

The Evolution of International Responsibility: from Responsibility to Protect to Responsibility While Protecting

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This paper examines the evolution of the Responsibility to Protect (R2P) framework in the past twelve years to show the potential of expanded concepts of international responsibility and their role in today's crisis situations. First, a theoretical discussion of the evolution of legal concepts related to responsibility and the use of force outlines a shift in perceptions of sovereignty that translated into a multilayered structure of responsibility. A brief history covering the key milestones along R2P's trajectory illustrates its tangible conceptual and political advances to date. Second, the paper discusses one of the key misconceptions related to R2P, namely that it is synonymous with intervention. This section of the paper explains the range of tools available to implement R2P, both coercive and non-coercive. The last section introduces the "responsibility while protecting" (RWP) initiative, which is the latest attempt to improve the R2P framework, with respect to its pillar three formulation. RWP emerged as a key interpretation of the legal implications of international responsibility, particularly after the use of force in Libya in the name of R2P. The paper concludes with a discussion of its merits toward clarifying the most contentious aspects of R2P as opposed to the right to access information in military conflicts.

Keywords: *responsibility to protect; sovereignty; use of force; international norms; civilian protection*

THE EVOLUTION OF INTERNATIONAL RESPONSIBILITY: FROM RESPONSIBILITY TO PROTECT TO RESPONSIBILITY WHILE PROTECTING

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INTRODUCTION

In 1999, at the 54th session of the UN General Assembly, the former United Nations (UN) Secretary-General, Kofi Annan, challenged member states to “prevent another Rwanda” and urged them to reach consensus on the issue of humanitarian intervention. In response to his challenge, in 2000, the Government of Canada established an independent commission, the International Commission on Intervention and State Sovereignty (ICISS). The commission’s mandate was to find an answer to the humanitarian intervention conundrum by reconciling the tension between interventions for

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human protection purposes and respect for state sovereignty. The report examined the widening gap between the codified practice of international behaviour captured in the UN Charter by the explicit emphasis on the need to respect state sovereignty, on the one hand, and actual state practice during the 1990s, which underlines the limits of sovereignty and the need to protect human rights, on the other.⁽¹⁾ The ICISS report, entitled *The Responsibility to Protect*, was released in December 2001, together with a supplementary volume detailing the extensive research on the topic. The ICISS report argued that the responsibