people from atrocity crimes – irrespective of whether the organisation has a specific protection mandate or the means to execute the mandate successfully.[3]

Over the past two years, several arms of the UN system have become actively engaged in R2P issues, including the Security Council, the General

Assembly, the Human Rights Council, the Office of the High Commissioner for Human Rights, the Office of Legal Affairs and, of course, the Joint Office for the Prevention of Genocide and the Responsibility to Protect.

To those who describe the post-Libya backlash as a sign of R2P's ill-health, it is worth pointing out that the UNSC has referred to the principle more often in the 12 months *since* Libya (in resolutions on Yemen, South Sudan and a presidential statement on preventive diplomacy) than it had done in the five years prior (Darfur, Côte d'Ivoire).

What R2P is facing, therefore, is not its death, but what Edward Luck has called the 'risk of relevance'. It is one thing to agree on an international principle that promises protection to populations at risk of genocide and mass atrocities, but it is another thing entirely to find international agreement on the best way of providing protection in individual cases.

As R2P becomes central to the way in which the international community thinks about, debates and responds to the challenge of genocide and mass atrocities, those using the principle will be confronted with hard choices. The principle itself will be subjected to closer scrutiny and there will be arguments about the best way to realise these goals in individual situations. Given the difficult international politics and the inherent complexities of situations where mass atrocities are committed, responses will, by necessity, be uneven – displeasing some when the international response is judged to go too far and others when it is judged not to be going far enough.

The surest sign of R2P's vitality, however, is that our debates have become firmly fixed on the prevention of genocide and mass atrocities and on the protection of vulnerable populations. It was not always thus.[4] Nobody today questions the basic principles that states have a responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and that when they fail to do so the international community should take action to provide protection. It is the question of finding international consensus on how best to realise these goals in the inherently difficult and complex situations that confront us today.

This chapter continues in three parts. The first part briefly clarifies the meaning, scope and status of R2P. The second part examines R2P's record since 2005, suggesting that the principle is becoming more, not less, relevant. And the third part considers the 'risk of relevance' in more detail, identifying the most pressing political and practical questions with respect to the principle's implementation.

Meaning, scope and status of R2P

The debate about what R2P actually is remains suffused with misunderstanding. It is therefore necessary to clarify briefly its meaning and scope, as agreed by the international community.[5] After several months of detailed consultation and negotiation carried out at the highest levels of government and the UN, world leaders unanimously adopted R2P at the UN World Summit in 2005.[6] Paragraphs 138–140 of the Summit's Outcome Document declared that:

> 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.
>
> 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 of the United Nations, to help protect populations from 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.
>
> 140. We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide. [7]

As agreed by UN member states, the R2P concept rests on three equally important and non-sequential pillars, which were set out by the UN secretary-general in his 2009 report 'Implementing the Responsibility to Protect':

- First, the responsibility of the state to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement (para. 138).
- Second, the international community's responsibility to assist the state to fulfil its responsibility to protect (para. 139).
- Third, the international community's responsibility to take timely and decisive action through diplomatic, humanitarian and other peaceful means through Chapters VI (peaceful measures) and VIII (regional arrangements) of the UN Charter. Should peaceful means be inadequate, in situations where the state had manifestly failed in its responsibility to protect, the international community is prepared to take collective action, including through Chapters VII (enforcement measures) of the UN Charter (para.139).[8]

No single pillar is more important than the others; R2P is equally dependent on each.

In the 2009 report, the UN secretary-general outlined a comprehensive plan for implementing each of R2P's three pillars.[9] The secretary-general's report was subsequently discussed by the General Assembly in a plenary debate held in July 2009. The General Assembly held another discussion on R2P in 2010, focusing on the question of early warning. This gave rise to the establishment of the UN Joint Office for Genocide Prevention and the Responsibility to Protect, charged with providing early warning and a convening mechanism to bring the system together in crisis situations in order to provide timely and coherent advice to the secretary-general. The topic for debate in 2011 was the role of regional and sub-regional arrangements. In the wake of the intervention in Libya, the secretary-general decided that in 2012

the focus for debate should be placed squarely on R2P's controversial third pillar.

The 2005 World Summit Outcome Document signifies the extent of international agreement about R2P. It is important to distinguish between the R2P that governments have agreed to adopt and the ideas that helped shape it, including the proposals of the ICISS, mentioned earlier. There are four key points to bear in mind in this regard.

First, R2P applies only to the four crimes enumerated in the 2005 World Summit Outcome Document – genocide, war crimes, ethnic cleansing and crimes against humanity – and to their prevention. Second, R2P is based on well-established principles of existing international law. The crimes to which it relates are crimes enumerated in international law. Under customary international law, states already have obligations to: prevent and punish genocide, war crimes and crimes against humanity; assist states to fulfil their obligations under international humanitarian law; and promote compliance with the law. In addition, the agreement is clear that R2P is to be implemented through the UN Charter. Nothing in the R2P principle permits states or regional organisations to act outside the Charter. Third, member states explicitly called for the *prevention* of the four crimes. As such, prevention is at the core of R2P, with other measures contemplated only when prevention fails or (in line with Article 42 of the UN Charter) is thought likely to fail by the UNSC. Fourth, force is to be used only when authorised by the UNSC and when other, peaceful, measures called for by Pillars II and III are thought unlikely to succeed.

R2P – the early years

Having clarified the meaning and scope of R2P, this section briefly documents debates about its use since 2005. It may be helpful to divide these into three periods.

2006–2008: Revolt against R2P

Immediately after the adoption of the World Summit Outcome Document there was a revolt against R2P characterised by tough diplomatic battles to have it reaffirmed, the UN secretary-general's struggle to appoint a special adviser, and a retreat from attempts to incorporate the principle into

diplomatic practice. Thanks largely to lingering concerns about R2P's potential to legitimise coercive interference, several states displayed what Gareth Evans labelled 'buyer's remorse' and launched a 'revolt' to stop the principle's implementation.[10]

It took six months of intense debate for the UNSC to unanimously adopt Resolution 1674, 'reaffirming' the World Summit's provisions 'regarding the responsibility to protect'. Russia, China and three non-permanent members (Algeria, the Philippines and Brazil) initially argued that the World Summit had only committed the General Assembly to further deliberation on R2P, not to its implementation.[11]

Changes in the UNSC's non-permanent membership and the softening of the language endorsing R2P helped forge agreement, but it was a hard-won consensus.[12] This experience persuaded some of the UNSC's R2P advocates to avoid asking the body to make greater use of the principle for fear of creating opportunities for backsliding.[13] Between the passage of Resolution 1674 in 2006 and 2009, the UNSC referred to R2P only once – in the preamble to Resolution 1706 (2006) on the situation in Darfur. Several UNSC members expressed concern (China abstained in the vote on Resolution 1706) about the diplomatic pressure brought to bear to secure this reaffirmation, and subsequent resolutions on Darfur shied away from endorsing R2P.[14]

Resistance to implementing R2P was also evident in other organs of the UN. For example, when the UN Human Rights Council's High-Level Mission to Darfur reported in 2007 that the government of Sudan was failing in its responsibility to protect Darfuris, the Arab Group, Asia Group and the Organization of Islamic Conferences all questioned the report's legitimacy and tried to prevent deliberation on its findings.[15]

In December 2007, UN Secretary-General Ban Ki-moon, in a budget estimates report, proposed the appointment of Edward Luck as his special adviser on R2P.[16] The General Assembly's Fifth (Budget) Committee implicitly rejected the proposed appointment and establishment of a Joint Office for Genocide Prevention and the Responsibility to Protect, when it adopted a resolution on the 2007/8 budget without funding the proposal.[17] The Fifth Committee addressed the appointment issue again in March 2008, and several member states (Cuba, Egypt, Morocco, Nicaragua, Pakistan and Sudan) expressed concern, arguing that it was premature in advance of the General Assembly's deliberations on R2P, and claiming that the 2005

agreement had merely committed the General Assembly to further consider R2P.[18] In the end, the secretary-general exercised his right to appoint advisers and the General Assembly exercised its right not to fund the initiative. Ultimately, the appointment of Luck helped turn the tide.

2008–2010: Building consensus

The first sign that the tide was turning came not in New York but in Nairobi. In the aftermath of the disputed 30 December 2007 elections in Kenya, ethnic and tribal violence resulted in the killing of some 1,500 people and the displacement of 300,000 more. The international community responded with a coordinated diplomatic effort led by African Union (AU) mediator, Kofi Annan, and supported by the UN's secretary-general and Security Council. Annan persuaded Kenya's president, Mwai Kibaki, and his main opponent, Raila Odinga, to conclude a power-sharing agreement and rein in the mobs. Annan later observed that he clearly saw and approached the situation 'in the R2P prism', as did the UN secretary-general.[19] This diplomatic effort, couched squarely in R2P terms, pulled the two leaders back from the brink and saved Kenya from a terrible fate. It also provided a tangible demonstration of R2P's capacity to facilitate atrocity prevention through peaceful means.

With Kenya as a helpful precedent, the newly appointed special adviser engaged in lengthy and detailed dialogue with member states about the principle's content and future direction. Early results included the articulation of R2P's three pillars and what the secretary-general described as a 'narrow but deep' approach that strictly limited R2P to what was agreed in 2005 but 'utilized the whole prevention and protection tool kit' available to the UN system.[20] This helped to clarify what had been agreed, to assuage concerns about unilateral intervention, and to build the foundation for a broader and deeper consensus.

In the midst of these discussions there were more attempts to 'apply' R2P to humanitarian crises. Following Myanmar's slow-paced response to requests for humanitarian access in the wake of Cyclone Nargis in May 2008, French Foreign Minister Bernard Kouchner briefly called for 'R2P' to be applied to facilitate the delivery of aid without the government's consent. A few months later, in August, Russia claimed that its invasion of Georgia was justified on R2P grounds as it aimed to prevent genocide in South Ossetia.

Both claims were rejected by the international community and the UN Secretariat, helping to further clarify the limits of R2P and to persuade cautious member states that the principle could not be used in an expansive way to justify unilateral coercion.

As noted, in early 2009 the secretary-general released his report, 'Implementing the Responsibility to Protect', in which he outlined the three-pillar strategy in some detail.[21] In the ensuing General Assembly debate, 94 speakers representing some 180 governments (including the Non-Aligned Movement) from every region participated. Of those, only four (Cuba, Venezuela, Sudan and Nicaragua) called for a renegotiation of the 2005 agreement. Most governments welcomed the secretary-general's report, agreed that the challenge was to implement R2P and *not* renegotiate it, and indicated their support for the three pillars and the secretary-general's 'narrow but deep' approach. Member states also voiced their commitment to the General Assembly continuing its consideration of R2P.[22]

2011–today: R2P and the risk of relevance

Despite the clear progress made in widening and deepening the global consensus on R2P, few if any anticipated the events of 2011 and the role that R2P would come to play. In March, the UNSC responded to violence in Libya, which included the commission of crimes against humanity and the clear potential for more, by unanimously passing Resolution 1970. Under Chapter VII, the resolution specifically referred to R2P, demanded an immediate cessation of violence, established a political process, imposed targeted sanctions and referred the situation to the International Criminal Court. When the Gaddafi regime failed to comply, the UNSC took three unprecedented steps: authorising the use of force to protect civilians from imminent danger; enforcing a no-fly zone; and imposing an arms embargo (Resolution 1973). This was the first time in its history that the UNSC had authorised the use of force against a functioning member state for human protection purposes.

A few days later, the UNSC unanimously adopted Resolution 1975 on Côte d'Ivoire. In the context of escalating post-election violence there, the UNSC declared Alassane Ouattarra to be the country's president and authorised the use of force to protect the civilian population. These three resolutions – passed without a single negative vote – clearly demonstrated the

UNSC's determination to act on its responsibility to protect populations, including through the use of force when necessary and possible. This signalled a new phase in the UNSC's history from which there could be no return.

Some member states criticised the actions in Libya and Côte d'Ivoire. In particular, critics complained that NATO and the UN overstepped their Security Council mandates by: contributing to the forcible change of regimes in those countries; using disproportionate force, which increased the risks to the civilian populations; and ignoring or outright rejecting opportunities for further political dialogue. Indeed, a number of countries, including Russia, India and China, went so far as to argue that regime change must never be part of the toolkit of responding to genocide and mass atrocities.[23] Subsequently, Russia in particular has argued that the lessons learned over Libya coloured its thinking on Syria, pushing it to resist Western pressure on the al-Assad regime on the grounds that this might open the door to regime change.[24]

We should be wary, however, of accepting this issue linkage at face value. It is unlikely that the international community's response to Syria would have been much different without the Libyan intervention. There are at least three major reasons for thinking so. First, Russia has a close political relationship with the al-Assad regime. Syria is a significant purchaser of Russian weapons, home to a Russian naval base, and the last of the region's Russian allies. Second, the Syrian situation itself is incredibly complex and fraught with potential danger, limiting the international community's plausible room for manoeuvre. And third, some of those states that voiced concerns about Libya – notably Brazil and India – sided with the West on draft resolutions condemning Syria.

Despite the very public political posturing on Syria, the international community has managed to reach consensus on some of the more significant issues – Kofi Annan's six-point plan, the deployment and then strengthening of UN observers, and the condemnation of the Houla massacre. As a result, the regime is under pressure to reform and faces significant obstacles to the commission of further atrocities. With UN monitors in the country, it would be very difficult to conceal evidence of a massacre and hard for the UNSC to ignore the reports of its own mission.

Interestingly, the vigorous debate over Côte d'Ivoire and Libya has not inhibited the UNSC from referring to R2P. Resolution 1996, adopted in July 2011, established a UN peace operation for South Sudan and called upon the international community to provide assistance to help the new government to

fulfil its responsibility to protect, in line with R2P's second pillar. Resolution 2014, adopted in October 2011, reminded the government of Yemen of its primary responsibility to protect its population. In its September 2011 Presidential Statement on preventive diplomacy, the UNSC again recalled the responsibility to protect.

This suggests a number of things about the state of R2P today. Perhaps most significantly, the criticism of what happened in Libya and Côte d'Ivoire was not directed at the principle of R2P – indeed no state directly criticised the principle – but rather at the way in which it was implemented. What remains controversial is not R2P – or even the idea that the international community should become involved in crises involving the commission or potential commission of genocide and mass atrocities – but rather the questions of using force and changing regimes. Crucially, in neither case were there challenges to the UNSC's right to authorise force for human protection purposes or the right of those acting on the UNSC's authorisation to use force. When we compare the situation today with that in 2006–2007, it seems clear that R2P has never been more 'alive' and relevant. What it confronts today is not 'death', but the risk of relevance.

Mitigating the risk of relevance

In 2011, reflecting on controversies over Libya and Côte d'Ivoire, the UN secretary-general noted that:

> this is a critical moment in the life of the Responsibility to Protect. In the six short years since its endorsement by the World Summit, this doctrine has gone from crawling to walking to running … As my Special Adviser on these issues is fond of saying, the Responsibility to Protect faces the risks of relevance. However, 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. The world has seen too much of the latter and too little of the former.[25]

The challenge now, therefore, is not to reinvent the wheel by thinking anew about what R2P means, but to address the very difficult questions about how to implement the principle in such a way as to maximise the protection afforded to vulnerable populations while maintaining the global consensus

that underpins the principle. The key challenge is to learn from experience. One useful way of thinking about the lessons that need to be learned in order to address R2P's 'risk of relevance' can be found in the concept of Responsibility while Protecting (RwP), championed by Brazil. The concept was proposed first by Brazilian President Dilma Rousseff at the September 2011 plenary of the General Assembly.

Towards the end of 2011, Brazil circulated a note outlining the concept in more detail and hosted an informal dialogue at the UN in February 2012. The initiative has been welcomed across the board, including by the UN secretary-general, for providing a way of building a new consensus on the implementation of those most controversial aspects of R2P that relate to coercion and the use of force.

For our purposes, it is worth singling out three particularly important elements of this concept that will be especially useful in helping R2P to cope with the risk of relevance.

Strengthen prevention

RwP calls for a renewed focus on prevention. This is in keeping with R2P, which includes a specific pledge to prevent the crimes of genocide, war crimes, ethnic cleansing and crimes against humanity. A stronger focus on prevention requires a 'grand bargain' between member states. On the one hand, states in the West and elsewhere that occasionally champion intervention should commit to providing real resources to strengthen preventive capacities and facilitate the development of strategies for prevention. On the other hand, states that are sceptical about coercive intervention need to recognise that the best way of avoiding the need for intervention is to prevent crises from erupting in the first place. As such, they need to be willing to act earlier to address imminent crises and to allow the international community to respond earlier to crises through diplomatic, humanitarian and other peaceful means, as agreed in 2005. States cannot resist early action and then complain when situations get so bad that they require external intervention.

There have been many generic calls for a focus on prevention, but what is needed now is a shift from rhetoric to firm policies and strategies. From the UN perspective, at least three strands of work are required. The same ideas may apply to regional arrangements as well.

First, capacity building. We need to know what work the UN system does that contributes to the prevention of genocide and mass atrocities, what gaps there are in that work, and how capacities might be strengthened to close those gaps. This work is already under way, with the secretary-general announcing in January 2012 that he had asked his special adviser on R2P to conduct a system-wide assessment of the UN's capacity to prevent genocide and mass atrocities.

Second, further strengthening the UN's capacity for early warning and assessment. The Joint Office has an early-warning mandate, but limited resources. As a result, it cannot provide in-depth or real-time assessments. Additional resources are needed to strengthen the office's analytical capacity, and closer cooperation with the rest of the UN system is needed so that the Joint Office can make better use of other early-warning and information-gathering instruments, access real-time information, and utilise existing structures for coordination to disseminate its analysis and advice.

Third, the prevention of genocide and mass atrocities. This should be mainstreamed into the work of the whole UN system. This means making UN agencies, departments and field missions aware of the factors that trigger atrocities and capable of understanding how their own work impacts on them, as well as encouraging them to contribute to preventive activity and pass on information about risk factors that they encounter in the field. As such, mainstreaming ought to involve four key elements: the adoption of an atrocity-prevention lens into the work of the UN system; information sharing about risk factors; capacity building; and joint lesson learning.

Accountability

The second key element of RwP is accountability. It was noted earlier that objections to the NATO-led intervention in Libya focused on the complaint that NATO had exceeded its mandate by refusing to negotiate with the Gaddafi regime and by pursuing regime change. This has led to calls for strengthened procedures to allow the UNSC to hold to account states that act on its mandate. However, although there is clear merit in the argument for stronger accountability, there are some issues with the idea of creating special mechanisms to govern R2P enforcement operations.

First, the UN Charter gives the UNSC wide flexibility in terms of the actions it can take in pursuit of its primary responsibility for international

peace and security, and deliberately made the UNSC self-regulating. This has allowed the UNSC to be innovative and nimble-footed when it has needed to be, and has helped it find consensus when that has proven difficult. New mechanisms would require a change to the Charter, which could have unintended negative consequences. Most likely, such changes would make it more difficult for the UNSC to reach consensus on timely and decisive responses to genocide and mass atrocities, and to respond in innovative ways. Second, the UNSC's responsibility covers international peace and security and not just R2P cases. It would make no practical sense to have one set of rules for some Chapter VII resolutions and another set for others. Third, the UN has past bad experience with excessive political interference in military matters. The experience of UNPROFOR in Bosnia and, especially, the genocide in Srebrenica, is testament to what can happen when the UNSC tries to micro-manage military operations. And fourth, excessive political requirements might inhibit states from implementing UNSC mandates by pushing them to the view that they cannot translate a resolution into a viable military strategy that they can sell to their domestic publics. This would reduce the likely implementation of UNSC mandates, weakening their credibility and legitimacy, and inhibiting protection.

But these problems should not mean that nothing can be done to improve accountability. Instead of a new layer of procedural rules, the UNSC should make use of the powers it already has, and could be urged to write specific accountability measures into its resolutions, ensuring that the measures are appropriate to the situation at hand. The UNSC has already developed a strong repertoire of accountability measures that might be appropriate. The challenge should be to inform non-permanent members (especially) about what these measures are and when they might be employed. Such measures include:

- *Sunset clauses:* Authorisations could be time-limited, forcing states acting on mandates to return to the UNSC for a renewal. This is standard practice for UN peacekeeping operations and helps to build an accountability loop.
- *Specific reporting requirements:* The UNSC can and does require reports from those acting on its mandates. In the case of Libya, Resolution 1973 required implementing states to report their activities to the secretary-general. In future, the UNSC might also require the secretary-general to

brief it on these reports or demand that implementing states report directly to the UNSC.
- *Specific limitations:* The UNSC might specifically rule out certain courses of action. For example, Resolution 1973 forbade the deployment of ground troops as an occupying force in Libya.
- *Direct action:* The UNSC might directly mandate or require diplomatic activity, the despatch of envoys or the acceptance of negotiated agreements.
- *Information gathering:* The UNSC might mandate its own fact-finding mission to gather information about the implementation of its mandates, supplementing or replacing reporting from implementing states.

Pursuing this route to greater accountability would reduce the likelihood of unintended negative consequences, allow the tailoring of accountability measures to individual circumstances and make use of the UNSC's existing authority under the UN Charter.

Analysis and assessment

The third critically important aspect of Brazil's RwP concept is its focus on the need for stronger analysis and assessment to drive decision-making on the best responses to situations of actual or imminent genocide and mass atrocities. The potential pitfall of the calls for judicious analysis is that the process becomes politicised and is then used as an excuse for inaction. To avoid this, the task should be given to the UN Secretariat – an independent service that works for all member states. To facilitate this, the UNSC in particular could be encouraged to request and receive briefings from the Secretariat (whether formal and public or informal and private) on emerging situations and the options for action. The Secretariat, in turn, needs to be given the resources to provide in-depth analysis and assessment.

In relation to the specific issue of genocide and mass atrocities, the Joint Office for Genocide Prevention and the Responsibility to Protect would be the most appropriate vehicle within the Secretariat. Analysis should include detailed information about the situation and the relevant parties, the merits and demerits of different courses of action, the likely costs of various forms of coercive action, and the likely costs and effects of inaction. This sort of analysis and assessment can only be provided if member states ask for it. In

the past, the UN Secretariat's willingness to provide briefings has far outstripped the willingness of member states to receive them. If member states sincerely believe in the merits of stronger analysis and assessment to guide decision-making, they need to request that the secretary-general provide them with such information and provide the necessary resources.

Together, these three propositions – a focus on prevention, strengthened accountability, and enhanced analysis and assessment – offer a realistic and useful way of responding to the risk of relevance confronting R2P today, which balances the need to maintain the global consensus about the manner in which R2P is implemented with the need for timely and decisive action to protect populations at risk in some circumstances.

Conclusion

We have argued that R2P is becoming increasingly central to the way in which the international community thinks about and responds to the problem of genocide and mass atrocities. The short history of R2P shows this progress only too well, and a careful consideration of the heated debates about how best to respond to situations in Côte d'Ivoire, Libya and Syria demonstrates that the world has moved on from the question of *whether* to accept and implement R2P to the (in some ways more difficult) question of *how* to realise its goals in specific situations.

There is no easy one-size-fits-all solution as each situation – and therefore the appropriate combination of measures – is different. It is important, however, that lessons are learned from experience to address the risk of relevance in a way that maintains global consensus about R2P while permitting timely and decisive responses to genocide and mass atrocities when needed.

Brazil's RwP initiative is a useful vehicle for learning lessons from Libya, and we suggest three in particular that ought to become policy priorities for the coming months and years: strengthening the prevention of genocide and mass atrocities; improving accountability; and enhancing analysis and assessment to guide decision-making.

Far from being dead, R2P has never been more relevant. But with relevance comes new challenges – and how we address these will determine whether R2P makes it past adolescence. The lives of many will be protected and improved if it does.

Endnotes

1 Aidan Hehir, 'The Responsibility to Protect: Sound and Fury Signifying Nothing', *International Relations*, 24(2), 2010, pp 218-239.

2 There is a voluminous literature on Darfur and R2P, much of it making basically the same point about the 'failure' of R2P to generate sufficient political will. See, *inter alia*, David Mepham, *Darfur: The Responsibility to Protect*. London: Institute of Public Policy Research, 2007; Cristina Badescu and Linnea Bergholm, 'Responsibility to Protect and the Conflict in Darfur: The Big Let Down', *Security Dialogue*, 40(3), 2009, pp 287-309 and Lee Feinstein, *Darfur and Beyond: What is Needed to Prevent Mass Atrocities*. Washington, DC: Council on Foreign Relations, 2007.

3 Central thesis of Siobhan Wills, *Protecting Civilians*. Oxford: Oxford University Press, 2009.

4 I have recounted the recent history of civilian immunity in Alex J. Bellamy, *Massacres and Morality: Mass Atrocities in an Age of Civilian Immunity*. Oxford: Oxford University Press, 2012.

5 The most recent example, where a scholar mistakes the R2P agreed by states with older variants proposed by others, is Robert A. Pape, 'When Duty Calls: A Pragmatic Standard of Humanitarian Intervention', *International Security*, 37(1), 2012, pp 41-80. Among the many errors in this piece, published in the leading US journal of security studies, is the claim that R2P calls for 'intervention' in response to any form of tyranny. That is clearly not the case, as a simple reading of the agreed text shows.

6 For a detailed account of the negotiating process see Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*. Oxford: Polity, 2009.

7 A/60/L.1, 20 September 2005, paras 138-140.

8 Ibid. See, Ban Ki-moon, 'Report of the Secretary-General on Implementing the Responsibility to Protect' A/63/677, 12 January 2009.

9 Ibid.

10 Gareth Evans, 'The Responsibility to Protect: An Idea Whose Time Has Come…and Gone?', lecture to the David Davies Memorial Institute, University of Aberystwyth, 23 April 2008.

11 S/PV.5319, 9 December 2005, p 10, 19; S/PV.5319 (Resumption 1), 9 December 2005, pp 3, 6.

12 UNSC Report, update report on the 'Protection of Civilians in Armed Conflict', No. 5, 21 June 2006 and No. 1, 18 June 2007.

13 UNSC Report, update report on the 'Protection of Civilians in Armed Conflict', No. 1, 18 June 2007.

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Responsibility to Protect', *Global Responsibility to Protect*, 1(2), 2009, pp 220-1.

15 High Level Mission of the UN Human Rights Council (2007), 'Report of the High Level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision S-4/101', A/HRC/4/80, 7 March. For the ensuing debate, see A/HRC/5/6, 8 June 2007.

16 A/62/512/Add.1, 30 October 2007, para 31.

17 A/RES/62/238, 20 February 2008. For a discussion see Ekkehard Strauss, 'A Bird in the Hand is Worth Two in the Bush – On the Assumed Legal Nature of the Responsibility to Protect', *Global Responsibility to Protect*, 1(3), 2009, p 301.

18 Fifth Committee of the General Assembly, GA/AB/3837, 4 March 2008.

19 On Annan, see Roger Cohen, 'How Kofi Annan Rescued Kenya', *New York Review of Books*, 55(13), 14 August 2008. On the UN secretary-general, see 'Statement Attributable to the Spokesperson for the Secretary-General on the Situation in Kenya', New York, 2 January 2008.

20 Ban Ki-moon, 'Responsible Sovereignty: International Cooperation for a Changed World', speech given in Berlin, 15 July 2008, SG/SM/11701.

21 Ban Ki-moon, 'Implementing the Responsibility to Protect', op cit.

22 A/RES/63/308, 7 October 2009.

23 S/PV.6531, 10 May 2011.

24 See Jess Gifkins, 'Syria and the Responsibility to Protect', *Global Responsibility to Protect*, 4(4), 2012.

25 UN Secretary-General, Ban Ki-moon, 'Remarks at Breakfast Roundtable with Foreign Ministers on "Responsibility to Protect: Responding to Threats of Imminent Atrocities"', UN Headquarters, 23 September 2011.

2

South Africa and R2P: More State Sovereignty and Regime Security than Human Security?

Festus Aboagye

Introduction

South Africa was a major player in the transformation of the Organisation of African Unity (OAU) to the African Union (AU), which was formally launched in Durban in 2003. The country is certainly one of Africa's nascent but strong democracies, with avowed soft-power aspirations in Africa as well as within the international community.

South Africa's foreign policy advocates principles revolving around a commitment to the promotion of human rights, democracy, justice and international law in the conduct of international relations.[1] These principles include, among others, a commitment to international peace and agreed international mechanisms for conflict resolution, as well as enhancing Africa's position in world affairs.

These principles, together with South Africa's unprecedented double non-permanent membership of the United Nations Security Council (UNSC) in 2007–2008 and 2011–2012, have helped place the country at the centre of

the Responsibility to Protect (R2P) discourse and practice – but have also posed serious challenges to South Africa's foreign policy choices.

Following recent R2P interventions in 2011 during the Arab Spring in North Africa and the Middle East, as well as the sub-Saharan crisis in Côte d'Ivoire, there has been renewed debate over R2P's principles and practice. The elaboration of R2P in the outcome document of the 2005 UN World Summit received broad support, but the expectation that the practice of R2P would receive similar global support has proved unrealistic. The debate has been animated by the role and position of regional organisations, and especially middle- and soft-power countries such as Germany, India, Brazil and South Africa (GIBSA), which have in some cases perceptibly shifted positions after coincidentally becoming non-permanent members of the UNSC in 2011–2012.

This chapter discusses South Africa's responses to and positions on key R2P interventions mandated by the UNSC, and the factors that informed these positions. The discussion is based on three critical factors, namely:

- changes or shifts in South Africa's position regarding R2P policy development and practice
- the merits and demerits of the various positions taken by South Africa in the historical evolution of R2P
- the validity of the underlying explanations for South Africa's positions, and implications for its soft-power status and role

South Africa's vacillation on R2P, as opposed to taking a single position, has been dominated by two broad factors, namely:

- the variables of R2P – the vicissitudes of norm building, diversity of conflict scenarios and dynamics, range of policy actors and implementers
- an apparent South African foreign policy option of upholding sovereignty and regime security, and not human security, as defined in African Renaissance terms in the AU's Solemn Declaration on a Common African Defence and Security Policy[2]

The chapter is presented in five sections: framing South Africa broadly in the discourse and practice phases of R2P; an overview of selected humanitarian interventions; an overview of classic R2P interventions in Libya (Arab Spring)

and Côte d'Ivoire; concluding observations; and broad policy issues and recommendations.

The discussion distinguishes between 'humanitarian interventions' – that is, the coercive (or non-coercive) use of force (or the threat of its use) to prevent and/or protect serious violations of human rights – and R2P, but recognises the linkages in their historical evolutions, as well as the marked degree to which both are based on human rights and the use of force for the protection of human rights. At the same time, however, it is conceded that there are differences in the application of force – for instance, in humanitarian interventions that may not involve territorial invasion or political submission.[3]

South Africa's position in R2P discourse and practice

While South Africa participated in the discourse regarding earlier episodes of humanitarian interventions in, for example, Kosovo (1999) and Sudan (2004), the country only entered the R2P discourse proper during its non-permanent membership of the UNSC – given the primacy of the UNSC for the maintenance of international peace and security (Article 24 of the UN Charter).

Although no African country is a permanent member of the UNSC,[4] South Africa has had the rare opportunity of serving two non-permanent terms, first in 2007–2008 and then in 2011–2012.

Building upon earlier work in the UNSC by Nigeria, South Africa, during its first tenure, preoccupied itself with a 'revisionist', wider interpretation of the Chapter VIII provisions of the UN Charter to make it automatic for the UNSC to provide financial and logistical support for regional organisations (especially the AU) undertaking peace operations. South Africa argued that since the AU's transformation in 2003 it had demonstrated considerable political will in crafting the African Peace and Security Architecture (APSA), which is tasked with undertaking peace support interventions within the continent. However, APSA has faced significant deficiencies in institutional expertise, funding capacity and logistics.

South Africa acceded to the UNSC for a second time with such hubris that, together with the other GIBSA countries, it was expected to embark on a push to revive the stalled UNSC reform agenda, as well as to improve the country's dismal track record of failing to uphold the protection of human

rights and other values during its UNSC debut.[5] The GIBSA reform agenda was perhaps too bold.

Be that as it may, South Africa pursued the same agenda for a UNSC-supported African leadership role in resolving the continent's conflicts. This led to the passage of UNSC Resolution 2033 (2012) on strengthening relations between the UNSC and regional bodies,[6] but with a particular focus on the AU Peace and Security Council (PSC) in the area of conflict management, among others.

South Africa's approach to R2P practice has shown an aversion to the use of force (especially in Libya but also in Côte d'Ivoire), highlighted by the marginalisation of both the AU and South Africa.[7]

Prior to South Africa's tenure on the UNSC, especially in the run-up to the 2005 World Summit, it was difficult to gauge the country's position on R2P principles and practice. South Africa's position is now much clearer. It subscribes to the key tenets of the AU's Common African Position on the Proposed Reform of the United Nations (Ezulwini Consensus),[8] including the primacy of the UNSC in authorising the use of force,[9] but without prejudice to the international community's responsibility to protect.

South Africa also emphasises the instrumentality of regional organisations on principles of proximity, as well as the need for a deeper appreciation of the causes and nature of (regional) conflicts in leading on actions with regard to R2P, subject to UNSC sanction, including *ex-post facto*,[10] in urgent situations that should then be financed by the UN. This notwithstanding, South Africa strongly believes that the primary responsibility of states is to protect citizens, with a caution to the international community to desist from using R2P as a pretext to 'undermine the sovereignty, independence and territorial integrity of states'.[11]

At the 2005 World Summit, South Africa and other Southern leaders (Argentina, Chile, Guatemala, Mexico and Rwanda) were influential in securing consensus on the R2P pillars:[12]

- Pillar I: The primary protection responsibilities of the state
- Pillar II: International assistance to states in exercising this responsibility
- Pillar III: Timely and decisive response

Bellamy, for instance, has argued that South Africa was an ardent advocate of R2P, and, along with Tanzania, greater UNSC prescription and responsibility

in resolving African problems. South Africa even insisted that these guidelines 'should not undermine the responsibility of the international community to protect'.[13]

It is fair to argue, however, that South Africa's proactive stance on UNSC primacy over regional organisations suffers a degree of compromise, largely as a result of the equivocal provisions of the AU Constitutive Act,[14] namely:

- Article 4(g) – on non-interference in the affairs of member states, coupled with the right of self-defence of member states
- Article 4(h) – 'the right of the Union [collectively] to intervene in a Member State pursuant to a decision of the Assembly in response to grave circumstances, namely war crimes, genocide and crimes against humanity', as well as in situations of 'serious threats to legitimate order'
- Article 4(j) – the right of member states to request intervention from the AU in order to restore peace and security

It is important to note, however, that the criteria in Article 4(h) are compatible with the R2P criteria: just cause threshold criteria – mass atrocities (predicated on mass killing involving ethnic cleansing, genocide, crimes against humanity and war crimes); and precautionary principles – right intention, last resort, proportional means and reasonable prospects.[15]

During its first two-year term on the UNSC, South Africa took its first concrete position on fundamental R2P principles during debates on draft resolutions seeking to condemn the Myanmar and Zimbabwe governments for suppressing legitimate opposition protests and for not respecting or protecting human rights.

South Africa voted against the resolutions. Its rationale, based on procedural remit, was that the UN Human Rights Council and not the UNSC was the appropriate forum to discuss these issues.[16] This position appears to be contradictory to South Africa's earlier stance on the primacy of the UNSC with regard to R2P, where the state has failed in its primary responsibility to protect human rights.

During its second (current) tenure, South Africa's R2P position has been even more confrontational regarding the 'disproportionate' use of force in the cases of Libya and Côte d'Ivoire, as well as the on-going crisis in Syria, among others. South Africa's voting pattern on these conflicts provides a reasonable basis for determining the consistency of its R2P practice position.

Humanitarian interventions: Positions and responses

AU interventionism, subsidiarity and pre-R2P practice

The AU PSC-mandated deployment of the African Mission in Sudan-Darfur (AMIS, 2004–2007) and the African Mission in Burundi (AMIB, 2003–2004) reflected an African Renaissance vision of not being indifferent to destabilising conflicts and of 'finding African solutions to African problems'.[17] Although motivated by humanitarian – and security – concerns, the missions were also a precursor of R2P practice in the continent.[18]

Furthermore, these interventions and other sub-regional initiatives underscored the principle of regional subsidiarity, given the reality that the UN and the international community were not always able, willing or ready to intervene in African conflicts.

The AU interventions helped to create conditions for the eventual deployment of UN missions.

While South Africa's role and contribution in both Burundi and Darfur, with consent-based mandates, are different from classic R2P/POC non-consent based mandates, for instance in Libya and Côte d'Ivoire, they do point to a return to regional and lead nation interventionism.

However, South Africa showed a conspicuous reluctance to participate in the AU PSC-mandated deployment of the AU Mission in Somalia (AMISOM, 2007).[19] This was in spite of the AU's pledge at the Kampala Summit (2010) to augment the force to about 20,000 as well as UNSC Resolutions 1766 (2007) and 1772 (2007) authorising the establishment of AMISOM.

While it came close to deploying military and naval elements to Somalia in August 2010, South Africa reneged on a shift in its policy intent to '… give logistical assistance and other support to ensure AMISOM does its work better than now'.[20]

It appears that South African participation in AMISOM is consistent with its national interests, predicated on its peace support intervention criteria.[21] The lack of a credible peace process in Somalia may explain South Africa's reluctance to get involved there.

In the context of this paper, Rwanda (1994) and Kosovo (1999) are examples of significant humanitarian interventions that provide a range of dynamic issues for an examination of South Africa's emerging role and position in the evolution of R2P.

Rwanda genocide (1994)

The lack of timely and decisive action by the UN and the international community allowed the Rwanda genocide to continue unabated (April–July 1994),[22] and will always be a blot on the conscience of humanity. A UN inquiry blamed the UN system, members of the UNSC – the United States (US), the United Kingdom (UK) – and other member states for the failure to halt the genocide. This debacle became a significant marker for decisive action in the future. Then UN Secretary-General Kofi Annan expressed deep remorse over the UN's failure and reaffirmed the UN's resolve 'never again' to fail to protect civilian populations from mass slaughter.[23]

The Rwanda genocide, coupled with the realities of Africa in the immediate aftermath of the Cold War, influenced the transformation of the OAU into the AU and the crafting of an African Peace and Security Architecture (APSA).[24] South Africa's view was that Africa could have done more than the ineffectual diplomacy and the minimalistic deployment of the Neutral Military Observer Groups in Rwanda in 1993–1994. By association, South Africa could be deemed to have been part of the blame game and of the evolution and developments that followed.

Kosovo (Balkan) crisis (1999)

The Kosovo crisis and the wider ethnic cleansing in the former Federal Republic of Yugoslavia only five years after the Rwanda genocide apparently did not remind the UNSC and the international community of its commitment 'never again' to allow such massacre.[25]

As Evans has argued, while most people and governments (Western) supported the need for external military intervention to stop the carnage, the UNSC failed to act because of Russia's threatened veto.[26] Acting on the strength of the Rambouillet Accords (1999), NATO 'unilaterally' intervened (March–June 1999)[27] to put an end to the carnage precipitated by the Racak massacre.[28]

It is important to note that attempts in the UNSC to defeat the NATO intervention failed dismally. Gabon and Gambia (two of the three African non-permanent UNSC members at the time), as well as Argentina, Bahrain, Brazil, Malaysia and Slovenia supported the NATO action. In spite of the significance of the non-condemnation of the NATO action by the UN

General Assembly, South Africa (and Nigeria) associated itself with the position of Namibia (and China and Russia) and voted in condemning the intervention. This points to South Africa's aversion to the use of force.[29]

Nel has noted that South Africa associated itself with the general Non-Aligned Movement (NAM) and OAU positions that, 'unilateral intervention, no matter how noble the pretext, is not acceptable'.[30]

Nel also believes that while South Africa maintained neutrality in relation to the protagonists, it reacted vehemently to the NATO bombings under the weight of its international and regional leadership positions in such organisations as the Southern African Development Community, the United Nations Conference on Trade and Development, NAM, and others, 'on the inappropriateness of NATO's actions, and the emphasis on the UN Security Council as the sole legitimate forum to deal with matters of humanitarian intervention'.[31] We will see later that South Africa's position on NATO action in Libya more than a decade later was contradictory to its position on Kosovo.

From the school of thought that the pursuit of national interest forms a core value of national foreign policy, Nel points to three possible national self-interest calculations to explain South Africa's military intervention in Lesotho (1998) under Operation Boleas,[32] which was done without UNSC authorisation. In the case of Kosovo, however, South Africa emphasised UNSC primacy and opportunistically shifted responsibility for African conflict resolution to the UN, thereby relieving itself of some of the burden of a regional soft-power conflict manager.

NATO's unilateralism may well have contributed to cynicism that external interventions are guises for powerful states to violate the sovereignty of fragile states. However, in spite of the potential damage to the UNSC's integrity and the opposition of the AU and South Africa, NATO's humanitarian intervention provided a lesson for crafting the AU's new APSA and in adopting the AU's right of intervention.

R2P episodes: Positions and responses

The foregoing and other humanitarian interventions provide a backdrop for the complex emergencies that have recently confronted the UN and the international community. The failure of the UN system in the 1990s in particular influenced a study by the Brahimi Panel on UN Peace Operations.[33]

These failures, coupled with ad hoc unilateral interventions in the aftermath of the Cold War, showed a perceptible need for greater coherence in collective responsibility and action in applying and attaining the principles and purposes set out in the UN Charter.[34]

The salient R2P interventions are those in Libya and Côte d'Ivoire in 2011, as well as Syria's still unfolding crisis. For objectivity and focus, any examination of the R2P aspects of these interventions should be informed by the same question that confronted Gareth Evans and Mohammed Sahnoun, the original founders of the ICISS:

> … if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?[35]

African dilemmas in Libya and Côte d'Ivoire

The Libya and Côte d'Ivoire crises constituted the most problematic test cases for South Africa during its second tenure on the UNSC. In both cases, South Africa attempted and failed to obviate military intervention and achieve peaceful settlements.[36] The crises also demonstrated a heightened disregard, both regionally and internationally, for the principle of subsidiarity.

Libya

A discussion of the R2P intervention in Libya must start with a careful examination of the sequencing of R2P action by the UNSC. Although acting under Chapter VII of the UN Charter, the UNSC was still cautious in taking graduated measures not requiring the use of armed force as a first resort. Consistent with Article 41 of the UN Charter, the UNSC first demanded an immediate end to the violence, called for steps to meet the legitimate demands of the population, and referred the situation to the International Criminal Court (ICC) prosecutor. At the same time, it imposed a targeted arms embargo – excluding arms for humanitarian or protective use – and an asset freeze on specified individuals or entities. The fulfilment of these measures was the basis for the unanimous vote for Resolution 1970 (2011), in which the UNSC:

> … expressed grave concern at the situation in Libya, … condemned the violence and use of force against civilians, as well as the gross and systematic violation of human rights, including the repression of peaceful demonstrators, the deaths of civilians, and the incitement to hostility and violence against the civilian population from the highest level of the Libyan government.[37]

Indeed, Thakur stresses the large consensus achieved among the UNSC, the Human Rights Council and the UN secretary-general in first asking Libya to 'respect its R2P, human rights and international humanitarian law obligations'.[38] It was only when these non-coercive measures were ignored that the UNSC passed Resolution 1973 (2011) by a vote of ten for, none against and five abstentions (Brazil, Russia, India, China and Germany, BRIC-G), thereby satisfying the sequencing of the R2P pillars.

The AU's problems started when it failed to consistently and strongly condemn the disproportionate use of force by the Libyan regime, as the declaration by the African Human and People's Rights Court did in March 2011 in reiterating crimes against humanity by Gaddafi. The AU suffered the first setback to its conciliatory policy stance when Gabon, Nigeria and South Africa, three African non-permanent members of the UNSC, voted with the P3 (France, the UK and the US) and four other non-permanent members to pass Resolution 1973 (2011). The resolution demanded an immediate ceasefire, imposed a no-fly zone and authorised 'all necessary means to protect civilians and civilian populated areas', among others.

Interestingly, the position of the AU Ad Hoc High Level Panel, comprising Congo Brazzaville, Mali, Mauritania (chair), South Africa and Uganda, contradicted the African position within the UNSC. While the Ad Hoc Panel collectively continued to emphasise the AU's five-point roadmap,[39] its individual members took divergent approaches based on national perspectives. Indeed, more African states increasingly came out openly in the media supporting the departure of Gaddafi, amounting to an open call for regime change.

Thus, NATO's military action was in response to the regime's threat and use of military force to suppress popular protest by 'unarmed' Libyans exercising their human rights, including civil and political rights (and, perhaps, even self-determination).[40] Essentially, the AU roadmap failed not on account of the pre-emptive NATO-French action on 19 March 2011, but

because of Gaddafi's threatening coded warning to the Benghazi population on 17 March: 'We are coming and there will be no mercy.' This was a clear intent to violate Resolution 1973, as South Africa acknowledged.

The AU and South African dilemma also lay in a policy stance perceived to be inclined towards regime security – a moral contradiction in terms of not upholding the human rights of Libyans and their aspirations for human dignity and freedom.[41] Given the fluidity of the R2P situation in Libya and the AU's own political and diplomatic inertia, the AU ceded any initiative to the League of Arab States (LAS), which as far back as early March 2011 had suspended Libya and sponsored Resolution 1973 (2011). The AU and South Africa were set on a collision course with the LAS, the UNSC and the international community (including the ICC, to which a referral had been made), and the African Court on Human and People's Rights, which condemned the massive human rights violations by the Gaddafi regime. The AU's – and by extension, South Africa's – failure to act made Africa irrelevant and isolated.

The South African and AU position also presented serious problems and challenges, if not contradictions, to the 'subsidiarity' prerogatives of regional organisations. While Libya is an African country and a key member of the AU, it is also Arab and a key member of the LAS, whose wider membership includes Algeria, Mauritania, Morocco and Tunisia, which are members of an equally dysfunctional Arab Maghreb Union. Libya's dual membership of two regional organisations which were in conflict over the crisis was a critical dilemma for South Africa, the AU and African diplomacy.

However, these arguments leave unanswered South Africa's sudden change of position and realignment with Brazil, Russia, India and China (the BRICS grouping) in vehemently denouncing and criticising the NATO action. South Africa has explained that it voted for Resolution 1973 because it was sponsored by the LAS and because of the urgent threat to civilians in Benghazi. The explanation could only be informed by its understanding of a credible regime threat to the civilian population of that city. However, that threat never abated and actually became increasingly systematic, widespread and intense throughout the country. Thus, even in hindsight, it was disingenuous of South Africa to distance itself from the need for military action.

Furthermore, in political-military terms, and to the extent that all resolutions and mandates require analysis for the development of implementation strategies, South Africa should have accepted military action

as the only option of enforcing the no-fly zone and protection of civilians (POC), as long as the Gaddafi regime was insistent on its own regime security. The tenacity of the Libyan rebels on the one hand and the regime's violations of its own unilateral ceasefires on the other attest to the 'moral hazard'[42] of the intervention. The perception of a 'regime-change' agenda was an unintended consequence of what may very well have been a subtle Gaddafi strategy of discrediting the NATO action and the institution of the UNSC. If it was, that strategy failed, underscoring the need for a degree of regime change for successful protection of civilians.

Côte d'Ivoire

It would appear that the AU system adopted the same dysfunctional approach towards the Ivorian crisis. To begin with, its principal mediators – Thabo Mbeki, Ralia Odinga, Bingu wa Mutharika, Teodoro Obiang Nguema and Blaise Compoare – presented a motley crew of member states with diverse democratic credentials and leverage, and divergent strategic approaches. Eventually, Nigeria acted as a regional hegemon in co-sponsoring UNSC Resolution 1975 (2011) for a UN–French POC mandate. Although this did not enjoy full consensus within the Economic Community of West African States (ECOWAS) and between different actors in Africa, it eventually succeeded in dislodging Laurent Gbagbo from power in early April 2011.

As in the case of Libya, the Côte d'Ivoire crisis continued to expose South Africa's shifting positions within the UNSC regarding R2P. While South Africa initially supported the AU opposition to the non-use of force, it materially clashed with ECOWAS and Nigeria by failing to recognise Alassane Ouattara, who enjoyed overwhelming regional and international support, as the victor in the presidential elections. Worse still, South Africa erred on the principle of subsidiarity by not consulting with ECOWAS and Nigeria, a fellow sub-regional player, on the strategic direction of any form of intervention. The unilateral 'bluff' in the deployment of a South African ship to Côte d'Ivoire[43] in early February was powerful but counterproductive gunboat diplomacy. It provided a false sense of security to Gbagbo. According the ECOWAS president:

> … the presence of the warship has further made the body to suffer a setback in its dialogue centred on peaceful negotiations because the

last option open to us 'is to use force to enforce our decisions on the issues at stake'.[44]

Although South Africa did realign its position with other key actors as UNSC Resolution 1975 was being passed in about mid-March, it was already too late for the country to redeem the lost initiative and opportunity caused by its flip-flop foreign policy stance.

Arab awakening: The Syria, Yemen and Bahrain crises (2011–2012)[45]

The recent Arab Spring uprisings in Tunisia, Egypt, Libya, Yemen, Bahrain and Syria were motivated by similar grievances, mainly the need for socio-economic opportunities, political space and freedom, the cessation of politics of exclusion, devolution of power, and democratic reforms providing for equality, participation and emancipation from ethnocentrism. The various episodes have, however, engendered different outcomes, raising further questions about R2P principles, criteria and practice.

In Tunisia, Zine Ben Ali capitulated and fled into self-exile in Saudi Arabia (January 2011). In Egypt, Hosni Mubarak capitulated after 18 days of protests (February 2011), allowing the military to seize and gradually transfer political power, and culminating in Mubarak's sentencing to life imprisonment on charges of premeditated murder of peaceful protestors. Both situations fell within the first principle of R2P – the primary protection responsibilities of the state – and precluded the need for any external military intervention.

In Yemen, Bahrain and Syria, however, other dimensions of geopolitics – US strategic interests, and Sunni-Shiite sectarianism and identities of Gulf Cooperation Council (GCC) countries – have either informed the partial containment of violence and the preclusion of R2P interventions, or are causing the escalation of violence and influencing calls for a military intervention.

The Yemen revolution (February–March 2011) compelled Ali Abdullah Saleh, who was faced with crippling political, military and ethnic disaffections and dire economic realities, to succumb to pressure from the GCC, sign a deal and step down. This strategy of appeasement paved the way for the transfer of political power and elections in February 2012, which obviated the need for external military intervention, although the situation is somewhat unsettled.

In contrast, the Bahrain civil resistance, characterised by the February 14 Revolution, was brutally put down by the state, buttressed by a declaration of martial law and a three-month state of emergency from mid-March 2011. This was accompanied by a Saudi-led GCC military intervention, not to protect vulnerable Shiite populations but to support the government in imposing its will. Although the situation is still uneasy, Bahrain appears to have escaped vehement calls for any R2P intervention.[46]

Essentially, the Yemen and Bahrain outcomes represent a successful application of the second principle of R2P, namely international assistance to states in exercising this responsibility.

Of all the Arab Spring conflicts, the Syrian revolution (from January 2011 and on-going) has defied all odds, including a UNSC-mandated military intervention. Whether or not this is attributable to NATO's regime-change agenda in Libya, it has emboldened the Syrian government to use excessive military force, resulting in more than 17,000 deaths, including 11,897 civilians, 4,348 soldiers and 884 military defectors[47] since the onset of the conflict – and the numbers grow each day.[48] While the fatalities in Libya were estimated at some 17,500, including 4,000 missing persons, only slightly more than 72 civilian deaths – including 20 women and 24 children – have been attributed by Human Rights Watch to the NATO military action in Libya.[49] This is in spite of the huge tonnage of munitions used and the fact that NATO had little or no presence on the ground to ensure greater accuracy.

Empirically, therefore, the NATO action in Libya appears to have been a successful R2P intervention, contributing to saving more lives than would have been the case if Gaddafi's forces had not been interdicted and degraded. One can argue that a military intervention in Syria could also save more lives than are currently being lost in the continued violence, and put an end to the slow but steady slide of Syria into deeper insurgency and civil war between the regime, the Free Syrian Army/Syrian National Council and other militant groups.

Against this backdrop, the first attempt by the UNSC to pass a strong draft resolution to influence the situation in Syria in early February 2012 failed on account of China and Russia exercising their veto power. On this occasion, as president of the UNSC, South Africa's representative first voted with the majority (12:3) for the draft resolution, which urged al-Assad to step down. However, South Africa betrayed its half-hearted support for the resolution

when it subsequently pointed out its concern about foreign intervention in Syria, calling for:

> … the Syrian people [to] be allowed to decide their own fate, including their future leadership … [further stating that] … fundamentally, no foreign or external parties should interfere in Syria as they engage in the critical decision-making processes on the future of their country. Any solution must preserve the unity, sovereignty and territorial integrity of Syria.[50]

On the other hand, South Africa supported recent UNSC Resolutions 2042 – for the work of the Joint Special Envoy for the UN and the LAS – and 2043 – on the establishment of the UN Supervision Mission in Syria (UNSMIS) comprising up to 300 observers. While it may be too early to gauge the success of these non-coercive measures within the framework of the second principle of R2P, the prevailing indications almost three months on are that the monitoring mission, as well as the work of the Joint Special Envoy (who has since resigned) and the proposed six-point peace plan (similar in many ways to the AU Libya roadmap) are failing Syria and serving as a catalyst for deepening violence.

In the UN General Assembly, South Africa, along with 136 other members,[51] supported the adoption of Resolution 66/253 (February 2012),[52] which rebukes the Syrian regime for continued widespread and systematic violations of human rights and fundamental freedoms. Given that UN General Assembly resolutions are non-binding, and noting that the token deployment of 300 observers will not be able to achieve de-escalation in Syria, the South African position has not materially affected the resolution of crimes against humanity and human rights abuses in Syria. South Africa's lack of firm support for the position of the LAS on Syria reinforces its ambivalence and lack of support for the principle of subsidiarity. The perception is that South Africa only advocates subsidiarity strongly when the principle concerns the AU, and not other regional groupings.

Conclusion

While South Africa has been constructive in humanitarian interventions, especially as a lead nation but also when it comes to collective African

responsibility, it has shown selective tendencies in terms of where it sits on the wide spectrum of principled interventions, principled opportunistic interventions and burden shifting.

In R2P terms, South Africa has been a key actor in establishing the AU's regional security architecture, underpinned by protection principles. In practice, however, South Africa has shown a marked degree of aversion to the use of force, being wary of perceptions of regime-change agendas. Although it presents itself as an adherent to state sovereignty, South Africa has not suggested alternatives to the use of force in dealing with dictatorships, whose states renege on their primary protection responsibilities.

In general, the recent Arab Spring and the Ivorian crises have exposed serious differences and lack of political will by actors – state, regional and the international community – regarding the triggers and criteria for R2P practice. Although several states subscribe to the primacy of the UNSC in R2P practice, some, including South Africa, base their positions more on state sovereignty than on a commitment to protect human rights, which is a key determinant of military intervention in cases where states have failed in their primary responsibility to protect the rights of citizens.

From both regional and global perspectives, South Africa appears to present at least four broad evolutionary positions with respect to consensual POC and non-consensual R2P/POC:

- During the OAU era, South Africa adopted a minimalist position with selective involvement in regional interventions, including a lead-nation intervention in Lesotho, but a pacifist international position and condemnation of regional interventions, especially by NATO and powerful states.
- Immediately after the transformation of the OAU into the AU and until 2005, South Africa took a more proactive role in AU-mandated regional interventions, including playing a lead-nation role in Burundi, and active but selective non-involvement in other regional interventions, notably AMISOM.
- In the run-up to the 2005 World Summit, South Africa took a discourse position, espousing the centrality of the UNSC, supporting R2P principles on such values as human rights and humanitarian emergencies, as well as strong military responses.
- After the World Summit, and especially from 2011, South Africa has

taken an R2P practice position that reflects the historically oriented ideology of solidarity and ambiguous national interest positions, and ignores the core principles of its foreign policy – such as the promotion of human rights, democracy and justice in the conduct of international relations.

Empirical evidence suggests that South Africa's position on R2P principles and practice shows shifts, perhaps changes, in the application of the principles of its foreign policy. South Africa's positions have also been somewhat influenced by AU regional consensus, but not consistently so. It has tended to emphasise subsidiarity from a largely African perspective, more than fully upholding that principle regionally and internationally, particularly in relation to ECOWAS and Nigeria, and the LAS and Turkey.

Nevertheless, the role and use of NATO as a regional military power in Libya – and to some extent French military power in Côte d'Ivoire – albeit legal and legitimate, has aroused concern over regime-change agendas. In another sense, this perception amounts to a romanticising of state sovereignty devoid of responsibility. However, concerns over the potential for abuse are also legitimate and call for UNSC responsibility for the command and control of military operations undertaken with its mandate. This will help obviate heightened opposition within the UNSC and the international community towards 'hasty' future interventions vis-à-vis the just cause threshold criteria and the precautionary principles of R2P.

Unfortunately, these R2P debacles still leave unanswered the key question that confronted Gareth Evans and Mohammed Sahnoun. They point to a degree of ambiguity in the conceptual understanding of R2P and show that more work needs to be done to mainstream R2P into the core work of the UN system.

Policy issues and recommendations

The lingering R2P problems revolve around the following issues:

- A perceptible setback to the notion of sovereignty as responsibility.
- The moral failings of R2P in raising false hopes about gaining human dignity, freedom and self-determination, but at the same time encouraging deviance on the part of states and regimes.

- A lack of clarity regarding the requisite time for states to exercise their primary protection responsibilities (Pillar I) and, indeed, whether states have failed in this in the first place; and for international assistance to states in exercising such responsibility (Pillar II) before the ultimate, timely and decisive response (Pillar III).
- The tendency towards selectivity due to the case-by-case principle, which also affects criteria for predictable action.
- The selective understanding and application of the subsidiarity principle, and the tension that lack of convergence of multiple regional organisations engenders in R2P.
- The use of regional military organisations as agencies for military action authorised by the UNSC.
- A more constructive role to be played by the UN General Assembly beyond passing non-binding resolutions.

The following policy recommendations are made to help address R2P issues arising from the perspectives of South Africa and other members of the international community:

- *For South Africa.* Advocacy for negotiations, mediation and dialogue should be based on the same set of precautionary principles, especially in terms of state regimes. In ensuring the preservation of state sovereignty, equal responsibility should be given to preserving human rights, dignity and freedoms in order to contribute to obviating the moral hazard of intervention. South Africa and other actors opposed to the use of force for protection purposes should advance alternative measures to achieve the third principle of R2P, that is, a timely and decisive response. Such an alternative would be pertinent to the resolution of the Syrian crisis now, as well as to other types of conflicts requiring R2P in the future.
- *For regional organisations.* The AU and other regional organisations should recognise and respect the principle of subsidiarity, including the primacy of certain organisations in specific conflict situations, and should work in harmony with the UNSC in finding common R2P positions. The same approach should be adopted by regional hegemons.
- *For regional military powers.* When mandated by the UNSC, regional military powers should be held accountable for the proportionate use of

force and should be subject to international enquiries on 'collateral' or incidental fatalities, no matter how few.

- *For the wider international community.* The international community should err on the side of the protection of human rights, human dignity and freedoms more than on state sovereignty and, as a lowest common denominator, should ensure adherence to the principle of 'sovereignty as responsibility'. The community should play a more proactive role in untangling the problems in R2P practice, especially on the questions relating to criteria (and predictability), and should also clarify and allay fears over the aspects of 'when, why, how, by whom and under whose authority'.
- *For the UNSC and the UN General Assembly.* The UNSC should recognise that the primacy of the Council comes with responsibility for transparent debate over issues relating to R2P, and this should take precedence over the interests of its individual members. Beyond establishing R2P/POC mandates, and without the risk of delegation, the UNSC should improve coordination with those who execute its mandates and should communicate better with regional organisations. Furthermore, it should be responsible for the command and control of military force, it should establish appropriate rules of engagement to ensure proportional use of force, and it should conduct appropriate enquiries after such military interventions.

  Borrowing from the role of the UN General Assembly during the Korean War (1950–1953) and the Suez Crisis (1956),[53] the UNSC and the UN General Assembly should collaborate in finding solutions to effective R2P practice, including, where possible, a UNSC referral to the UN General Assembly.

Endnotes

1 Department of Foreign Affairs, *Strategic Plan 2008-2011*. Available online: http://www.dfa.gov.za/department/stratplan2008-2011/index.htm.

2 For a definition and usage of human security, see the AU's Common African Defence and Security Policy, 2004. Available online: http://www.issafrica.org/armsnetafrica/?q=content/african-union-solemn-declaration-common-african-defence-and-security-policy-2004.

3 See Gareth Evans, 'The Responsibility to Protect: An Idea Whose Time Has Come … and Gone?', *International Relations*, 22(3), 2008, pp 290-291. Available online: http://ire.sagepub.com/content/22/3/283.full.pdf; and F Tesson, *Humanitarian Intervention: An Inquiry Into Law and Morality* (2nd edition), 1997, in Dajeno Kumbaro, *The Kosovo Crisis in an International Law Perspective: Self-Determination, Territorial Integrity and the NATO Intervention*. NATO Office of Information and Press, 16 June 2001, p 54. Available online: http://www.nato.int/acad/fellow/99-01/kumbaro.pdf.

4 The predominant African view on the UNSC based on the UN Charter of 1945 is that it is obsolete and does not reflect contemporary realities. See AU Executive Council, *Common African Position on the Proposed Reform of the United Nations*, 7th Extraordinary Session, Ext/EX.CL/2 (VII), Addis Ababa, 8 March 2005, p 6. Available online: http://www.issafrica.org/uploads/RPT11.pdf.

5 Colin Keating, *Stalled UN Security Council Reform: Time to Consider Resetting Policy?* ISS Policy Brief No. 29, Pretoria, December 2011, pp 1-2. Available online: http://www.issafrica.org/uploads/No29.pdf.

6 See UN Security Council, Resolution 2033 (2012). Available online: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/206/23/PDF/N1220623.pdf?Open Element.

7 Centre for Conflict Resolution, 'South Africa, Africa, and the United Nations Security Council', Policy Advisory Group Report, Cape Town, 13-14 December 2011, pp 1-2, 12-13. Available online: http://www.ccr.org.za/images/pdfs/vol38_unsc_report_4apr2012.pdf.

8 AU Executive Council, op cit.

9 UN, *Report of the High-level Panel on Threats, Challenges and Change (A More Secure World: Our Shared Responsibility)*. New York: DPI, pp 3-4. Available online: http://www.un.org/secureworld/report2.pdf. These guidelines (seriousness of threat; proper purpose; last resort; proportional means; and balance of consequences) aimed more at achieving international consensus than predictability of international action.

10 In 1989/90, the Economic Community of West African States (ECOWAS) had reason to advance such arguments in respect of the tardiness of the UN and international community response to the Liberian and Sierra Leonean crises. ECOWAS argued its prerogative to intervene without UNSC sanction, albeit against considerable international caution. See Festus B Aboagye, *ECOMOG: A Sub-regional Experience in Conflict Resolution, Management and Peacekeeping in Liberia*. Accra: Sedco Publishing Limited, 1999.

11 AU Executive Council, op cit.

12 See UN General Assembly, 2005 World Summit Outcome, A/60/L.1, 15 September 2005, paras 138-139, 31-32. Available online: http://www.responsibilitytoprotect.org/index.php/about-rtop. The 2001 ICISS Report noted

three essential components of R2P, namely the responsibility to: 1) *prevent* a human catastrophe by addressing root and direct causes of internal conflict and other man-made crises; 2) *react* to an actual or apprehended situation of compelling human need … with appropriate measures, which may include coercive measures such as sanctions, international prosecution and military intervention in extreme cases; and 3) *rebuild* after the intervention through the provision of full assistance with recovery, reconstruction and reconciliation. See UN OCHA, *Glossary of Humanitarian Terms, In Relation To the Protection of Civilians in Armed Conflict*. New York: UN OCHA, 2003, pp 22-23. Available online: http://www.un-interpreters.org/glossaries/ocha%20glossary.pdf.

13 Alex J Bellamy, 'Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit', *Questia, Ethics & International Affairs*, 20, 2006. Available online: http://www.questia.com/app/direct/SM.qst.

14 AU, Constitutive Act of the African Union, Lomé, 1 July 2001. Available online: http://www.issafrica.org/uploads/CONSTIT_ACT_OF_AU_2000.PDF.

15 Bellamy, op cit. See also Ramesh Thakur, *Libya and the Responsibility to Protect*, ISS Situation Report, Pretoria, 6 March 2012, p 2. Available online: http://www.issafrica.org/uploads/6Mar2012Libya.pdf.

16 IDG, *Reconciling National Interests and Values: A Dilemma for South Africa's Foreign Policy?* Midrand: IDG, 2010, pp 6, 19.

17 Festus Aboagye, 'The African Mission in Burundi: Lessons Learned from the First African Union Peacekeeping Operation', ACCORD, *Conflict Trends*, 2004/2, Durban, pp 9-15. Available online: http://www.accord.org.za/downloads/ct/ct_2004_2.pdf.

18 For background perspectives of these interventions, see Festus Aboagye, *The Hybrid Operation for Darfur: A Critical Review of the Concept of the Mechanism*, ISS Paper 149, Pretoria, pp 8-9. Available online: http://www.issafrica.org/uploads/PAPER149PDF.PDF; Aboagye, 'The African Mission in Burundi: Lessons Learned from the First African Union Peacekeeping Operation', op cit.; and ACCORD, *South Africa's Peacekeeping Role in Burundi: Challenges and Opportunities for Future Peace Missions*, Occasional Paper Series, 2(2), 2007, pp 17-21. Available online: http://www.accord.org.za/downloads/op/op_2007_2.pdf.

19 AMISOM's force of about 9,631 is contributed by Uganda (5,200), Burundi (4,400), Kenya (10), Ghana (9), Nigeria (8), and Cameroon, Mali, Senegal, Zambia (4).

20 See Defence Web, 'Somalia chatter dies down', 10 August 2010. Available online: http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=9220:somalia-chatter-dies-down&catid=61:Editor%20Column.

21 The criteria established in South Africa's 1999 White Paper on South African Participation in International Peace Missions are: a clear international mandate;

sufficiency of means; a domestic mandate and budget; volunteerism; clear entry and exit criteria; regional cooperation, and foreign assistance. See also 'South Africa to deploy troops to Somalia', *Daily Monitor*, 16 August 2010. Available online: http://www.monitor.co.ug/News/National/-/688334/977490/-/x3bkg5/-/index.html.

22 UN, Rwanda-UNAMIR. Available online: http://www.un.org/en/peacekeeping/missions/past/unamirS.htm.

23 See 'Rwanda inquiry finds UN failure to halt 1994 genocide', *Africa Recovery*, 13(4), December 1999. Available online: http://www.un.org/en/africarenewal/subjindx/134peac2.htm.

24 In a nutshell, APSA devolves on the provisions of the AU's Constitutive Act, notably the AU's right of intervention, the establishment of the AU PSC and other organs, as well as the establishment of the African Standby Force (ASF).

25 See, for instance, Leann Long, 'The Srebrenica massacre', *Questia*. Available online: http://www.questia.com/reader/action/readchecked?docId=5028543147. See also Alan J Kuperman, 'The moral hazard of humanitarian intervention: lessons from the Balkans', *International Studies Quarterly* 52, 2008, p 64. Available online: http://www.udel.edu/poscir/intellectualLife/MoralHazardofHumanitarian Intervention.pdf.

26 Evans, op cit, p 285.

27 Eventually, acting under Chapter VII of the UN Charter, the UNSC passed Resolution 1244 (1999) authorising 'Member States and relevant international organizations to establish the international security presence in Kosovo ...', when the territory was still part of the Federal Republic of Yugoslavia (FRY). See, for instance, Natalino Ronzitti, 'Lessons of international law from NATO's armed intervention against the Federal Republic of Yugoslavia', *The International Spectator*, XXXIV(3), July-September 1999, pp 45-54, 50. Available online: http://www.iai.it/pdf/articles/ronzitti.pdf.

28 Although NATO action ultimately forced a Serbian withdrawal, the accompanying escalation heightened the humanitarian crisis, forcing the displacement of about a million ethnic Albanians from Kosovo, and caused more than 11,000 deaths, with some 3,000 people (2,500 Albanian, 400 Serbs and 100 Roma) still missing.

29 Bellamy, op cit.

30 Philip Nel, *South Africa: The Demand for Legitimate Multilateralism, in Kosovo and the Challenge of Humanitarian Intervention*, Reliefweb Updates. Available online: http://reliefweb.int/node/61294.

31 Ibid.

32 See Neo Neethling, *Military Intervention in Lesotho: Perspectives on Operation Boleas and Beyond*, Travel Fun Club. Available online: http://travelfunclub.com/arhives/lesotho/l3avewv-bizsmoe.php.

33 UN, Report of the Panel on UN Peace Operations, A/55/305 and S/2000/809. Available online: http://www.un.org/peace/reports/peace_operations/.
34 See Thakur, op cit, pp 1-2.
35 This was the fundamental question posed by former UN Secretary General Kofi Annan to the founders of the ICISS in 2001.
36 Centre for Conflict Resolution, *South Africa, Africa, and the United Nations Security Council*, pp 1-2, 12-13.
37 UN Security Council, Resolution 1970 (2011), S/RES/1970 (2011,) 26 February 2011. Available online: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/245/58/PDF/N1124558.pdf?OpenElement.
38 See Thakur, op cit, p 2.
39 The AU roadmap was established by the AU PSC on 10 March 2011, based on ceasefire, protection of civilians, humanitarian aid, dialogue and inclusive transitional period.
40 For a brief perspective on 'internal' self-determination and/or secession, see, for instance, Kumbaro, op cit, p 27ff.
41 AU, *Solemn Declaration on a Common African Defence and Security Policy*, 2004. Available online: http://www.issafrica.org/armsnetafrica/?q=content/african-union-solemn-declaration-common-african-defence-and-security-policy-2004.
42 Kuperman, op cit, pp 49-80.
43 South Africa admitted that it had deployed *SAS Drakensberg*, a combat supply vessel, to the international waters of the Gulf of Guinea, 'planned to participate as a communication and guard vessel for the 2011 Cape to Rio Yacht Race during the period January to February'. See Defence Web, 'Parliamentary Question: DoDMV: Warship into Côte d'Ivoire'. Available online: http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=14375:parliamentary-question-dodmv-warships-into-cote-divoire&catid=86:parliamentary-questions&Itemid=187.
44 'Cote d'Ivoire: South Africa is fuelling Ivorian crisis – Ecowas', *The Vanguard*, 8 February 2011. Available online: http://allafrica.com/stories/201102090037.html.
45 For more detailed analysis, see Festus Aboagye, 'The Arab Spring exposes double standards over R2P', *The African.org*, 18, ISS, Pretoria, April-May 2012, pp 32-34.
46 The GCC Peninsular Shield Force intervention comprising 1,000 Saudi troops and 500 UAE police, partly aided by the establishment of the Royal Independent Investigation Commission, and other remedial measures such as the release of detained persons, amounting to a degree of appeasement, have pre-empted a UNSC-sanctioned R2P intervention.
47 See, for instance, 'Syria Crisis: Death Toll Tops 17,000, Says Opposition

Group', *Huff Post*. Available at: http://www.huffingtonpost.com/2012/07/09/syria-crisis-death-toll-17000_n_1658708.html?utm_hp_ref=Syria.

48 Half of this figure is estimated to be civilians, but also includes 4,100–6,500 armed combatants from both sides and up about 1,400 opposition protesters.

49 See HRW, 'NATO: investigate civilian deaths in Libya', 14 May 2012. Available online: http://www.hrw.org/news/2012/05/14/nato-investigate-civilian-deaths-libya.

50 South Africa's stance regarding UN Security Council vote on Syria, *South African Government Information*. Available online: http://www.info.gov.za/speech/DynamicAction?pageid=461&tid=55443.

51 12 against and 17 abstentions.

52 See UN General Assembly Resolution 66/253, 21 February 2012. Available online: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/474/00/PDF/N1147400. pdf?OpenElement; and Resolution 11207 (GA/11207/Rev.1), 16 February 2012. Available online: http://www.un.org/News/Press/docs/2012/ga11207.doc.htm.

53 See General Assembly's Resolution 377(V) of 1950, popularly referred to as the Uniting for Peace resolution, and the provision to address '… lack of unanimity of the permanent members … [and] failure …to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression …'. In appropriate circumstances, the UN General Assembly may be able to use its special emergency sessions to break an R2P impasse, such as over Syria and other problematic interventions.

3

Germany and R2P: Common but Differentiated Responsibility?

Lars Brozus (with Jessica von Farkas)

Introduction: The development of German R2P thinking

The international community was determined to prevent future mass atrocities after the horrifying events in Rwanda and the former Yugoslavia shocked the world in the 1990s. Early on in the process, Germany joined the debate about the responsibilities of governments and/or the international community for the protection of populations. Klaus Naumann, a Federal Armed Forces (*Bundeswehr*) general, was a member of the Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS).[1] The ICISS was appointed in 2000 and was tasked with working on the nexus between sovereignty, responsibility, protection and intervention. Its final report, 'The Responsibility to Protect', was published in December 2001 and effectively structured the international debate about the principles that would form the core of Responsibility to Protect (R2P): paragraphs 138 and 139 of the 2005 United Nation (UN) World Summit Outcome Document. The World Summit concluded the deliberations about the 'responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity', stating that if a government is unable or unwilling to keep

its citizens safe from harm in such a situation, the international community has to take over this obligation.[2]

Given Germany's past, this commitment to the protection of civilians might come as a surprise. It is understandable only in the context of the country's development after the Second World War. The Federal Republic's foreign and security policy after 1945 centred on multilateral self-commitment and non-military conflict regulation. Owing to the historical legacy of aggressive German expansionism that spurred two world wars, the country's political elite subscribed to a solid consensus based on firm integration into Western institutions such as the European Union (EU) and the North Atlantic Treaty Organization (NATO). The most important foreign policy goal of the Bonn Republic was to avoid international isolation at all costs, and conceding sovereignty to international institutions such as the EU helped to achieve this goal. Corresponding with the multilateral approach to international politics is the preference for peace building rather than war fighting, which resonates deeply with the German general public.[3]

This elite consensus has remained remarkably stable over time. Even after unification in 1990, when some observers feared the re-emergence of great-power attitudes and behaviour in the Berlin Republic, there has been no fundamental shift of the basic assumptions and aspirations of German foreign and security policy. The much-discussed decision to participate in the Kosovo war in 1999 – the first time that German soldiers were engaged in battle since 1945 – can be explained by Germany's preference for acting in concert with its NATO partners. But it was only the threat of mass atrocities (ethnic cleansing) that convinced the Federal Government to resort to arms. Note, however, that the coalition government, consisting at that time of the Social Democrats and the Green Party, nearly collapsed because of this step: Federal Chancellor Schröder took the risk of a vote of no-confidence in Parliament, which has to approve any military mission that is likely to include fighting.

It is probably fair to say that only a progressive government in Berlin could overcome the deep-seated reluctance of the Germany public towards participation in an armed international intervention. It would have been much harder for a conservative government to make a convincing case for *Bundeswehr* participation in the Kosovo campaign because it would have faced massive political resistance from inside as well as outside the German *Bundestag*. Of course, the Schröder government had to deal with widespread criticism within its own political camp, but it could count on a loyal

opposition in the *Bundestag*. This explains why political pressure did not build up, as was expected by many observers in Berlin at the time. Even though NATO's campaign did produce much collateral damage among civilians, the Schröder government could stick with it until Yugoslav president Milosevic finally agreed to surrender authority over Kosovo.

R2P principles in Germany's political debate: Promoting the new concept

Triggered by the events in Kosovo, the debate about Germany's international responsibilities and role after unification intensified. Owing to positive experiences with shared sovereignty and rule-based behaviour in Europe, Berlin was happy to contribute to the international community's approach to tie sovereignty privileges to the performance of a specific government. Another aspect of the Kosovo case showed that only the UN could provide universally accepted legitimacy for armed international intervention with a humanitarian background. Thus, the discussion in Berlin about the protection of civilians against mass atrocities committed (or ignored) by governments centred on the United Nations Security Council (UNSC) – the only institution that is deemed legitimate to interfere with the sovereignty of nation states.

This was acknowledged in a White Paper titled 'German Security Policy and the Future of the *Bundeswehr*' published in 2006 (one year after the World Summit), which explicitly refers to R2P:

> The international law doctrine of the Responsibility to Protect has developed as a result of the lessons learned from the intervention in Kosovo 1999. Even if the states that have adopted this doctrine are probably still not in the majority, the debate about the Responsibility to Protect is increasingly impacting on the ways of thinking in western countries. In the long term, this will affect the mandating of international peace missions by the United Nations Security Council as legitimating under international law is crucial especially when military force is used. Germany accepts its share of the responsibility to strive for world peace and international security within the framework of the United Nations. As the third-largest contributor in monetary terms after the USA and Japan, Germany currently shoulders just under nine percent of the UN budget and of the budgets for international peace

missions and additionally makes obligatory and voluntary payments to sub-organisations and special organisations.[4]

R2P is supported by Germany in its general work on crisis prevention through human rights policy and development policy, by strengthening regional and international organisations and by financial and political support of the work of the UN secretary-general's special advisers (on the Responsibility to Protect and on the Prevention of Genocide).[5] Germany was the first UN member state to invite the newly appointed UN Secretary-General Special Adviser on the Responsibility to Protect Edward Luck for official consultations in early 2008.[6] Furthermore, Germany is a member of the Group of Friends on Responsibility to Protect – an informal group of states from developed and developing countries that seeks to advance the R2P principles in international politics. With a current share of about eight per cent of the UN budget for peacekeeping measures, Berlin is the fourth-largest financial contributor to UN peace missions.[7]

Although Germany has integrated R2P in its foreign and security policies, actively promotes the new principle and provides substantial financial contributions to UN peace missions, its staff deployment to international operations is notably low. Germany's share of deployed military personnel in current UN missions amounts to 0.28%; in missions led by the EU it is 0.79% and in NATO missions it is 4.75%.[8] These contributions appear negligible when compared to the contributions of other countries to UN missions, including developing nations such as Bangladesh, Ghana or Pakistan. Moreover, Germany's self-image as a consistent promoter of R2P was seriously undermined when Berlin abstained in the vote on UNSC Resolution 1973 in the Libya crisis in March 2011. In order to shed some light on these contradictions, we will take a closer look at some cases that are representative of Germany's contradictory policy in different R2P situations.

Case studies: Germany's conflicting positions in different R2P situations

The case studies discuss Germany's policy in Kosovo (from 1999), Darfur (from 2003) and Libya (2011). Kosovo provides an example of a long-term and broad-based German engagement in an R2P situation, accompanied by massive investments in personnel and material resources. Given the geo-

graphic proximity, Berlin's interest in stabilising Kosovo appears to be quite obvious. Darfur, in Eastern Sudan, provides an example of the more reserved approach Berlin shows towards participation in international R2P missions in regions that lie outside its core area of interest, namely Europe. Libya, finally, is the most recent and probably prominent example of applied R2P principles. The UNSC authorised the use of force in order to protect civilians against threats emanating from armed forces controlled by Libya's long-ruling dictator Colonel Gaddafi. Germany did not vote in favour of this decision, thereby isolating itself from its Western allies and compromising its support for R2P.

Table 1: International interventions in R2P situations since Kosovo

Year	Country	International Peacekeeping Mission	International personnel	German personnel
			(includes military, police and civilian personnel)	
from 1999	Kosovo/ Yugoslavia	KFOR (NATO)	5,576	872
		UNMIK (UN)	182	5
		EULEX Kosovo (EU)	2,584	109
from 2004	Darfur/ Sudan	AMIS (AU)	Max. 7,000	5
		UNAMID (UN)	24,630	6
		MINURCAT (UN)	4,760	0
		EUFOR TCHAD/RCA (EU)	3,700	4
from 2004	Côte d'Ivoire	UNOCI (UN)	9,989	1
from 2010	Dem. Republic of Congo	MONUSCO (UN)	20,555	10
2011	Libya	Unified Protector (NATO)	Max. 8,000	0
from 2011	South Sudan	UNMISS (UN)	7,900	18
2012	Syria	UNSMIS (UN)	410	1

Source: Based on information from UN documents on peacekeeping missions (http://www.un.org/en/peacekeeping/), the International Coalition for the Responsibility to Protect (http://www.responsibilitytoprotect.org/index.php/crises), NATO (http://www.nato.int/) and the Center for International Peace Operations (http://www.zif-berlin.org/fileadmin/uploads/analyse/dokumente/veroeffentlichungen/International_Personnel_2011_EN.pdf).

Kosovo (from 1999)

The territorial conflict between the Kosovo Liberation Army (KLA), pursuing an independent Republic of Kosovo, and Serbian authorities from the Republic of Yugoslavia began to escalate in 1998. Clashes between the KLA and the Yugoslav forces led to massive human rights violations and deportations of Kosovo Albanians.[9] The conflict resulted in the death of over 1,500 Kosovo Albanians and forced 400,000 people from their homes. The international community became deeply concerned about the escalating conflict, its humanitarian consequences and the risk of contagion: it had not been able to prevent the killing of tens of thousands of civilians in Bosnia-Herzegovina between 1992 and 1995. Owing to concerns about the replay of such mass atrocities in Kosovo, NATO opted for military intervention in the spring of 1999.[10] However, the Alliance proved unable to obtain undisputed authorisation by the UNSC. Accordingly, the intervention became highly controversial within the international community.[11]

Germany decided to participate in NATO's Operation Allied Force, prioritising the prevention of mass atrocity crimes over indisputable compliance with international law. In February 1999, the German *Bundestag* approved the government's request for military contributions to the operation.[12] Federal Chancellor Schröder announced Berlin's support for air strikes against Yugoslav armed forces. He justified Germany's participation by referring to the necessary prevention of imminent human rights abuses, and stated that military action was not directed against any side, but had as its goal the protection of the lives of civilians.[13] Thus, Schröder made the Kosovo intervention a classic case of R2P. The German *Bundestag* overwhelmingly supported this position. Only one out of five parties represented in parliament at that time (the leftist party PDS, now *Die Linke*) voted against participation in NATO's operation for reasons of 'manifest violations of international law and inevitable collateral damage among civilians'.[14]

Operation Allied Force ended with the adoption of UNSC Resolution 1244 in June 1999, which authorised UN member states and relevant international organisations to deploy an international security presence in Kosovo.[15] NATO established a multinational Kosovo Force (KFOR) comprising up to 50,000 military personnel to provide security within the region. The German *Bundestag* approved a *Bundeswehr* contribution of up to 8,500 soldiers to KFOR, thus becoming the largest provider of troops.[16] With

872 out of 5,576 soldiers, Berlin is currently the second-largest contributor to KFOR.[17] In addition to KFOR, the UN established an international civilian presence, the United Nations Interim Administration Mission in Kosovo (UNMIK), which in 2002 had some 9,000 staff. In 2011, 182 staff continued to serve with UNMIK, including five from Germany.[18] After the unilateral declaration of independence by Kosovo in 2008, the EU established the European Union Rule of Law Mission in Kosovo (EULEX Kosovo). EULEX Kosovo assists administrative and judicial authorities as well as law-enforcement agencies in their progress towards sustainability and accountability.[19] EULEX Kosovo comprises 2,584 civilians, including 109 from Germany.[20]

Darfur (from 2003)

A civil war between the Government of Sudan and allied militia on one side and various armed rebel groups on the other erupted in Darfur in 2003. Since then, tens, if not hundreds, of thousands of people have died and at least 1.8 million people have been internally displaced.[21] The protection of civilians in this brutal conflict has been a top priority for the international community. Intensive diplomatic and political efforts to bring all parties into a peace process have somewhat moderated the conflict. However, it still remains one of the bloodiest since the Second World War, and the international community has mandated several armed missions with the aim of protecting Darfur's people.

The African Union (AU) took the initiative and established a peacekeeping operation called the African Union Mission in Sudan (AMIS) in 2004, which by 2005 comprised some 7,000 soldiers.[22] Germany supported the mission with personnel as well as financial and logistical aid, such as providing air transport for the regular exchange of African contingents, delegating logistics officers, and deploying five police officers for training purposes as well as allocating 25 million euros to AMIS.[23] After multiple political efforts had failed to stop the fighting, UNSC Resolution 1769 (2007) authorised the AU–UN Mission in Darfur (UNAMID), whose core goal is the protection of civilians. AMIS merged with UNAMID on 31 December 2007, creating a hybrid mission of both the AU and the UN. Up to now, UNAMID has been the largest peacekeeping mission in terms of deployed personnel, currently encompassing 24,630 troops. German assistance to UNAMID is comparable

to its support of AMIS, relying more on financial contributions than on seconding personnel.

Intensifying cross-border attacks from Eastern Chad, the Central African Republic and Sudan added to the continuously deteriorating humanitarian situation in Darfur and threatened to further destabilise the whole region. The international community tried to address this situation with UNSC Resolution 1778 (2007). The resolution authorised the deployment of the *Mission des Nations Unies en République Centrafricaine et au Tchad* (MINURCAT), which was intended to contribute to the protection of civilians and to promote human rights, the rule of law and regional peace, as well as to facilitate humanitarian assistance.[24] From 2008 to 2009, the EU supported MINURCAT by a military component named the EU Military Operation in Eastern Chad and North Eastern Central African Republic (EUFOR Tchad/RCA). Germany contributed to MINURCAT by financial means and to EUFOR Tchad/RCA by deploying four out of a total of 3,700 military personnel.[25] When MINURCAT was terminated in 2010, UN Secretary-General Ban Ki-moon referred to it as a remarkably successful R2P mission: 'MINURCAT has been an unusual and unique United Nations peacekeeping operation in that it was devoted solely to contributing to the protection of civilians, without an explicit political mandate.'[26]

With regard to the devastating humanitarian situation in Darfur, the low deployment of German personnel to humanitarian missions in the region stands in stark contrast to Berlin's declared policy of support for R2P principles. This discrepancy cannot be explained by a preference for crisis prevention and peace building with non-military means. In Kosovo, Berlin has demonstrated that it is willing and able to contribute on a large scale and for a long time to robust international missions in R2P situations. Hence, Germany's R2P policy appears to be shaped more by regional preferences than by objective requirements, thereby provoking accusations of inconsistency and selectivity.

Libya 2011

Mass protests began in Libya in February 2011. They were directed against the regime of Colonel Gaddafi, which had lasted for more than 40 years. The protests soon turned violent following brutal repression by the regime. The city of Benghazi in Eastern Libya became a stronghold of the armed rebels. In

early March 2011 Gaddafi's troops moved quickly towards Benghazi, threatening to crush the rebellion and to punish the population. Gaddafi himself announced that he would exterminate his political opponents and their supporters. In response to the impending mass atrocities, the UNSC took preventive action by issuing Resolution 1973 (2011), which explicitly referred to the R2P principles as the main reason for action.

The resolution authorised member states, acting nationally or through regional organisations, to take all necessary measures to protect civilians under threat of attack in Libya. This would have to be accomplished by air power since a foreign occupation force of any form on any part of Libyan territory was strictly ruled out.[27] In support of UNSC Resolution 1973, NATO started to take robust action to protect civilians under threat of attack in Libya and enforced a no-fly zone.[28] Operation Unified Protector lasted until 31 October 2011 and succeeded in preventing mass atrocities against civilians. Gaddafi himself was captured and killed by armed rebels shortly before the operation ended.

UNSC Resolution 1973 was adopted by a vote of ten in favour to none against, but with five abstentions (Brazil, China, Germany, India and the Russian Federation). Instead of aligning itself with its NATO allies in support of the forceful application of R2P principles, Germany decided to abstain, thereby raising fresh doubts about its sincere commitment to the protection of people under threat of mass atrocities. In the voting procedure on UNSC Resolution 1973, UN Ambassador Peter Wittig tried to explain Germany's position. Emphasising Berlin's concern for the plight of the Libyan people and its support of the UNSC in stopping the violence in Libya, Wittig stated that the Federal Government still saw enormous risks in UNSC Resolution 1973. These risks involved:

- the likelihood of a large-scale loss of life, which should not be underestimated
- the risk for countries participating in the implementation of UNSC Resolution 1973 to run into a protracted military conflict that could draw in the wider region
- the possibility of failure when implementing UNSC Resolution 1973, making a quick and efficient military intervention impossible[29]

In an official statement on Germany's decision, Federal Foreign Minister

Guido Westerwelle stated that Berlin supported the elements of UNSC Resolution 1973. He argued, however, that an alternative to military intervention existed, and referred to increasing political pressure and harsh sanctions. Westerwelle continued to emphasise Germany's interests in assisting democratic developments in Northern Africa by political, economic and humanitarian – that is, non-military – means.[30]

Although both statements signalled support for UNSC Resolution 1973 as well as for the need to protect the Libyan population against mass atrocities, they still stressed non-military measures. However, given the imminent threat the people of Benghazi faced by the advancing troops of Gaddafi, the reluctance to use force seemed somewhat naïve at best. It is doubtful that political pressure or sanctions could have prevented the killing of civilians had the Libyan forces entered Benghazi. Internationally, Berlin's decision received much criticism from traditional German allies, including France and the United Kingdom, and the decision continues to be hotly debated by experts in Germany and abroad. While some argue that not all criteria for a military intervention based on R2P were met in the case of Libya, others stated that Germany's behaviour was inconsistent with and juxtaposed to its values and would lead Germany into political isolation.[31]

The bumpy road ahead: German contributions to the development of R2P

The case of Libya has demonstrated that the conceptual foundations of R2P are far from clear. Probably the most important question concerns the problematic connection between the protection of a population – the task R2P was designed for – and regime change. One of the major criticisms of NATO's intervention in Libya was the one-sided support for the anti-Gaddafi forces, culminating in a joint letter by United States (US) President Obama, United Kingdom (UK) Prime Minister Cameron and French President Sarkozy in April 2011. The letter explicitly stated that the replacement of Gaddafi was inevitable in order to protect the Libyan people: 'So long as Gaddafi is in power, NATO and its coalition partners must maintain their operations so that civilians remain protected and the pressure on the regime builds.'[32]

This statement raises a tricky question of what exactly the UNSC authorises when it approves all necessary measures in the context of R2P. Does this refer only to prevention in situations where genocide, war crimes,

ethnic cleansing or crimes against humanity seem imminent?[33] If NATO had succeeded in averting the seizing of Benghazi by Gaddafi's troops but then discontinued its military operations, there would have been the danger of retribution in the weeks, months or even years to follow. The Gaddafi regime already had a long record of killing dissidents both at home and abroad, and it would have been easy to identify the opposition groups in Benghazi as well as in the rest of the country. Furthermore, it cannot be ruled out that the regime would have used the opportunity for a general purging of opposition groups. It is unclear whether the UNSC would have authorised another R2P mission in that event – and this would have been even more questionable if NATO or any other coalition would have taken on such a repeat mission.

Thus, one of the main lessons that can be drawn from the Libya case is that the UNSC has to be very clear to what temporal and territorial extent it agrees to issue an R2P mandate. With its long-standing focus on conflict prevention and peace building, Germany seems well prepared to contribute much more to the conceptual clarifications needed. Raising these issues in the UNSC, where Germany will be a non-permanent member until the end of 2012, would be very much in line with previous work it has done in the UN Peacebuilding Commission.

Another aspect of improving R2P relates to more strategic dimensions. The first brings up the question of improving coordination between the mandate-giver and the mandate-taker – the UNSC and NATO in the case of Libya. Much criticism has focused on the way NATO informed, or rather did not inform, its mandating agency, the UNSC. The unwillingness of the three permanent members of the UNSC that are engaged in NATO (France, the UK and the US) to share information with the other members of the Council has raised much concern. This coordination clearly has to improve in order to maximise support for international intervention in future R2P situations. Improvement does not necessarily mean a higher degree of formalisation or institutionalisation of the process as following a predetermined sequence of political consultations could prove to be inadequate in a situation of clear and present danger (for example, Benghazi in March 2012).

When mass atrocities occur, or seem likely to occur, it is not enough to argue about the appropriate sequence of events. Better coordination, rather, refers to proper reporting to and consultation with the political authorities responsible for legitimising R2P interventions.

A military operation the size of Unified Protector cannot be operated out

of New York unless an effective UN military headquarters is created – and no military organisation is likely to agree to this. However, ignoring the mandating agency for weeks or even months is not a good strategy. It should be in the interest of the mandate-taker to report back to the UNSC as soon as and as frequently as possible. If this does not happen, support for a specific mission in order to protect civilians – as well as for subsequent missions – may fade away. It can therefore be argued that the people of Syria are paying the price for NATO's under-reporting on Libya.

A second strategic dimension concerns cooperation with other relevant organisations besides the mandate-giver and the mandate-taker. It has been rightly noted that regional security and political organisations such as the League of Arab States (LAS) and the AU played a crucial part in convincing the UNSC to issue Resolution 1973.[34] The next step should be to improve communication and interaction with these organisations once a resolution has been passed.

Failure to do this is likely to increase the risk that these organisations become alienated – as was the case with the AU in Libya – with dire consequences for future R2P situations. Improving cooperation also paves the way for a possible engagement of regional organisations in the political reform of a country once the military mission is completed.

However, bringing in regional organisations may provoke new conflicts. As demonstrated in the case of Libya, a country may be a member of more than one regional organisation.[35] Libya's role in the AU and its standing in the LAS differed considerably under Gaddafi's regime. Whereas the AU relied heavily on financial contributions from Libya, Gaddafi's influence in the LAS was much weaker. Accordingly, the AU's position on Libya was considerably softer, as demonstrated by its request for political negotiations between Gaddafi and his opponents, whereas the LAS was instrumental in convincing the UNSC to authorise military intervention.

Future R2P situations might replay a scenario of overlapping memberships and contradicting loyalties, or simply different proposals for a solution.[36] Usually, it would be desirable to have a clear ranking of the authority of different regional organisations, but politically this is unrealistic. However, since multilateralism is one of the main pillars of Germany's foreign and security policy strategies, Berlin could contribute to raising awareness of the potential problems that an increasing role of regional organisations in R2P situations might create.

The next steps in Berlin

Even though the behaviour of the Federal Government in the case of Libya may have created a different impression, Berlin claims to be firmly committed to R2P principles.[37] There is some evidence supporting this claim: Berlin is currently discussing whether to transfer the competence for R2P from a more conceptually oriented division within the Federal Foreign Office to a more operationally engaged unit. This could imply that the work of the Special Representatives for the Prevention of Genocide and the Responsibility to Protect might be funded differently in the future.

Until 2011, Germany contributed only indirectly to their work, but this changed in 2012 when the Federal Government decided to fund the office of the two special representatives directly. This year's funding was earmarked for the UN secretary-general's report on R2P. The report focuses on Pillar III of R2P, elaborating on the responsibility of the international community to act promptly and decisively in situations where governments are neither willing nor able to protect their citizens from genocide, war crimes, ethnic cleansing or crimes against humanity.[38]

Regarding the establishment of national focal points for improving the inter-agency coordination of measures in R2P situations, the Federal Government is considering if and how the introduction of this instrument might contribute to more coherent action in such situations. The guidelines that are currently being developed by the Global Centre for the Responsibility to Protect will be an important input into this discussion.[39] However, for the moment, the Federal Government is not planning to establish an institution equivalent to the US administration's Atrocities Prevention Board. Berlin is confident that it can deal with R2P situations within the existing framework of inter-agency cooperation or cross-departmental working groups.[40]

Beyond these institutional questions, Berlin should capitalise on the political momentum that was gained by its decision to vote with the democratic BRIC (Brazil, Russia, India and China) countries in the case of Libya. By positioning itself as a bridge-builder between Western countries and these emerging powers, Germany could hold a key position in contributing to the development of the conceptual and strategic dimensions of R2P.

Brazil and India (and South Africa) agree on the necessity to clarify what R2P means and how it can be effectively and legitimately applied. Some important questions in this regard have been raised by the Brazilian initiative

on protecting responsibly.[41] So far, the Federal Government's reaction to this initiative has been remarkably muted. Several recent initiatives in the *Bundestag* as well as in the European Parliament suggest, however, that there is political support for the advancement of R2P.[42]

Endnotes

1 General Naumann could draw on his vast experience as chairman of the North Atlantic Military Committee (1996–1999). He played an important role in managing the Kosovo crisis in 1999.

2 UN World Summit Outcome, A/RES/60/1, 24 October 2005, p 30.

3 This preference is probably best demonstrated by the Action Plan 'Civilian Conflict Resolution, Crisis Prevention and Post-Conflict Peace-Building', which was passed by the Federal Government in 2004. The plan defines crisis prevention as a cross-sectoral political task and explicitly refers to safeguarding the livelihoods of people in crisis regions as an important goal of German foreign policy. Available online: http://www.auswaertiges-amt.de/cae/servlet/contentblob/384232/publicationFile/4346/Aktionsplan-En.pdf.

4 White Paper 2006, p 44f. Available online: http://merln.ndu.edu/whitepapers/germany_white_paper_2006.pdf. White Papers are important strategic documents that outline the foreign and security policy of the Federal Government. They are updated every five to ten years. For another early appraisal of R2P, see Federal Foreign Office, 'Report of the Federal Government on the Collaboration of Germany and the UN in 2006 and 2007', p 31.

5 Reply of the Federal Government to a written question by MP Heidemarie Wieczorek-Zeul (SPD), BT-Drs. 17/6712, 29 July 2011, p 3f.

6 Busso von Alvensleben, 'Krisenprävention, Konfliktbewältigung und Friedenskonsolidierung als Herausforderungen deutscher Politik'. Opening Statement, Symposium TU Dresden, 27 November 2008, p 5.

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28 NATO and Libya, 28 March 2012. Available online: http://www.nato.int/cps/en/SID-40E5F2A4-2D595E38/natolive/topics_71652.htm.
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36 Of course (sub-) regional organisations may cooperate very well with each other, thus maximising their leverage in a political crisis, as demonstrated by the Economic Community of West African States (ECOWAS) and the AU in the post-electoral conflict in Côte d'Ivoire in 2010–2011.
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4

Brazil and R2P: A Rising Global Player Struggles to Harmonise Discourse and Practice

Eduarda Passarelli Hamann

Introduction

This chapter first discusses the Brazilian position regarding the Responsibility to Protect (R2P). It begins by explaining how Brazilian foreign policy is moulded by strong non-material aspects *and* lack of material capacity. When translated into foreign policy, these two conditions act in favour of the use of soft power to deal with international politics, which justifies Brazil's preference for non-coercive measures to maintain or restore international peace and security.

The next section presents the Brazilian positions in four key crises: two from the 1990s (Rwanda and Kosovo) and two from the twenty-first century (Darfur and Libya). Only in the case of Rwanda did Brazil support the use of force to stop the atrocities. In the other cases, Brazil gave clear priority to non-coercive measures (Darfur and Libya), or condemned the troublesome use of force by an illegitimate authority (Kosovo), or raised an objection to actions exceeding the mandate (Libya).

In late 2011, in a more proactive stance, Brazil presented a comple-

mentary approach to R2P, which is the Responsibility *while* Protecting (RwP) initiative. It suggested a reflection on principles and criteria that should guide R2P operations in order to legitimise intervention to protect civilians on behalf of a more responsible international community. Despite being treated as a Brazilian proposal, RwP is not a novelty per se: the same principles are found in international law, and similar criteria have been discussed for at least a decade by scholars, by United Nations (UN) secretary-generals and by policy-makers.

The real contribution to the R2P debate should be limited to the creation of new vocabulary under which one finds existing principles and parameters that help to consolidate the debate. It is possible, however, that the Brazilian position as a global player may be jeopardised by RwP.

Until now, Brazil has relied on diplomacy to promote ideas and values related to international peace and security, and, if it cannot back up these ideas with action, its discourse as a global player is likely to lose its legitimacy. In other words, up to now Brazil's discourse and practice have been consistent with what is expected from a middle power; but its status has recently changed, and it is still acting on the global stage with preferred solutions that are not necessarily consistent with this new status. Either the world will change to accommodate a narrative that eminently privileges soft power, or Brazil will need to adapt its discourse or practice for the sake of coherence and reputation.

Brazilian foreign policy: Fundamentals and constraints of a global player

In order to understand the Brazilian position on R2P, one must look for the underlying conditions that shape its foreign policy. These result from:

- non-material components (tradition, beliefs and legal constraints)
- lack of material capacity (economic and military)

It is also important to distinguish between the idealistic and the pragmatic components of Brazil's foreign policy. The idealistic component, manifested in its discourses, believes in a different type of international society. According to Brazilian Minister of Foreign Affairs Antonio Patriota, issues related to social progress, human rights, and the fight against hunger and poverty are

among its core aspects.[1] The pragmatic component influences Brazilian decisions because it is usually related to the lack of material capacity, which represents a challenge or a constraint to some aspirations of this global player.

Tradition, beliefs and legal constraints

Among the non-material elements one finds a strong preference towards diplomacy, international law, multilateralism and consensus building. These moral and political values were included in the Brazilian tradition by a belief in them, by the several treaties of which the country is signatory, and by the 1988 Brazilian Constitution. The principles most relevant to this discussion are peaceful conflict-resolution and non-intervention, which are explicitly mentioned in Article 4 of the Constitution, in the 1996 and 2005 Brazilian National Defense policies, and in the 2008 National Defense Strategy. In the international arena, Brazil is a founding member of the UN and has signed and ratified treaties directly related to R2P, such as the Genocide Convention (1948), the four Geneva conventions (1949) and the Rome Statute (1998). Owing to its legalistic tradition, Brazil's behaviour in the international arena is constrained by these directives.

Brazil's moral and political values have been backed up by action, clearly seen in its relations with its neighbours. It has been almost 150 years since Brazil was last involved in inter-state warfare,[2] and Brazil's borders were delimitated without resorting to force, even in the most controversial cases.[3] Moreover, due to the presence of the United States (US) in the region, the inter-American system since the nineteenth century has been based on non-intervention in domestic affairs, respecting sovereignty and territorial integrity, which are strong values for Brazilian discourse and practice.[4]

These principles remain relevant today and, despite being the largest country in the sub-region in terms of territory, population and economy, Brazil has forged ahead without being perceived as a threat by its neighbours.[5] The country takes the lead in several regional and sub-regional arrangements, mostly aiming at socio-economic and political integration, but this does not mean that Brazil's leadership in the region is without controversy. For example, Argentina and Mexico oppose Brazil's aspiration to gain a permanent seat on the United Nations Security Council (UNSC), and minor disputes also exist among Brazilian companies and persons in countries such as Paraguay, Uruguay and Bolivia.

Overall, however, it is undeniable that Brazil is a regional soft power. It is inaccurate to label Brazil a global power because it lacks adequate material capacity (economic and military) to act on the global scene, especially to maintain or restore international peace and security.

Lack of material capacity

In addition to its traditions, beliefs and legal constraints, Brazilian foreign policy has also been moulded by material constraints. Despite recent advances, Brazil still faces serious economic and military limitations to act as a global power. This is especially true for unilateral action, but it is also accurate in terms of Brazil's capacity to act in concert with others.[6] Evidence shows that Brazil is not among the top ten in any world ranking that measures materiality of power, except for the size of its economy.

The numbers speak for themselves. In absolute numbers, Brazil is eleventh in the world in terms of military spending. In percentage terms, it allocates approximately 1.7% of its gross domestic product (GDP) to military expenditure, putting it in eighty-ninth position in the world.[7] Brazil's armed forces have 371,200 active troops, positioning it in fourteenth position in the world ranking.[8] When converting these numbers into global action, Brazil's most significant engagement is with UN peace operations, and still the current 2,200 Brazilian peacekeepers put it in twelfth position.[9] Considering the small number of Brazilian military acting as advisers in missions of the Organization of American States, and considering that collective military operations do not exist in other regional organisations in which Brazil takes part (such as the Union of South American Nations), it is possible to conclude that the UN missions receive most of the Brazilian military involved in international operations. This means that Brazil deploys only 1.69% of its military in international operations.

Brazil is the sixth-largest world economy – the only indicator among the top ten.[10] However, its wealth is concentrated in the hands of a few, with Brazil ranking fifty-second in the world in terms of GDP per capita.[11] Again looking at how this translates into the country's actions as a global player, Brazil's financial contributions to UN budgets are mediocre compared to its potential: the country is the fourteenth-largest contributor to the UN regular budget (2012) and the twenty-eighth-largest contributor to the budget of the UN Department of Peacekeeping Operations (DPKO) (2011–2012).

In other words, Brazil is sending contradictory messages. It strongly advocates multilateralism, it has global aspirations and it is the sixth-largest world economy. But these have yet to be converted into political action in its international relations. On the one hand, Brazil is clearly willing to have more influence in world politics as a global player and not only as a regional power. Also, there are increasing expectations from other countries (traditional and emerging players) to see Brazil behaving as a global actor. On the other hand, however, Brazil puts great reliance on discourses about influence, which are necessary but not sufficient, and its effective recognition would also involve global action.

The lack of materiality in Brazilian power has at least two consequences. First, it emphasises that Brazil does not have the credentials of a global power; only of a global player. Expectations need to be lowered accordingly. Second, Brazil still has to recognise that climbing up to a new level involves responsibilities that go beyond pure diplomacy. It is one thing to verbally accept new responsibilities, as Brazil has done many times, and quite another to contribute effectively to collective action to maintain or restore international peace and security. This will only happen by improving the materiality of Brazil's power – not by becoming a military power, which contradicts its traditions. However, this would involve investing more resources to remain relevant as a global player. These could include developing conflict-sensitivity policies to technical cooperation in fragile or post-conflict states (reinforcing Pillar II of R2P), and strengthening mechanisms to identify and mobilise civilian expertise to be deployed to R2P activities,[12] either before or at the same time as the collective use of force.

Brazil and R2P

After discussing some of the fundamentals and constraints that shape Brazilian foreign policy, it is understandable that Brazil has demonstrated mixed reactions when dealing with R2P. It obviously embraced those aspects aligned with the non-material elements of its foreign policy, including R2P's focus on prevention, non-coercive measures, peace building and use of force as a last resource. Brazil has also welcomed the fact that R2P is based on existing international law, focuses only on the four crimes agreed in the 2005 World Summit Outcome Document, and tries to stimulate the involvement of other international organisations and UN agencies, going beyond the UNSC,

thus proving to have a broader approach when protecting civilians. These ideas work well at the discourse level and, again, are aligned with the non-material components of Brazilian foreign policy. However, when it comes to responding effectively to atrocities, Brazil is still struggling to match its position with action.

Brazil's main resistance relates to the implementation of Pillar III – more specifically, with the actual use of force to protect civilians, a preoccupation shared by other developing countries such as Pakistan, Venezuela and Cuba. The Brazilian position on R2P improved slightly in 2009 after the UN secretary-general report 'Implementing the Responsibility to Protect' (A/63/677), which in many ways is aligned with the Brazilian position. However, Brazil is still concerned with R2P being used as a pretext to interfere in other states' domestic affairs or, worse, to elicit regime change. Thus, although the country welcomed the report, it officially disagrees, for example, with the co-existence of the pillars. Brazil shares Ramesh Thakur's belief[13] that there must be 'political subordination and a chronological sequence' among the pillars.[14] In other words, Pillar II should be complementary to Pillar I, while Pillar III is a supplementary action, activated as a last option only after Pillars I and II have proved to be ineffective.[15]

Brazil's responses to the crises in Rwanda, Kosovo, Darfur and Libya

Brazil has a semi-permanent status on the UNSC: it has had a seat for 20 of the Council's 67 years of existence, or for about 30% of the time.[16] Since 1992 – the first year after the Cold War – Brazil has been on the UNSC for about 38% of the time. By coincidence, or because of this semi-permanent status, Brazil was on the UNSC during several humanitarian crises, including the four cases explored in this section – two in the 1990s (Rwanda and Kosovo) and two in the twenty-first century (Darfur and Libya).

Brazil's position on humanitarian intervention and, more specifically, on the protection of civilians and R2P, generally tends towards non-intervention (the only exception was Rwanda). In fact, Brazil usually demonstrates more reluctance than willingness to act in humanitarian crises when the use of force is considered.[17] Consequently, the country's diplomatic language leans heavily towards preventive and non-coercive actions, such as persuasion and capacity building.

It is also worth mentioning that between Kosovo (1998–1999) and Darfur (2005–2006) there was a major shift in Brazilian politics led by former President Lula and former Minister of Foreign Affairs Celso Amorim (2003–2010). Their vision of the world changed Brazil's attitude in its external relations. From a 'passive' role in world politics, Brazil became much more proactive, at least at the discourse level. This, however, did not change the country's position on humanitarian interventions. The formal adoption of R2P in 2005 also had little influence.

Rwanda

The mid-1990s was a time of intense discussions and memorable omissions of the international community when dealing with gross violations of human rights, with Rwanda being one of the most serious challenges. Brazil was on the UNSC when the crisis escalated in 1993–1994. Brazil, together with such countries as Spain and Nigeria, vehemently condemned the genocide and explicitly defended the use of force to stop it.[18]

The position of supporting the use of force seems to be an exception, not a precedent, in the Brazilian approach to humanitarian crises. And there is a weakness in this position. Although Brazil condemned genocide and defended the use of force to stop it, it did not have the troops to back up its position. In other words, Brazil was assuming that someone else would intervene and take the risks in Rwanda, which, in the event, did not really happen. This type of statement is easier to accept from a middle power or from a country which, at the time, did not have many troops engaged in other international missions.[19] Would the Brazilian position have been different if Rwanda had occurred in 2011?

Kosovo

Brazil was on the UNSC in 1998–1999 during the Kosovo crisis. As before, Brazil explicitly condemned all forms of violence in the province of Kosovo and gave priority to non-coercive measures, even under Chapter VII. It insisted, for example, that an embargo based on Article 41 should be approved by the UNSC only if 'accompanied by parallel diplomatic efforts aimed at the promotion of a safer and more harmonious environment for those who have been most directly affected by the unrest'.[20]

In October 1998, as the crisis escalated, Brazil made clear its position on following UN rules and procedures by condemning the discussions (not yet the action per se) on the eventual use of force without authorisation by the UNSC:

> After having witnessed certain disturbing signs which would point to a weakening of the Security Council's authority and after long discussions, we note with reassurance that the primary responsibility of the Security Council for the maintenance of international peace and security is reaffirmed.[21]

In June 1999, after the North Atlantic Treaty Organization (NATO) finished its campaign in Kosovo and Serbia, Brazil once again emphasised its concern about the intervening authority, which had not been explicitly authorised by the UNSC. It argued that 'problematic precedents have been set in the resort to military force without Security Council authorisation. These have neither contributed to upholding the Council's authority nor improved the humanitarian situation'.[22] This emphasises that Brazil was relatively tolerant regarding the use of force under the UN Charter, either for self-defence or as explicitly authorised by the UNSC, but would not accept other interpretations: 'there is no third way'.[23]

Darfur

Brazil was on the UNSC in 2004–2005 in the middle of the crisis in Darfur. This was during Lula's administration (2003–2010), when the country began to take a more proactive role in the international scene. Here, the Brazilian position relied again on the adoption of non-coercive measures by the UN, as revealed from the analysis of four aspects.

First, the crisis in Darfur was not considered genocide by the International Commission of Inquiry on Darfur,[24] and this strengthened the Brazilian preference to use other tools rather than the use of force. Second, due to fragile institutions and the low level of development in Darfur, Brazil insisted on peace-building activities and not pure peacekeeping or peace enforcement, which was consistent with discussions on Darfur not only in the UNSC but also in bodies such as the UN General Assembly, the Economic and Social Council (ECOSOC), the Peacebuilding Commission (PBC) and the Human Rights Council (HRC). Third, in terms of authority, the African Union

decided in 2004 to manage the crisis through a hybrid mission with the UN, which received full support from Brazil.[25] Finally, in terms of accountability, Brazil believed that the Sudanese government should try the suspects for legal reasons: there is a primacy of national judicial institutions over international ones, and Sudan was not a member of the International Criminal Court (ICC).[26] However, the UNSC believed that the ICC should try the men listed by the International Commission of Inquiry on Darfur (ICID) (UNSC Res 1591/2005). Brazil preferred to abstain in the vote on this resolution and was heavily criticised for doing so.

In 2006, Brazil was criticised for another abstention, this time on an HRC resolution that foresaw severe action against the Sudanese government.[27] Abstention therefore seems to be a recurring voting strategy for Brazil in difficult situations, probably for the sake of consistency.

Libya

Brazil was on the UNSC in 2010–2011 during the escalation of the situation in Libya. Its position in this case is a mix of the previous approaches. Brazil believed that the situation on the ground did not pose a threat to international peace and security: 'There were popular movements in Libya who would peacefully rally and ask for wider participation in the political process, better economic opportunities, better living conditions and freedom of expression.'[28]

As the crisis escalated, decisions at the UN level were still considered reasonable and legitimate, and were all taken by consensus, including UNSC Resolution 1970/2011, which established freezing of assets and an arms embargo. The situation began to change with UNSC Resolution 1973/2011. To justify its abstention (another abstention), Brazil argued that the military action foreseen by the resolution was not proportionate to the situation on the ground and that the use of force was not the last resort.[29] Moreover, while acting on behalf of the international community, the UNSC has the responsibility not to worsen the instability of a country or region.[30] Regime change was also a concern for Brazil, despite this not being officially stated. Regime change is not only condemned by the international community but it may also create a vacuum of power in countries with fragile institutions, eventually opening the doors to fundamentalist groups and terrorists.[31]

To conclude, the Brazilian position in these situations demonstrates that

the country tends to condemn gross human rights violations; however, when it comes to effective action, it usually finds inconsistencies and irregularities with the use of force and tends to abstain from voting. The pattern seems to be as follows: Brazil focuses on prevention, and when prevention fails it defends the use of non-coercive measures. But what would the Brazilian position be when non-coercive measures are no longer effective and if there are no other peaceful alternatives to the use of force?

Responsibility *while* Protecting: Old wine in new bottles

R2P was not a novelty when it was launched at the 2005 World Summit since it basically ratified trends and aimed at giving effect to some of the goals and obligations set forth by the UN Charter and other international treaties.[32] The same is true for Responsibility while Protecting (RwP). However, when the RwP initiative was brought to the UN by Brazil in late 2011, many called it a 'Brazilian proposal'.[33] But discussions had been going on for at least a decade on the need to define principles and criteria to guide the international community in its robust actions over humanitarian crises. Different criteria have been suggested, for example, by Cook,[34] Wheeler[35] and the International Commission on Intervention and State Sovereignty (ICISS).[36] These explicitly include criteria for 'focus on prevention', 'last resort', 'proportionate', 'just cause', 'right intention', 'good over harm' and 'collective action'. However, there is still no consensus on which criteria should regulate R2P operations.

Brazil resumed the debate with a proposal to guide the collective responsibility of the international community to protect civilians from the four R2P crimes, and it did so by organising existing principles and criteria.[37] More specifically, Brazil's contribution focuses on Pillar III and on the need to resort to military action to protect civilians.[38] RwP is an innovation in terms of terminology, and is an attempt to consolidate an existing but fragmented discussion. However, the criteria for the use of force are not new, as seen below:

- **Only as the last resort** has been highlighted by international law as well as by policy-makers and academics. Brazil added that 'the use of force must be preceded by a comprehensive and judicious analysis of the possible consequences of military action on a case-by-case basis'.[39]
- **Do no harm** was included in R2P discussions by the ICISS.[40] Brazil only

reinforces it: '[I]n exercising its collective responsibility, the international community should be careful not to provoke more instability than the one it is seeking to limit or to avoid.'[41]

- **Proportionality** has been anticipated, for example, by Wheeler[42] and the ICISS,[43] deriving from international humanitarian law.
- **Authority** is clear in the UN Charter:[44] only the UNSC can approve the use of force by the UN or by regional organisations.
- **Accountability** had been foreseen by the ICISS.[45] Brazil strengthens the need to improve monitoring tools for interpreting and executing mandates coherently with common goals.

In sum, the RwP guidance to Pillar III proposes the consolidation of existing principles and criteria under a single expression, and can be seen as old wine in a new bottle. The chosen principles and criteria are obviously aligned with the idealistic component of Brazilian foreign policy, and, indeed, the country was politically capable of grabbing the attention of global leaders after launching RwP.

Nevertheless, when it comes to the effective implementation of R2P operations even under RwP guidance – that is, the last step in Pillar III – Brazil is not likely to take a proactive role since it lacks the material capacity to engage with military action. In other words, Brazil condemns the four crimes covered by R2P and proposes consolidated guidelines for the use of force in R2P operations; however, Brazil is not able to perform when it comes to taking risks and getting involved in robust collective efforts.

The use of force under R2P means heavy employment of human, financial and material resources to stop one or more of the four mass atrocities protected by R2P. To effectively stop these crimes with military force there must be air support, ground transport for a relatively large number of troops, and adequate and modern equipment. As mentioned earlier, Brazil currently deploys less than two per cent of its military to international missions, and military equipment (weapons from the 1960s, for example) is only now being updated following a recent change in legislation that is stimulating the local military industry.

Thus, if Brazil continues to support the UN Mission in Haiti (MINUSTAH) with two battalions, it would not have sufficient human resources or equipment to deploy elsewhere abroad. At things stand, if Brazil were to become involved in new international operations it would only have

the ability to deploy a company or, perhaps, a reduced (500-troop) battalion properly trained and equipped to deter R2P crimes. This would have been acceptable ten to fifteen years ago when Brazil was a middle power, but more is expected from a global player.[46]

The current contradictory position could have problematic consequences. The Brazilian argument seems to be directed at those who engage in military intervention and not at Brazil itself – a classic 'do as I say, not as I do' situation. Developed and emerging countries would take the risks to protect civilians, and their actions would be regulated by RwP. At the same time, developing countries facing violence related to R2P could not count on Brazil in any R2P operation, which could be awkward for a country that is building a reputation in the global South. This situation reinforces the principle of sovereignty, even of suspicious governments, and may threaten the legitimacy of the Brazilian discourse as a leader.

There seems to be at least one sub-optimal solution for this situation. If the use of force in an R2P operation is considered legal and legitimate, Brazil could engage in a second phase, after the first robust R2P operation, contributing a limited number of troops to the operation and eventual transition to a more sustainable phase. Brazil has expertise, adequate training and consolidated experience with this kind of activity, both at home and abroad.[47]

Such a situation happened in 2004 in Haiti. Brazilian involvement in MINUSTAH occurred in June 2004 after the Multinational Interim Force (MIF) was authorised by UNSC Resolution 1529 in February 2004 and had been fully implemented by the US, France, Canada and Chile. In many ways, the MIF prepared the ground for MINUSTAH. Although the political situation was different and the MIF had the approval of the Haitian president (which would not necessarily apply to R2P operations), there are similarities between the MIF-MINUSTAH approach and an eventual R2P operation. For example, the UNSC authorised both MIF and MINUSTAH and was working under Chapter VII. There was clear concern about the deterioration of the political, security and humanitarian situation, and the UNSC resolution aimed at preventing civil war in Haiti (which could have led to war crimes or crimes against humanity). In other words, a combination of approaches, such as the MIF-MINUSTAH example, could enable Brazil to engage effectively in R2P operations, re-establishing the coherence between discourse and action.

In sum, Brazil is eagerly trying to influence the norms that regulate the use of force to protect populations from genocide, crimes against humanity, war

crimes and ethnic cleansing. The debate sparked by RwP may lead to a new ethic of intervention to deal with R2P crimes, based on a multidimensional understanding of international law and international politics.

Looking to the future through strategic lenses

Brazil is developing different partnerships with other rising players (newcomers and not-so-newcomers) on issues directly and indirectly related to R2P. The choice of partners usually depends on the issues at stake, the strength of the partnership (whether it is a temporary coalition or a strategic arrangement), and the beliefs and material capability of the potential partners. This section briefly describes a number of arrangements that have been or could be explored by Brazil.

First, Brazil has a strategic partnership with India and South Africa through the IBSA (India, Brazil and South Africa) arrangement created in 2003. Owing to IBSA's political nature, one can anticipate joint positions on issues related to R2P despite the fact that in the case of Libya (UNSC Resolution 1973/2011) South Africa voted in favour of the resolution, together with other African countries, while Brazil and India abstained.

Second, Brazil also has a strategic partnership with India, Germany and Japan, forming the Group of Four (G4). The G4 basically aims at reforming the UNSC and guaranteeing a permanent seat (with non-veto power) for each, together with two African countries. While the group seems dormant, it is a strategic partnership that could be reactivated in issues related to R2P. In the recent case of Libya, Brazil, Germany and India abstained, while Japan was not on the UNSC. There is also an interesting sub-group that may be worth exploring in specific situations: Germany, Brazil and Japan have similar volumes of military spending (US$42 million, US$34 million and US$33 million respectively), differing a lot from India (US$92 million), and the three of them have legal restraints in terms of military power.[48] This puts them in similar positions in terms of a more limited engagement with effective use of force to protect civilians. However, Germany and Japan contribute heavily to the UN regular budget and to the DPKO budget, and are among the top four contributors.[49] This separates them from Brazil at present, but the situation could change in the future.

Third, Brazil favours convenient temporary coalitions with countries such as Russia and China, as in the BRICS arrangement (Brazil, Russia, India,

China and South Africa). Their main concern was originally based on economic issues and, although this may be changing, there are still difficulties in including international peace and security in the agenda for at least two reasons. First, Russia and China are part of the status quo in the UNSC, a body that Brazil wishes to reform. Second, when dealing with humanitarian intervention, Russia and China tend to abstain or to vote against military operations (even using their veto power), in a similar position to Brazil, although inspired by different motivations. And when discussing RwP more specifically, both Russia and China preferred not to include the new wording in a BRICS joint declaration in March 2012, despite the fact that Brazil, India and South Africa supported it.[50] This highlights the fact that a Brazilian coalition with Russia and China on RwP may be difficult at the moment.

Finally, it might be worth exploring eventual coalitions with other developing countries on articulating concepts and tools in other UN bodies such as the UN General Assembly, ECOSOC, the PBC and the HRC. As a UNSC non-permanent member and a country with global aspirations, Brazil should promote its concepts and ideas with other regional powers and global players, such as Indonesia and Turkey.

Conclusion

Brazil has been able to rely on non-material components of its foreign policy when defining its positions on R2P. Despite initial resistance, it has clearly accepted Pillars I and II and has made a recent conceptual contribution to the controversial Pillar III. However, RwP, the new vocabulary, proposes lines of action that the country itself cannot at present follow. Consequently, Brazil's lack of material capacity may threaten the coherence and legitimacy of the country's discourse, endangering its position as a global player.

In serious humanitarian crises, when prevention is no longer a possibility and when non-coercive measures are not effective, good ideas are necessary but not sufficient. The responsible use of economic and military resources would allow a direct or indirect engagement of Brazil in R2P operations, and this must be seriously discussed by the Brazilian government and civil society. The country could contribute with innovative mechanisms for implementing Pillar III in its totality, going beyond the discourse level to engage effectively not only with non-coercive measures, but also with a more responsible and regulated use of force, as it did in Haiti. Enhanced and responsible

engagement with R2P practices, and not only with discourses, is definitely expected from a global player.

Endnotes

1 Antonio Patriota, Press conference on responsibility to protect, 21 February 2012. Available online: www.youtube.com/watch?v=7OiCXb9z57g.
2 Brazil was part of the Triple Alliance (with Argentina and Uruguay) against Paraguay (1864–1870). Also, during the Second World War, Brazil sent 15,000 troops to Italy (1944–1945) to support the Allies.
3 Barão do Rio Branco was the Brazilian minister of foreign affairs from 1902 to 1922. He is recognised as being responsible for negotiating the Brazilian borders with almost every country in South America: Bolivia (1902), Ecuador (1904), Dutch Guiana (1906), Colombia (1907), Peru (1904 and 1909) and Argentina (1910). Before becoming the minister of foreign affairs, he worked on border disputes with Argentina (1893–1895) and French Guiana/France (1898).
4 Maria Regina Soares de Lima , 'Diplomacia, Defesa e a Definição política dos objetivos internacionais: o caso brasileiro', in Nelson A Jobim, Sergio W Etchegoyen and João Paulo Alsina (eds), *Segurança Internacional: perspectivas brasileiras*. Rio de Janeiro: FGV, 2010, pp 401-418.
5 Argentina was considered a regional competitor until the 1980s, but tensions never rose to the level of an armed conflict. See Antonio Patriota, Public audience with his Excellency the Brazilian Minister of External Relations, at the Commission of External Relations of the Brazilian Senate (10 May 2012). Available online: www.youtube.com/watch?v=6MBdyfEf-1c&feature=g-all-u.
6 Although there can be many forms of material capacity, the chapter focuses on the economic and military dimensions as relevant aspects of power.
7 Global Security, 'World Wide Military Expenditures – 2011', 2012. Available online: www.globalsecurity.org/military/world/spending.htm.
8 Global Fire Power, 'Active Military Manpower by Country', 2011. Available online: www.globalfirepower.com/active-military-manpower.asp.
9 Department of Peacekeeping Operations (DPKO), 'Ranking of Military and Police Contributions to UN Operations', 30 April 2012. Available online: http://www.un.org/en/peacekeeping/contributors/2012/apr12_2.pdf.
10 Centre for Economics and Business Research (CEBR), 'Brazil has overtaken the UK's GDP', news release, CEBR World Economic League Table, 26 December 2012. Available online: www.cebr.com/wp-content/uploads/Cebr-World-Economic-League-Table-press-release-26-December-2011.pdf.

11 World Bank, World Development Indicators: GNI per capita, Atlas method (current US$), 2010. Available online: http://data.worldbank.org/indicator/NY.GNP.PCAP.CD [accessed 22 May 2012].

12 Civilian capacity is mentioned at paragraph 39 of the UNSG report 'Implementing the Responsibility to Protect' (A/63/677). It received greater attention in 2011 with the publication of the UNSG report 'Civilian Capacity in the Aftermath of Conflict' (A/65/747-S/2011/85).

13 Alex Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds*. New York: Routledge, 2010.

14 Maria Luiza Ribeiro Viotti, 'Informal Interactive Dialogue on the Responsibility to Protect', 23 July 2010. Available online: www.un.int/brazil/speech/10d-mlrv-informal-interactive-dialogue-on-the-responsability-to-protect.html; Maria Luiza Ribeiro Viotti, 'Responsibility to protect - SG report on "The role of regional and sub-regional arrangements in implementing the responsibility to protect"', 12 July 2011. Available online: www.un.int/brazil/speech/11d-mlrv-Responsability-to-protect-report.html.

15 Viotti, 'Informal Interactive Dialogue on the Responsibility to Protect', op cit; Maria Luiza Ribeiro Viotti, 'Open Debate of the Security Council on the Protection of Civilians in Armed Conflict', on behalf of Minister Antonio Patriota, 9 November 2011. Available online: www.un.int/brazil/speech/11d-mlrv-AAP-Open-Debate-of-the-Security-Council.html; Gelson Fonseca Jr, 'Dever de proteger ou nova forma de intervencionismo?', in Nelson A. Jobim, Sergio W. Etchegoyen e João Paulo Alsina (eds,) *Segurança Internacional: perspectivas brasileiras*. Rio de Janeiro: FGV, 25010, p 191. As of August 2012, these discussions are evolving both in New York and Brasilia, and it seems that Brazil could recognise the co-existence of the pillars during the next General Assembly session, in September 2012, as long as use of force remains a last resort. Ambassador Viotti recently argued in New York that 'the sequence is logical, not chronological'.

16 Brazil was on the UNSC in 1946–1947, 1951–1952, 1954–1955, 1963–1964, 1967–1968, 1988–1989, 1993–1994, 1998–1999, 2004–2005, 2010–2011.

17 Fonseca Jr, 'Dever de proteger ou nova forma de intervencionismo?', op cit.

18 Breno Hermann, *Soberania, não intervenção e não indiferença: reflexões sobre o discurso diplomático brasileiro.* Brasília: Fundação Alexandre de Gusmão, 2011, p 192; Andréa Fernanda Rodrigues Britto, 'A tradição da continuidade: análise do lançamento do conceito de responsabilidade ao proteger pela diplomacia brasileira', 2012, p 15. Available online: pt.scribd.com/doc/ 78669625/Analise-da-responsabilidade-ao-proteger.

19 At that time Brazil had approximately 70 peacekeepers working in UN missions and there was no policy to increase the number. Today, Brazil has some 2,400 peacekeepers.

20 Henrique Valle, Item Letter dated 11 March 1998 from the Deputy Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (S/1998/223) and Letter dated 27 March 1998 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council (S/1998/272). UN Security Council, 31 March 1998. Available online: www.un.int/brazil/speech/98d-hv-csnu-letter.html.

21 Celso Amorim, 'Kosovo'. UN Security Council, 24 October 1998. Available online: www.un.int/brazil/speech/98d-clna-csnu-kosovo.html.

22 Gelson Fonseca Jr., 'The situation in Kosovo, Federal Republic of Yugoslavia', UN Security Council, 10 June 1999. Available online: www.un.int/brazil/speech/99d-gfj-situatio-in-kosovo.html.

23 Amorim, op cit.

24 ICID, 'Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General', 25 January 2005, p 131. Available online: www.un.org/ News/dh/sudan/com_inq_darfur.pdf.

25 Henrique Valle, 'Brazilian Intervention during the Open Briefing on African (Sudan) situation'. UN Security Council, 24 September 2004. Available online: www.un.int/brazil/speech/004d-hv-csnu-Sudansituation-2409.html.

26 The legal justifications must be combined with two political motives derived from the pragmatic component of its foreign policy. First, Brazil had recently re-established connections with many African countries (Agência Estado, 'Brasil defende neutralidade no Caso de Darfur', 13 December 2006. Available online: g1.globo.com/Noticias/Politica/0,,AA1385617-5601,00.html). Second, Brazil contributed 1,200 troops to MINUSTAH and did not have the capacity to relocate part of them to an eventual UN collective action in Darfur (BBC Brasil, 'Amorim descarta enviar tropas brasileiras a Darfur', 24 April 2007. Available online: www.bbc.co.uk/portuguese/reporterbbc/story/2007/04/ 070424_ darfuramorimdb.shtml).

27 Agência Estado, 'Anistia acusa Brasil de Omissão no Massacre de Darfur', 12 December 2006. Available online: g1.globo.com/Noticias/Politica/0,, AA1384081-5601,00.html; PET iREL UnB, 'A resposta internacional ao conflito em Darfur', *Mundorama*, 31 August 2008. Available online: mundorama.net/2008/03/31/a-resposta-internacional-ao-conflito-em-darfur-por-pet-irel-unb-3/.

28 Antonio Patriota, Public audience with his Excellency the Brazilian Ministry of External Relations, to discuss the living conditions of the thousands Brazilians who live in the Middle East, as well as to provide an analysis of the impact and the consequences of the relations between these countries and Brazil. Eleventh Extraordinary Meeting of the Commission of External Relations of the

Brazilian Senate, 27 April 2011. Available online: www.senado.gov.br/atividade/comissoes/sessao/disc/listaDisc.asp?s=000147/11.

29 Viotti, 'Responsibility to protect', op cit.

30 Britto, 'A tradição da continuidade: análise do lançamento do conceito de responsabilidade ao proteger pela diplomacia brasileira', op cit, p 1, Viotti, 'Responsibility to protect', op cit.

31 Patriota, Public audience with his Excellency the Brazilian Ministry of External Relations, op cit.

32 A/63/677, paras 2-3; Fonseca Jr, 'Dever de proteger ou nova forma de intervencionismo?', op cit, p 191; Hermann, *Soberania, não intervenção e não indiferença* op cit, p 192; Viotti, 'Informal Interactive Dialogue on the Responsibility to Protect', op cit.

33 See, for example: '"RwP" was *introduced* by President Dilma Rousseff in her address to the 66th United Nations General Assembly last September' (emphasis added – Itamaraty, Brazilian Minister of External Relations, 'Participação do Ministro das Relações Exteriores, Antonio de Aguiar Patriota, em debate sobre a responsabilidade ao proteger na ONU', press release, 21 February 2012, p 36. Available online: www.itamaraty.gov.br/sala-de-imprensa/notas-a-imprensa/participacao-do-ministro-das-relacoes-exteriores-antonio-de-aguiar-patriota-em-debate-sobre-responsabilidade-ao-proteger-na-onu-2013-nova-york-21-de-fevereiro-de-2012/). Also see: '… Brazil circulated a paper arguing that the R2P concept, as it has evolved so far, needs to be supplemented by a *new set of principles and procedures* on the theme of "responsibility while protecting" … . Its two key *proposals* are a set of criteria (including last resort, proportionality, and balance of consequences) to be taken into account before the Security Council mandates any use of military force …' (emphasis added – Gareth Evans, 'Responsibility while Protecting', *Project Syndicate*, 2012. Available online: www.project-syndicate.org/commentary/responsibility-while-protecting).

34 Alex J Bellamy, 'Pragmatic Solidarism and the Dilemmas of Humanitarian Intervention', *Millennium: Journal of International Studies*, 31(3), 2002, pp 473-497.

35 Nicholas J Wheeler, 'Legitimating Humanitarian Intervention: Principles and Procedures', *Melbourne Journal of International Law*, 2(2), 2001, p 550. Available online: www.austlii.edu.au/au/journals/MelbJIL/2001/21.html.

36 ICISS, 'The Responsibility to Protect', Report of the International Commission on Intervention and State Sovereignty, Ottawa, December 2001. Available online: http://responsibilitytoprotect.org/ICISS%20Report.pdf.

37 A/66/51–S/2011/701.

38 Patriota, Public audience with his Excellency the Brazilian Ministry of External Relations, op cit; Press conference on responsibility to protect, op cit; Speech

of the Minister of External Relations at the Instituto Rio Branco, during the graduation ceremony of class 2010–2012, 20 April 2012. Available online: www.youtube.com/watch?v=jZMdwkKcJr4&feature=g-all u&context=G2a918afFAAAAAAAAEAA.

39 A/66/551-S/2011/701, para. 8.

40 ICISS, para 7.26

41 Patriota, Press conference on responsibility to protect, op cit; Viotti, 'Open Debate of the Security Council on the Protection of Civilians in Armed Conflict', op cit.

42 Wheeler, op cit.

43 ICISS, op cit, para 7.27.

44 UN Charter, Articles 42 and 53.

45 ICISS, op cit, para 7.27.

46 This situation may change in five years, for at least two reasons. First, because the total amount of troops deployed to MINUSTAH is reduced by the UNSC each time it renews the mission's mandate, which usually happens in October of each year. If this trend continues, it will probably release at least one Brazilian battalion, which could eventually get involved in other international collective efforts, including R2P operations under RwP guidance. Second, the Brazilian Ministry of Defense has recently launched a new domestic policy (National Defense Strategy, 2008), which aims, for example, to transform the country's armed forces into institutions of the twenty-first century. This means, among others, developing national technology, improving training standards, and buying or building modern equipment.

47 The most relevant and recent examples include the pacification of slums in Haiti (such as *Bel Air* and *Cité Soleil*) as well as in Rio de Janeiro (such as in *Complexo do Alemão*).

48 Global Security, op cit.

49 UN Secretariat, 'Assessment of Member States' contributions to the United Nations regular budget for 2012', ST/ADM/SER.B/853, 27 December 2011. Available online: www.un.org/ga/search/view_doc.asp?symbol=ST/ADM/SER.B/853; DPKO, op cit.

50 Oliver Stuenkel, 'Why the BRICS should embrace the "Responsibility while Protecting"', *Post-Western World*, 1 March 2012. Available online: www.postwesternworld.com/2012/03/01/why-the-brics-should-embrace-the-responsibility-while-protecting/.

5

India and R2P: Reconciling the Tension Between Intervention and State Sovereignty

Dipankar Banerjee

Introduction

This chapter examines how India has perceived the Responsibility to Protect (R2P) and whether, and if so, to what extent, its approach has evolved over time. Has India been able to shape the global debate on R2P – reconciling the tension between intervention and civilian protection?

Since the end of the Cold War the world has witnessed a new form of violence. It is now not necessarily the clash of arms between nation states or coalitions that is the likely cause of catastrophic deaths, but, instead, it is the violence that occurs within states themselves. This may be through internal conflicts, or where a state inflicts violence on its own citizens or is unable to prevent violence being inflicted on its people by forces that may or may not be under its control.

India's perception of R2P has been conditioned by its conviction that all people have the inherent right to life and liberty, which their governments are duty bound to protect. At the same time, nation states are entities whose sovereignty, including regime change, must not be violated with ease by the

international community. Reconciling the differences has engaged Indian policy-makers seriously in recent years.

India has consistently supported the United Nations (UN) in maintaining peace and security around the world.[1] It has contributed to UN Peacekeeping Operations (UNPKO) from the very beginning, has been among the largest global troop contributors and has laid down the lives of most soldiers in this line of duty.[2] In the twenty-first century, India has consistently been among the top three troop-contributing countries.[3] India believes that contributing to international peace is an essential duty, and this is clearly enumerated in its constitution.[4] It is therefore neither political will nor the absence of capacity that prevents India from participating in executing R2P. It is, rather, the absence of conviction.

Examining this question will require a brief overview of Indian foreign policy since independence and its own interventions in Bangladesh in 1971 and in Sri Lanka from 1987 to 1990.

What shaped India's policy in the turbulent period after the Cold War world and right up to Libya? And how is India likely to respond in future to calls for R2P in terms of policy, participation and coalition building?

Early debate on sovereignty and intervention

Tension between state sovereignty and international intervention is particularly strong in India. This has arisen from the collective memory of recent centuries of colonisation as well as survival in the bipolar Cold War world. India sees itself as an old civilisation and a new nation state; and preserving its independence and autonomy has been a constant in India's foreign policy. This led to a policy of non-alignment, emphasising state autonomy even when it believed in engaging internationally.

India's international policy in the early years of its independence has been best expressed under the Five Principles of Peaceful Co-existence, or Panch-sheel.[5] These principles were included in the preamble to the Agreement on Trade and Intercourse between the Tibet region of China and India, which was signed on 29 April 1954. The five principles of Panchsheel are:

- mutual respect for each other's territorial integrity and sovereignty
- mutual non-aggression
- mutual non-interference

- equality and mutual benefit
- peaceful coexistence

The emphasis on sovereignty and non-interference characterised India's relations with other countries during this period. India's failure to criticise the Warsaw Treaty Organization's repressions in Czechoslovakia or Poland and the Soviet Union's aggression in Afghanistan in 1979 clearly went against these beliefs; however, this needs to be seen in the context of India's strategic dependence and close relationship with Moscow during the Cold War. There were other exceptions, particularly in India's neighbourhood, where New Delhi's decisions were guided at least partially by national strategic interests.

A significant example of this was its support to the Mukti Bahini (Freedom Fighters) in Bangladesh and intervening in Bangladesh's liberation war in 1971. Another significant example was the despatch of an international peacekeeping force to Sri Lanka at the request of Colombo in 1987. Both were major interventions in support of causes that were essentially humanitarian, but in two very different circumstances.[6]

Both these examples suggest that when they are in India's vicinity, incidents of mass violence stir India's conscience and impinge on its strategic interests. They also directly affect India's own security due to the spill-over effect. In such situations, New Delhi may be left with no other option than intervention.

Bangladesh (East Pakistan) in 1971 experienced perhaps the most intense internal violence perpetrated by a state against its own people anywhere in the world since the Second World War.[7] It was larger in scale than Rwanda, which followed two decades later, and came close to fitting the definition of genocide.[8] Detailed narratives differ, as do exact figures regarding civilian atrocities, but the numbers massacred through state violence may have been around three million with 100,000 rapes and an international outflow of refugees to India numbering ten million.[9] In spite of the scale of violence spread over months and well documented in the international media, no country came to the aid of the people and no serious attempt was made at the UN Security Council (UNSC) to oppose it. Indeed, in the context of their global power interests, powerful nations, permanent members of the UNSC, actively supported the state committing these crimes. India responded in self-defence, assisting the forces that were opposing these atrocities, and this led to the emergence of a new country, Bangladesh.

India's military intervention was guided not primarily by humanitarian concerns but by its opposition to armed aggression. It was driven by the fact that ten million refugees were forced into India and that a further refugee inflow may well have led to India's economic collapse. At that time, international opinion would not have supported or allowed humanitarian intervention as visualised today under R2P. Indian forces withdrew from Bangladesh within three months of the liberation and the new nation has governed itself ever since. But the lesson India learned was permanent and long lasting; a healthy scepticism of major power humanism. It learned that in international affairs, national interests matter more than humanitarian concerns and will ultimately prevail. Pakistan was an important ally of the West: no matter what the atrocity or the numbers affected, Pakistan should not be challenged.

The other example was Sri Lanka (1987–1990). Ethnic conflict in Sri Lanka had reached a critical stage in 1987, with serious concern of a minority community being militarily attacked by a state's armed forces, which might then lead to a massacre. A mild show of force by India led to the Indo–Sri Lanka Agreement to Establish Peace and Normalcy in Sri Lanka, signed on 29 July 1987.[10] This allowed India to despatch a sizeable peacekeeping force to the north of the country at the specific request of the Sri Lanka government. Subsequent affairs went very wrong, and a conflict that should have been avoided broke out furiously. India learned that all the goodwill and force in the world was inadequate in a civil war, where parties remained determined on violence and were unable to resolve their political differences peacefully. External military force, however powerful or well intentioned, could only achieve limited goals.

The views against intervention prevailed not only during the Congress rule in the initial decades but later, when these views left deep imprints on India's foreign policy. Viewed in this context, humanitarian intervention, despite its affinities with the liberal values of the Indian state, did not resonate well with the foreign policy elite. Some of this had to do with defending India's position in Jammu and Kashmir. Any possibility that there might be an external role in resolving this question was not to be tolerated, and hence views on humanitarian intervention in spite of some exceptions remained an anathema.

It is in this context that India's role in UNPKO needs a brief mention. India has been the largest contributor to UNPKO since its inception, having

contributed about 163,000 soldiers to 43 UN peace missions.[11] Why does India contribute so much to UN peace missions when many of today's advanced nations are reluctant to be involved? This has more to do with India's willingness to contribute to international peace and security, which is a responsibility enshrined in Article 51 of the Indian Constitution, and much less with humanitarian issues. Yet, among the broad principles that govern India's participation are that these must be under UN sanction and military command, that the mandate must be capable of achievement, and that, politically, the mandate must be in accordance with Indian policies. Sometimes this precludes involvement in states with which India has had close friendly relations. In many cases, particularly in Africa, India's role in UNPKO resulted in stabilising situations in countries where massacres may have otherwise occurred.[12]

Early responses to R2P

A new Congress government returned to power in Delhi in 1991 under Prime Minister Narasimha Rao, a former foreign minister and a liberal intellectual. Instead of following Nehru's ideological orientation, the new government attempted a novel set of policies. Rao changed India's socialist economic orientation under a new finance minister, Manmohan Singh, he initiated major economic reforms and he opened up a hitherto closed economy.[13] These policies led to rapid economic growth and a more confident and outward-looking India. Nehru's belief in India's manifest destiny in the future changed to the prospect of an India fit to be a global player, to assume a major role in the world, and to become a permanent member of the UNSC. This change came about when the Cold War was ending and when India became a non-permanent member of the UNSC (1991–1993).

At key moments during debates on international interventions in northern Iraq, Somalia, Sierra Leone, Kosovo and East Timor, India demonstrated an openness to consider alternatives. Two themes begin to emerge at this time.

First, India was never negative about coming to the aid of another nation in distress. Even though it continued to subscribe wholeheartedly to the principles of sovereignty and non-use of force, opposing intervention remained an essential principle. But it also tolerated interventions that enjoyed wide international support, particularly among its traditional allies in the developing world and in Africa.

Second, India was willing to countenance multilateral actions that enjoyed host-state consent and UN authorisation in situations where all peaceful means had been fully exhausted.

These were admittedly not easy conditions to meet. However, what remained completely outside the pale was unilateral intervention.

The first case that was advanced as humanitarian justification was in April 1991 in Iraq, after the First Gulf War, when Saddam Hussain targeted the Kurds. When the UN adopted Resolution 688 condemning the Iraqi government's actions and asking it to end this repression, India, along with China, abstained. The Indian permanent representative at the UN at the time, Chinmaya Gharekhan, explained this position, emphasising that the UNSC should 'respect the sovereignty and territorial integrity of States' and that the condition of the Kurds was not 'a clear threat to international peace and security'.[14]

In respect of Somalia in December 1992, when Resolution 794 was adopted by the UNSC to authorise a multinational force under Chapter VII 'to use all necessary means' to provide humanitarian assistance, India held the Presidency and voted in favour. Ambassador Gharekhan justified this vote, saying that Somalia was a 'unique challenge' because it had no effective government, which meant that the relief agencies were subjected to 'extortion, blackmail and robbery'.[15] Mainly due to the nature of the situation, India made an exception to its normal policy and accepted a force led by the United States (US) rather than one directly under the UN.[16] Given Somalia's proximity and strategic importance to India, the latter contributed some 3,000 peacekeepers, whose roles covered almost half the country, as well as three warships, which patrolled the coast under the Unified Task Force.

Finally, in late 1999, India committed a sizeable force in Sierra Leone under the United Nations Mission to Sierra Leone, including the force commander. This was mainly in solidarity with West Africa. Although India was no longer a member of the UNSC, its voice was heard because it was the major troop contributor to all operations affecting Sierra Leone during this period. Even though peacekeeping and later peace enforcement encountered many difficulties, India operated under Chapter VII provisions to bring peace and stability to Sierra Leone before withdrawing its forces after accomplishing all major tasks.

The principal challenge to intervention came in the case of Kosovo in March 1999. India strongly opposed this. The NATO-led intervention

evoked scathing and unequivocal condemnation in India. Lieutenant-General Satish Nambiar, although now no longer in government, articulated Indian sentiment well at an international seminar on Kosovo held under the auspices of the UN University in Tokyo.[17] According to him, the unilateral action was a flagrant violation of all international norms and was against the provisions of the UN Charter, amounting to direct and unprovoked aggression.[18]

This policy towards intervention continued in the new government in India under the right-wing Bharatiya Janata Party, which was in power for six years from 1998. In June 2001, when the International Commission on Intervention and State Sovereignty (ICISS) held its commission meeting in Delhi, no one from the government attended.[19] Indeed, even an evening party hosted by the ICISS was attended only by a low-ranking protocol officer.[20]

By 2004 India had become a major emerging country with an outward and assertive foreign policy. India's growth in gross domestic product had now been sustained for over a decade at about seven per cent a year. According to financial asset management company Goldman Sachs, this led to the possibility of India emerging as the third-largest global economy after China and the US by 2050.[21] This led to a change in self-perception and also to a somewhat assertive foreign policy.

From 2004 India began a campaign along with Brazil, Germany and Japan for a permanent seat in an enlarged UNSC. Later, South Africa too was included in this campaign. The practicability of bringing about a structural change in the UNSC through this process may be questioned, but India received support from all major countries except China. India thus progressed from being an outlying player to becoming a more assertive and leading participant in international debates on peace and security. This was reflected best when at the World Summit Outcome debate at the UN in 2005, India, even as the last opponent to R2P, was 'not prepared to scuttle the summit by rejecting the R2P paragraphs at the last moment'.[22]

This somewhat tentative acceptance of R2P was first reflected in India's approach towards Sri Lanka in April 2009 during the final stages of the civil war, when civilian casualties surged following intense fighting. On 17 April 2009 SM Krishna, the foreign minister of India, urged the Sri Lankan government to extend the ceasefire to allow the trapped civilians to escape to safety.[23] Five days later Krishna stated in clearer terms: 'The Sri Lankan Government has a responsibility to protect its own citizens.'[24] Even though this was the first clear statement by India on R2P, it was not followed by a call

for international action if the Sri Lankan government did not respond. Instead, India merely repeated its call for the Sri Lankan government to uphold its responsibility towards its citizens.

At the UN 2005–2012

The World Summit Outcome debate in 2005 further legitimised R2P. India therefore accepted that the UNSC could act under:

> 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 are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.[25]

Ever since, India has continued to repeat this support – but has qualified it with the important caveat that the primary responsibility to protect lies with the state.

On 9 November 2009, India's Permanent Representative to the UN, Ambassador Hardeep Puri, participated in the open debate at the UNSC on the protection of civilians. Puri held that:

> [T]he UN has a mandate to intervene in situations where there is a threat to international peace and security … Force is not the only way of protecting civilians. It should only be the measure of last resort and used only when all diplomatic and political efforts fail … Protection of civilians when applied as a basis for Security Council action needs to respect the fundamental aspects of the UN Charter, including sovereignty and integrity of the Member States … In this context, it is pertinent to mention that we find several Member States all too willing to expend resources to effect regime change in the name of protection of civilians.[26]

This is where the crux of Indian objections lie. While it is indeed true that a government that cannot protect its people, or is not willing to do so, may well require to be changed, the manner of affecting this becomes the critical issue. Should the primary means be an international intervention or a peaceful

transition through ascertaining the wishes of the people? Who is the best to judge the situation and decide on the issue? What means are the most appropriate to be used and who will provide the forces? How will the transition be executed? India has expressed reservation on all these issues and has urged greater consideration in each case before a decision is taken. These issues came to the fore once more in the Libyan crisis.

Role in the UNSC and Libya

In October 2010 India again became a non-permanent member of the UNSC by a record vote of 187 members.[27] The Arab Spring started the following year and led to the UN intervention in Libya. It marked the first example of UNSC authorisation of an R2P operation. Resolution 1973 was adopted by the UNSC on 17 March 2011 by a majority of ten to zero, with five states abstaining (China, Russia, Brazil, Germany and India). Under this, the UNSC authorised the use of 'all necessary measures ... to protect civilians and civilian-populated areas'[28] – the first UN-sanctioned combat operation since the 1991 Gulf War.

The question generally has been raised that if India had such serious reservations on intervention, why did it merely abstain and not vote against Resolution 1973? First, India by now was no longer fundamentally against intervention, particularly if it were for genuine humanitarian reasons. Conditions at the time in Libya when Resolution 1973 was debated were sufficiently dire to suggest that the Gaddafi regime was poised for a major military operation on Benghazi, where there would be heavy civilian casualties. This was the feeling among all members in the UNSC, which is why no country voted against the resolution. It was only later when the actions of NATO seemed to go beyond what was actually sanctioned under Resolution 1973 that disappointment set in.

Later Ambassador Puri excoriated what he described as the supplying of arms to the Libyan rebels in violation of the UNSC's understanding of what was allowed by a resolution passed as a measure of protection. He also criticised NATO's bombing raids on certain targets, which he said were not justified. Ambassador Puri called for more discussion in the UNSC before resolutions of this nature were passed again, and he also demanded that non-military steps should be exhausted before armed force was authorised.[29]

The UN intervention in Libya has been seen differently by various states.

While the principal NATO countries that intervened militarily saw the intervention as a success, countries in the UNSC which had abstained, including India, saw it differently. Ambassador Puri said that, in practice, the Libya intervention 'was different than what was intended'.[30] Indeed, according to him, 'Libya gave R2P a bad name'.[31]

The specific reasons for this merit a brief summary of what happened in this intervention:

- The explicit terms of the arms embargo were breached by some members of the NATO-led coalition, which armed the rebels and may have even provided soldiers to train them in weapons use.
- The possibility of achieving a genuine ceasefire was not taken seriously at any stage.
- Air attacks were mounted on fleeing personnel who posed no immediate threat to civilians.
- Air attacks were mounted on some targets of no obvious military significance and these attacks even targeted the government leadership.
- The international coalition comprehensively supported the rebels in what rapidly became a civil war.
- Confirming earlier fears, many saw the objective quickly move to regime change.

This perception has affected the possibility of an international consensus on Syria to stop the on-going internal conflict. Even as the situation in Syria has deteriorated rapidly to a near civil war situation, an effective solution has to date eluded the UNSC. Kofi Annan's plan was supported by all members and led to the deployment of military observers even as it called for the cessation of violence by all sides. Yet, neither China nor Russia budged from their opposition.

India's view on Syria was again explained by Ambassador Puri in an address to the UN General Assembly as recently as 7 June 2012. While regretting the escalation in violence, he stressed that India called for a peaceful solution to the Syrian crisis and for a commitment by all sides to UN Envoy Kofi Annan's six-point plan. Ambassador Puri expressed strong condemnation of all violence, irrespective of who the perpetrators were, and condemned all violations of human rights. The solution, according to him, 'called for a peaceful and inclusive political process to address the grievances

of all sections of Syrian society'. He also called for the 'cessation of all outside support for armed groups … operating in Syria'. Progress should be made on other aspects of the six-point plan, 'including provision of humanitarian assistance, access to and release of detainees, and full respect for political and civil rights of all Syrians'. Ambassador Puri simultaneously called for 'respect for Syria's sovereignty, unity and territorial integrity'.[32]

Prime Minister Singh at the General Assembly, 2011

India's policy on R2P was articulated by Prime Minister Manmohan Singh at the UN General Assembly on 24 September 2011. First, he said that: 'Societies cannot be reordered from outside through military force. People in all countries have the right to choose their own destiny and decide their own future.' His second point was the acceptance that the 'international community has a role to play', but only in assisting the processes of transition and institution building. He called for great caution against prescriptions that have to be imposed from outside, which, according to him, were 'fraught with danger'. His third point was that the rule of law is 'as important in international affairs as it is within countries' and must be respected by all sides. And his final point was that the bottom line should be that 'actions taken under the authority of the United Nations must respect the unity, territorial integrity, sovereignty and independence of individual states'.[33]

India's response in the future

India's current tenure in the UNSC will expire at the end of 2012. Owing to the rotatory framework in Asia, its next tenure is likely only after a decade, more likely two. Despite this, India's voice in global affairs, particularly in peacekeeping, is likely to remain prominent – whether as an important member of the international community, as a major troop contributor or as a member of the BRICS grouping (Brazil, Russia, India, China and South Africa).

It is more difficult to predict the exact humanitarian crises that will call for an R2P response in the future. However, these seem likely to be in three regions. The first is the Arab world, where democracy still remains a distant dream in many countries, even as the desire and ability of the region's countries to achieve this goal increases. The second is other regions of Africa,

where explosive situations are created by the tension between authoritarian rule and people's aspirations, or by tribal and ethnic differences and/or by the need to retain political unity. The third is the fall-out in Afghanistan and its impact in the larger Central Asian republics and the Islamic world. Here, tensions between religious extremism and authoritarianism conflict with, for example, women's rights and democratic equality. Here also, warring religious factions create the possibility of serious internal conflict.

This may suggest that the Americas, Europe and East Asia will be spared the possibility of the emergence of an R2P situation. This seems likely. However, even more important is that situations where international response may be warranted are much less likely in regions where security exists as a result of the rule of law and/or regional cohesion and/or the presence of a dominant power.

India's contribution to shaping the R2P debate internationally

India's long involvement in UNPKO and its own experiences, as discussed above, have guided its response to the R2P debate. The overwhelming view has been that of restraint. While the protection of citizens from violence is accepted as an international responsibility, the actual decision to do so and the modality of implementing this must be careful and cautious, and its consequences well thought through. Such intervention should therefore be attempted only after all other methods have been exhausted. This was India's principal stance in the recent debate over Resolution 1973.

In addition, India has always insisted on the lead role of the United Nations and its Security Council. It believes that any international involvement in a conflict must be done through the UNSC, even though regional organisations, where these exist, have a role to play in shaping and contributing to policy and in providing support. However, India has also strongly sought a change in the composition of the UNSC, which today still reflects the power structure of the post–Second World War era rather than that of the early twenty-first century. This reduces UNSC legitimacy and effectiveness, and constrains the role of emerging major powers, such as India, Brazil and South Africa. A change in the structure and number of permanent UNSC members and the inclusion of additional members has now become essential to its legitimacy.

Furthermore, even though India's faith in democratic governance has been long and sustained, it does not believe in bringing about such changes through outside pressure or coercion. Each country and its people have the inherent right to decide how they would like to govern themselves and no outside power should play a role in this. Outside pressure and coercion bring back to Indian minds ideas of colonialism, which New Delhi is determined to oppose. India's role in highlighting this position has had a substantial impact on the global approach to R2P.

Responding to future crises

The broad parameters affecting India's decision to respond to future crises will, we believe, remain the same as in recent years. The basic policies are fundamental and long lasting.

First, India will hold that territorial integrity of nation states must be honoured, and that any external intervention must meet all the stringent criteria that have been discussed.

Second, it will hold that any attempt at regime change will be severely discouraged and that any intervention that has this as a primary objective should not have the strong international support that is mandatory for intervention. However, intervention may be acceptable where the regime is manifestly illegitimate, where there is strong international consensus and where the nature of internal violence is acute.

Third, it will hold that issues of state security may dominate when it comes to India's neighbourhood, where the impact of internal violence may directly affect India's own security and stability due to overlapping concerns.

International security and new forms of threats that impinge on such security are issues that will merit greater attention in New Delhi. Immediate challenges include state-sponsored terrorism; nuclear proliferation and nuclear weapons falling in to terrorist hands; and failed states that are drawn towards insecurity. These are areas where the next international challenges may arise. How will the international community protect exploitative regimes from these challenges? A brief regional analysis is given below.

The Arab World

Much of the Arab world remains in transition. Where the expression of

popular will has led to political transition, there are possibilities that conditions may stabilise over time. Egypt is an example where, after protracted agitation, a successful presidential election was held and real hopes for stability exist. But the process of democratic transition is far from complete and it is too early to predict what turbulence this process might cause. In some states the process of transition to a popular representative government has not begun and the chance of violence remains high. Some countries have strategic importance either because there is oil, or because the regime provides direct security support to major international players. Bahrain and Saudi Arabia come to mind. Because they are also governed by different sets of security relationships to major powers, the responses to internal violence may well be different, and particularly those regarding regime change. Other regimes, such as Yemen and Somalia, may pose direct security challenges and may be considered as being 'on the wrong side of history'.

India will be wary of any international force mobilised with a regime-change agenda. New Delhi's strong belief in internal democracy will support a policy of bringing about change through a country's internal democratic processes. Just as in Syria, India is likely to strongly oppose any external force to bring about internal changes in these countries.

A main factor in determining India's policy in the region will depend on how India sees this policy affecting its own Islamic population. India has at least 150 million Muslims, the third-largest Islamic population in the world. About six million additional expatriates work in various West Asian countries, where they both contribute to the Indian economy and remain hostage to these states. Their interests will impact on Indian policy. How India votes and how it supports issues there will be of concern to them.

In Africa

Several regions in Africa may possibly be affected by internal violence. With Sudan having been separated into two, any conflict there is likely to be an international one and may well require strong mandates under Chapter VI or even Chapter VII. An R2P condition may not arise now, but other countries may be affected by what happens on this continent. India's response is likely to be as it has been before – supporting only UNPKO interventions. Increasingly, New Delhi may well lean towards South Africa as part of both BRICS and IBSA for guidance in shaping its response there.

Afghanistan and its periphery

An immediate challenge – and some believe the next one – that will confront the world is the situation in Afghanistan. The incomplete task being left behind there has again exposed the limitations of military force in solving complex human problems. The situation looks much more dire when viewed from the region than from Chicago, where the last NATO Summit was held in May 2012. Several challenges are likely to hit the country from 2014 and affect the larger region almost immediately. These challenges include escalating terrorism, religious extremism, reduced state capacity to handle problems and hostile neighbours looking to exploit the sudden vacuum. New Delhi does not have the luxury of looking away. Even though not a direct neighbour, India is a member of the South Asian Association for Regional Cooperation, which is the principal regional cooperation mechanism trying to bring about regional peace and prosperity. The response to such contingencies may well be outside the purview of R2P.

BRICS and R2P

India's policies in respect to R2P have been discussed extensively, but how about participation in the future? It is by now sufficiently clear that India's participation, whenever a decision is finally made, will be under UN command and mandate. It will always be India's objective to build a coalition in support of its view – based essentially on the BRICS mandate. However, BRICS includes two permanent UNSC members, China and Russia, who have veto powers as well as independent foreign policies. The coalition then is likely to be around the IBSA countries, even though such a coalition is unlikely to be sufficiently strong. There has been little in terms of discussion and dialogue about these issues, but a process may well have begun.

Brazilian President Dilma Rousseff paid an official visit to India in March 2012 at the time of the BRICS summit in Delhi. A joint statement included recognition of Brazil's Responsibility while Protecting (RwP) proposal:

> The Leaders called for enhanced Security Council procedures in order to monitor and assess the manner in which resolutions are interpreted and implemented. In this vein, they support the idea that the concept of … RwP should be discussed further at the UN.[34]

By attempting to establish basic criteria to ensure that interventions by force do the smallest damage possible, it may well be seeking a link between international intervention and sovereign immunity. This provides an important framework for emerging powers that seek to strike a balance between protecting threatened populations while reducing the negative implications of military intervention.[35]

Achieving the above objective has always been difficult in practice. Military force, however restrained and carefully applied, opens up the possibility of additional violence and civilian deaths. Yet, not applying this counter-violence may well lead to the type of mass casualties that R2P seeks to prevent. A compromise is essential and a few principles should perhaps be stated.

- First, external military intervention should be the last resort – that is, only after all other measures have been explored.
- Second, intervention must be under a UNSC mandate that is carefully crafted to ensure maximum support, particularly from regional countries and organisations.
- Third, the emphasis has to be on using minimum counter-violence and should stress protective measures.
- Fourth, focus should be on ensuring an early withdrawal after stabilising the situation, as well as initiating peace-building measures as applicable.

Conclusion

UN Secretary-General Ban Ki-moon has said: 'The world has embraced the responsibility to protect, not because it is easy, but because it is right.'[36] This may not be considered profound, but from a world statesman it embodies both the goal and the challenge. While at the end of the first decade of the twenty-first century this responsibility has had wide support, a road map for its implementation has yet to be developed. This is a challenge that India will have to address in the near future.

Endnotes

1 For an analysis of the policy and decision-making process involved in participating in UNPKO, see Ramesh Thakur & Dipankar Banerjee, 'India: democratic, poor, internationalist', in Charlotte Ku and Harold Jacobson (eds), *Democratic Accountability and the Use of Force in International Law*. Cambridge: Cambridge University Press, 2003, pp 176-200.

2 UN, 'Contributors to United Nations peacekeeping operations'. Available online: http://www.un.org/en/peacekeeping/contributors/2012/may12_1.pdf [accessed 26 June 2012].

3 Ibid.

4 The Constitution of India, Article 51 spells out the state's responsibility for the promotion of international peace and security. Available online: http://lawmin.nic.in/coi/coiason29july08.pdf [accessed 26 June 2012].

5 Government of India, Ministry of External Affairs. Available online: http://www.mea.gov.in/ [accessed 12 May 2012].

6 Each called for deploying massive armed forces over a fairly prolonged period. However, in both situations the forces were withdrawn at the earliest opportunity. In Bangladesh it was within three months of the end of hostilities. In Sri Lanka it was at the request of the host government, even though the tasks were incomplete.

7 A fascinating account based on recently available documents is provided by Geoffrey Warner. See Geoffrey Warner, 'Nixon, Kissinger and the breakup of Pakistan, 1971', *International Affairs,* 81(5), 2005, pp 1097-1118.

8 Asif Mahfuz in *The Daily Star*, 16 December 2009, the leading Bangladesh English language newspaper, citing recently released US foreign policy documents quotes US Consul General in Dhaka Archer Blood as writing: 'Unfortunately, the overworked term genocide is applicable to the situation in Dhaka'.

9 Ibid. This quote is from archival material released in the US after the expiry of confidentiality of official documents. There are numerous contemporary international reports that provide corroborating data.

10 Indo-Sri Lanka Agreement to Establish Peace and Normalcy in Sri Lanka. Available online: http://www.satp.org/satporgtp/countries/shrilanka/document/papers/indo_srilanks_agreement.htm [accessed on 12 May 2012].

11 Data based on the assessment of the UN Section of the Army Headquarters, Department of UN Peacekeeping, Deputy Director General of Staff Duties. Author's interview, 17 January 2012.

12 Instances are too many to list, but a few examples include operations in the Congo in the early 1960s and later in Somalia, Sierra Leone, Ethiopia and Sudan.

13 Manmohan Singh became prime minister of India in 2004 when the Congress Party returned to power and continues to remain in office.
14 UN Document S/PV.2982, p 63.
15 UN Document S/PV.3145, pp 49-50.
16 UN Document S/PV.3145, p 51.
17 Lieutenant General Satish Nambiar was commanding general of the UNPROFOR and special representative of the secretary-general in Yugoslavia 1991–1992. In 2003–2004 he was the member from India on the UN High Level Panel appointed by the secretary-general to review the functioning of the UN.
18 Satish Nambiar, 'Kosovo', in Albrecht Schnabel & Ramesh Thakur (eds), *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Intervention and International Citizenship*. Tokyo: United Nations University Press, 2000. Available online: http://archive.unu.edu/p&g/kosovo_full.htm#17 [accessed 10 May 2012].
19 Only the author, a retired major-general of the Indian Army and Ambassador G Parthasarathi, a recently retired former diplomat, testified before the Commission from India, in their personal capacities, on 11–12 June at the India International Centre in New Delhi.
20 Ramesh Thakur, 'Responsibility to Protect is Universal', *Daily Yomiuri* online, 17 November 2009. Available online: file:///Users/user/Desktop/R2P%20and%20India/Ramesh%20Th.webarchive [accessed 25 March 2012].
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23 Statement by External Affairs Minister on the Situation in Sri Lanka, New Delhi, 17 April 2009, India's Ministry of External Affairs. Available online: http://meaindia.nic.in/ [accessed 12 May 2012].
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28 UN Document S/RES/1973, 2011.

29 Statement by India's Permanent Representative at the UN Hardeep Puri at a seminar marking the tenth anniversary of R2P hosted by the Stanley Foundation, New York, January 2012. Available online: http://theinterdependent.com/120201/as-security-council-debates-syria-libyan-intervention-looms-large [accessed 12 May 2012].
30 Ibid.
31 Ibid.
32 'Syria reaffirms its commitment to the success of Kofi Annan's peace plan', *Syria 360*, 7 June 2012. Available online: http://syria360.wordpress.com/2012/06/07/syria-reaffirms-its-commitment-to-the-success-of-kofi-annans-peace-plan/ [accessed 26 June 2012].
33 Prime Minister Manmohan Singh, UN General Assembly, General Debate: 66th session, 24 September 2011. Available online: http://gadebate.un.org/66/india.
34 Joint Statement by India and Brazil on the State Visit of Her Excellency Ms Dilma Rousseff, President of the Federative Republic of Brazil to India, 30 March 2012, Government of India, Ministry of External Affairs. Available online: http://www.mea.gov.in/mystart.php?id=530519171 [accessed 27 June 12].
35 'BRICS and the "Responsibility while Protecting" concept', *The Hindu*, 12 March 2012. Available online: http://www.thehindu.com/opinion/op-ed/article2985190.ece [accessed 24 May 2012].
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6

R2P – A case for Norm Localisation

Katharina Wolf

Introduction

Despite its conceptual establishment as a new norm in international relations, Responsibility to Protect (R2P) remains contested in practice. The crises in Darfur, Libya and Syria reveal an increasing cleavage of parallel or contradicting discourses between global and regional actors. While there is general consensus on the conceptual content of R2P expressed in the World Summit Outcome Document, and in the case of African Union (AU) in its Constitutive Act (Art. 4h), this consensus weakens when R2P is applied. Certainly, the ambiguous nature and vague wording of the World Summit Outcome Document have contributed to the patchwork of deviating interpretations of R2P, as have existing and prevailing national interests.

Norm localisation

In order to better accommodate diverging perspectives on R2P we must have recourse to the concept of norm localisation developed by Archarya.[1] He defines norm localisation as 'a complex process and outcome by which norm-takers build congruence between transnational norms … and local beliefs and

practices'.[2] It is exactly this link between the state-centric and often Western-dominated interpretation of R2P and a localised and regionalised understanding that is missing in today's discourse. The formalisation and institutionalisation of R2P is no guarantee of political action. Norm initiatives are doomed to fail if R2P is not connected to specific social interests and ideas generated locally or sacrificed for more pressing needs.

What is missing thus far is a systematic norm-construction process from below, which enables and activates local norm entrepreneurs such as universities, social agencies, foundations, religious institutions and non-governmental organisations. These actors can be valuable for R2P because they engage in crafting the cultural and normative root environment for the international norm.

The localisation of R2P is important because it can potentially solidify R2P's ambiguous character by bridging the gap between norm-creator and norm-takers. As the case of Libya has shown, it was not R2P as such that caused African resentment but rather how the North Atlantic Treaty Organization (NATO) implemented or executed its mandate, which de facto degraded African actors to bystanders.

In addition to the formal legitimacy (through United Nations Security Council [UNSC] mandate) of humanitarian intervention, a successful localisation of R2P can add important credibility to such missions. As Robert Cox aptly noted: 'An externally imposed order would remain fragile, vulnerable to the charge of imperialism.'[3]

For R2P to survive and prosper, it is therefore essential to overcome the current lack of common understanding and the preponderance of mutual suspicion and threat perceptions that have become apparent over NATO's intervention in Libya and the humanitarian disaster in Syria.

Furthermore, humanitarian interventions need not only be state driven; they can and should also entail a local dimension in which the local population is not only the victim of state crimes but is actively resisting them. After all, any form of transitional justice after crimes against humanity, war crimes, ethnic cleansing or genocide have been stopped necessarily requires popular engagement. Additionally, the preventive obligation forming part of the R2P concept, which also rests on the international community, can hardly be achieved without local engagement.

The opportunities for local engagement can be manifold, and include raising awareness, empowering individuals, strengthening resistance move-

ments, engaging local authorities and devising strategies for civil defence instruments and local mediation. All these remain under-explored at present.

Some caveats

The integration of local perspectives on R2P does, however, come with a number of caveats. Human actors are not homogeneous. Living realities are shaped by differing social contexts, practices, cultures and historical experiences. Translating R2P from its Western liberal interventionist origin to different cultural concepts might in the best case provide R2P with a broad inter-cultural rooting and at worst further fragment the already vague substance of the norm.

What will emerge through further norm localisation will be differing but not necessarily conflicting and contradicting understandings of the basic principles of R2P. Certainly, the danger exists of conflating and deviating perceptions of R2P, and there is no guarantee that regional bodies will actively seek consensus on the conceptual interpretation or political action. Again, Libya demonstrated significant differences between the pan-African and sub-regional level. While the League of Arab States very quickly called for a no-fly zone, the AU favoured a mediation solution.

Nonetheless, a regional dimension in support of R2P as well as other policy fields remains highly desirable. This is because any UNSC reform appears to be unlikely in the near future and so the main decision-making power still lies primarily with the Permanent Five (the United States, the United Kingdom, France, Russia and China). An ad hoc committee of the regions could therefore potentially ameliorate the existing differences among the regions on the one side, and among the regions and the global level on the other. It could bridge the gap between the norm-creator and the norm-absorber by allowing regions to become the former and take part in the implementation phase as well. An ad hoc committee on regional crisis resolution could take the form of an extra-consultative body able to refer cases to the UNSC. In this way, the interests of the Permanent Five would get multilaterised and connected to regional interests, raising veto costs but at the same time increasing legitimacy for supposed unilateral missions, such as the one to Libya. Additionally, it could further synchronise cooperation between the UN and regional bodies during the implementation phase as decision-making rests on shared responsibilities.

Endnotes

1 Amitav Acharya, 'How ideas spread: Whose norms? Norm localization and institutional change in Asian regionalism', *International Organization*, 58, 2004, pp 239-275.
2 Ibid, p 241.
3 Robert Cox, 'Thinking about civilizations', *Review of International Studies*, 26, 2000, p 232.

7

Preventive R2P Measures

Carl-Wendelin Neubert

Introduction

This summary of a paper presented at the June 2012 Responsibility to Protect (R2P) dialogue meeting held in Pretoria focuses on the effective implementation of R2P through measures aimed at preventing situations of compelling human need.

In the same way as the reaction to full-on conflict, preventive measures depend on the political will of the international community. In addition, the period between detecting a potential conflict and its eventual outbreak may be brief, so the window of opportunity for preventive measures is usually short. Propositions on prevention are therefore unlikely to affect existing R2P conflicts, such as that in Syria.

But unlike conflict reaction, preventive measures are more effective in terms of actual human rights protection, less infringing on geostrategic interests and significantly less costly.

In order to be most effective, preventive approaches should be applied from multiple angles, mostly from within the existing United Nations (UN) system. Some propositions target long-term prevention and require structural adjustments, while others, especially preventive peacekeeping, offer short-

term solutions to impending R2P conflicts. All of these measures are within our reach, but will undoubtedly require bold endorsement.

UN early-warning system and its implementation

The establishment of an effective early-warning system appears to constitute a structural necessity as well as a fundamental challenge to swift responses to R2P situations. Arguably, a centralised and well-resourced early-warning system under a UN umbrella would enable the UN, as the competent international body, to address a crisis both swiftly and effectively. Owing to its reliance upon information from various sectors (cultural, economic, political and military) the UN early-warning system should reside within the Secretariat, as the administrative hub of the UN. This would also ensure that the UN secretary-general is made immediately aware of an emerging conflict and that the situation is promptly brought to the attention of the UN Security Council (UNSC).

Owing to the complexity of the issues and the requirement of local expertise and knowledge, any early-warning system should concentrate on gathering as much credible information as possible. The UN early-warning system should therefore foster close contact and information exchange with various regional arrangements, especially those already operating early-warning systems of their own. It is encouraging that the Joint Office of the Special Adviser on the Prevention of Genocide and on the Responsibility to Protect has begun to assume some of these early-warning system functions.

However, given the limited powers of the secretary-general and his special adviser, as well as the lukewarm political will on the matter, the early-warning system requires strong institutional and political allies if it is to achieve its goals. In order to bolster the political power of the UN's early-warning capability and to ensure the acceptance of its findings and recommendations among member states, UN entities in addition to the secretary-general should join in and issue preventive political responses to mass human rights violations. This approach specifically aims at using existing institutional and political capacities within the UN and incorporating them into the UN early-warning system.

One UN entity well-suited for this approach is the Human Rights Council (HRC), which is charged with monitoring the adherence of member states to human rights. Despite severe criticism after its formation, the HRC has in

recent times addressed human rights violations more sincerely and efficiently, notably with respect to the situations in Côte d'Ivoire, Yemen, Libya, North Korea and Syria. The HRC's resolutions are likely to receive growing political support. In turn, the HRC can apply increasing political pressure both on countries under review and on the UNSC, should the situation on the ground deteriorate.

Preventive peacekeeping

Preventive peacekeeping missions are not new and traditionally require the consent of the country of deployment. However, the European Union (EU) election security mission to Congo and neighbouring Gabon in 2006 and the North Atlantic Treaty Organization mission Allied Harmony in Macedonia (which was relieved by the preventive EU security mission Concordia in 2003) are two recent and promising examples of preventive peacekeeping missions. They purportedly prevented violent civil and ethnic strife, and they therefore underscore the effectiveness and potency of preventive peacekeeping. They should serve as examples for future conflict prevention.

Preventive interim administrations

Post-conflict interim administrations with vast responsibilities and complex tasks – such as UNMIK in Kosovo and UNTAET in East Timor – have proved enormously helpful in restoring peace, public order and the exercise of sovereign power. They could also prevent the flare-up of potential new conflicts that could arise in a fragile post-conflict society.

Situations also exist around the world that have the potential to turn violent without an immediately preceding conflict, such as civil strife over natural resources, contended rights to passage through enclaves or territorial waters, and disagreements over border regions. As with post-conflict interim administrations, preventive interim administrations could provide viable safeguards in volatile regions and could assume the administration of contested areas, resources or rights until conflicts are resolved.

Indirect sanctions through specialised agencies

Under the UN Charter system, various UN specialised agencies, such as the

International Monetary Fund and the World Bank, provide countries with services whose withdrawal due to lack of cooperation can have effects similar to comprehensive sanctions by the UNSC. The specialised agencies often already condition their services subject to good governance, but they are charged with their individual tasks and regularly claim their independence from political considerations. Still, specialised agencies should be asked to pay increased attention to a country's compliance with human rights instruments in order to add further preventive leverage to avert future disasters.

R2P treaty

Despite widespread opposition to R2P becoming a legal norm, many states have expressed their desire for clear and binding rules on the prevention of mass atrocities, and they therefore support the evolution of R2P into law. If these states want to be true to their word, they should (perhaps in cooperation with the International Law Commission) draft and adopt an international R2P treaty. This treaty could have a catalysing effect on the eventual approval of an international norm of R2P and could contribute to the formulation and development of its components.

Conclusion

R2P – Not Evasive but Still Reluctant Action

Malte Brosig

Introduction

Considering the geographical spread and different historical and political trajectories of the GIBSA (Germany, India, Brazil and South Africa) countries, it is not surprising that they do not have one coherent position on Responsibility to Protect (R2P). In fact, GIBSA is not a voting bloc or a unitary actor, and does not aspire to be one. The sometimes complementary and sometimes diverging positions of GIBSA countries reflect existing debates and controversies in the world. The positions in GIBSA are no more and no less divergent than the global discourse on R2P.

In the light of the prominent role these four countries occupy in their regions and globally, what common ideas can we detect to further the debate around R2P? In the contributions to this publication, at least five recurring themes appear that are worth restating. They are:

- the vagueness of R2P and its open character
- the centrality of the United Nations (UN) in mandating and monitoring R2P missions
- global versus regional security governance

- national inconsistencies
- stronger emphasis on preventive measures

The vagueness of R2P

R2P has become the dominant context in which humanitarian interventions are debated today. Despite its vague and internationally contested content, R2P has survived its challengers and numerous international crises. One might even say that R2P remains at the centre of the global discourse on humanitarian interventions precisely because it is vague and contested and does not have legal qualities. As surprising as it may sound, this ambiguity has a number of advantages.

R2P does not provide clear guidance and much remains unspecified. In fact, R2P does not provide any specific prescriptions or obligations concerning when and how to react to gross violations of humanitarian law. This particular feature has helped R2P to survive the most turbulent events of 2011 and so far in 2012.

The fact that R2P is not a legal norm with clear prescriptive standards for behaviour and punitive and automatic sanctioning mechanisms can serve a number of purposes. Considering the existing contested and diverging views on R2P, any attempt to codify it would be unrealistic. Even if R2P became a legal norm, the likely compromise product would be a watered-down version, which in the future would be difficult to modify or amend. But R2P's open meaning does not necessarily render it toothless or imply rhetorical commitment to empty human rights promises, as some activists might claim. The vagueness of R2P and its character as a norm in the making bring opportunities as well: Krook and True hold that 'norms diffuse precisely because – rather than despite the fact that – they may encompass different meanings, fit in with a variety of contexts, and be subject to framing by diverse actors'.[1]

A fixed norm often sparks controversy because it does not appear to fit the cases at hand. This cannot be said about R2P; it provides for much-needed political space to mediate, negotiate and adjust policy instruments to the dynamics of a particular crisis. The absence of a catalogue of punitive instruments does not mean that R2P does not provide for them or that the international community is not willing to use strict sanctions. R2P might even have a deterrent effect as perpetrators cannot be sure what measures they will face.

While a vague norm is not automatically a weak norm, the open wording of R2P can be misused for more narrow national interests, or states may not feel bound to support it because it is not clear what R2P stands for. In the end, much depends on what actors make of it. Certainly, the GIBSA group is well positioned to provide global and regional leadership on R2P considering the economic and political weight of these countries.

Centrality of the UN

Cutting across all the chapters is the acceptance that R2P missions may only be mandated by the UN Security Council (UNSC). There is still strong support for the existing UN structure despite none of the GIBSA countries having succeeded in reforming the UNSC and winning a permanent seat on it. This strong GIBSA support for the UN should not be overlooked: both Germany and South Africa have launched and participated in peacekeeping operations and humanitarian interventions without an explicit UNSC mandate (in Kosovo and Lesotho, respectively).

The current trend towards 'more UNSC' can partly be explained by the lack of UN control over its mandated operations in Libya and Côte d'Ivoire in 2011. The misgivings issued over Libya do not concern the principle of R2P as much as they reflect on how and who executed the mandate. The UN's inability to garner any significant control over what was happening in Libya and the North Atlantic Treaty Organization's (NATO's) undiplomatic execution of operation Unified Protector (not reporting to the UN) made it vulnerable to accusations of using unilateral power in the economic interests of some Western states. Responding to the missing UN control over NATO's operation, Brazil (see Chapter 4, Passarelli Hamann) reinvigorated the debate about Responsibility while Protecting (RwP), which was left out of the 2005 World Summit Outcome Document but originally mentioned in the 2001 International Commission on Intervention and State Sovereignty (ICISS) report.

While more UN control over its mandated missions is highly desirable, this would only add to the chronic UN overstretch and existing capacity constraints. In fact, it reveals a significant mandate–resource gap. On the one hand, the UN is mandating operations such as in Libya and others, while on the other hand it is apparently not commanding over the necessary military capacities to rapidly establish a no-fly zone or even deploy troops on the

ground. Furthermore, the events of 2011 showed the absence of an effective post-intervention accountability mechanism, and so creating resentment against the application of R2P. Thus, the obvious challenge is that R2P operations such as those in Libya require an effective coordination of global and regional security governance systems that does not exist today.

Global versus regional security governance

The termination of genocide and mass atrocities, which includes all three pillars mentioned in the World Summit Outcome Document (that is, local capacity-building, preventive measures, and external military intervention as a last resort) requires concerted effort by the UN, regional organisations and lead actors such as the GIBSA countries. However, the challenge for regional and global cooperation is that there are hardly any overarching principles or hierarchies to order such a relationship. Considering existing resource constraints at the global and regional levels, the principle of subsidiarity or the prominent position of the UNSC can be problematic.

Subsidiarity points to the legitimate concern that internationally imposed solutions to local problems may face domestic resistance as they lack regional legitimacy and local competences to leave a lasting positive impact. Indeed, a lack of local ownership can be counterproductive for R2P operations, which not only target the perpetrators of gross human rights violations but also have to take responsibility afterwards. The issue of state transformation comes up immediately if such crimes have been committed by the ruling elites.

The principle of subsidiarity can also be problematic in circumstances where regional organisations overlap or do not coordinate their policies or even openly contradict one another. In the case of Libya, the rift between the League of Arab States, the African Union (AU), the UN and NATO could not be more obvious. The situation in the UNSC is equally complex. In the cases of Kosovo, Darfur and Syria, in which severe human rights violations can be observed, the UNSC has not firmly condemned these actions, has blocked more assertive efforts to remedy the situation, or has acted late.

National policy inconsistencies

Most of the contributions, and Aboagye's in particular, point to national inconsistencies in the application of R2P. Thus even at the micro level there

is no stable or consistent interpretation of R2P. While Germany actively participated in NATO's Kosovo operation, which did not have a UNSC mandate, it did not participate in the case of Libya, which had such a mandate.

South Africa played a lead-nation role in deploying the South African Protection Support Detachment (SAPSD) to Burundi, before the AU mandated the deployment of the African Mission in Burundi that eventually subsumed the SAPSD. But it was highly critical of the NATO operation in Libya, which did have full UNSC backing. We find other cases where countries commit verbally to R2P but provide either no or only reluctant action thereafter. Such foreign policy behaviour reflects negatively on R2P and complicates its evolution and application. However, labelling these foreign policy stances as completely erratic would be too simplistic.

Most foreign policy decisions are not taken with a view to long-term consistency but rather with respect to the often sporadic and quickly changing crisis situation at hand. Inconsistencies are more likely to emerge over the long-term as governments and situations change. Individual inconsistencies might be more damaging for single countries but less so for R2P, which requires collective decision-making.

Lastly, diverse interpretations of what R2P entails and how it should be put into effect are likely to stay. From a pragmatic point of view it makes little sense to try to impose a single coherent interpretation. The more important question is how we manage the existing plurality of positions in a more productive and less antagonistic way. For example, although India (see Chapter 5, Banerjee) has very reluctantly embraced R2P, it is one of the largest troop contributors to the UN. The same applies to South Africa in the context of the AU.

What is slowly becoming apparent, although not yet formalised, is a division of labour in which certain actors specialise in specific capabilities while not actively sabotaging others who have a more assertive understanding and application of R2P. GIBSA countries as a group of leading democratic middle powers can make an important contribution by increasing their constructive engagement.

Preventive measures

Despite the often diverse positions on R2P, there is broad consensus in the chapters concerning the need for more effective preventive measures. One of

the most important lessons, and one that is applicable to many conflict and crisis areas, is that most of them could have been less severe, and their escalation to genocide, war crimes, crimes against humanity or ethnic cleansing prevented. In his contribution, Bellamy notes: 'States cannot resist early action and then complain when situations get so bad that they require external intervention.' In too many cases only extremely urgent and dire humanitarian situations have led to decisive action, while lower-scale conflicts or less dramatic humanitarian situations usually do not create enough political momentum for concerted action. An effective and interconnected global and regional early-warning system leading to early action is still missing.

Conclusion

This publication contributes to the debate around R2P from the perspective of the aspiring middle-power GIBSA countries, which are often overshadowed by the permanent members of the UNSC. While a single unified understanding of R2P in concept and practice is still far off, the GIBSA group demonstrates widespread support for the basic principle of R2P. In fact, the debate about R2P in GIBSA countries reflects the divergences worldwide and therefore does not form a separate debate on its own. As global power dynamics are becoming more decentralised, more integrated and less exclusive solutions are needed.

Finally, R2P remains a norm under construction, which will change as new challenges emerge.

Endnote

1 Mona Krook & Jacqui True, 'Rethinking the life cycles of international norms: The United Nations and the global promotion of gender equality', *European Journal of International Relations*, 18(1), 2010, p 105.

'Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.'

(Art. 138, World Summit Outcome Document, 2005)

What happens if a state turns against its own people? Should the international community respect state sovereignty and the principle of non-interference, or should it intervene in an internal conflict?

The Responsibility to Protect (R2P) was first formulated in 2001 and received significant political acceptance through its integration into the United Nations World Summit Outcome Document in 2005. R2P limits the principle of non-interference in circumstances in which a state commits gross human rights violations, as defined in the World Summit Outcome Document. However, recent examples in Libya, Syria, and other countries have shown that the application of R2P is highly controversial.

This publication contributes to the debate around R2P from the perspective of four middle-power countries and regional hegemons – Germany, India, Brazil and South Africa (GIBSA) – which were all non-permanent members of the United Nations Security Council in 2011, and whose views were often overshadowed by those of the permanent members.

To date, the positions of the GIBSA countries on R2P have repeatedly diverged, mirroring the worldwide controversy around the norm. Nevertheless, a debate is necessary in order to highlight the deficiencies of R2P and to create momentum for furthering the norm-construction process. *The Responsibility to Protect – From Evasive to Reluctant Action? The Role of Global Middle Powers* brings together leading researchers on the subject, highlighting the GIBSA countries' positions on R2P and exploring their contribution to the development of the norm.

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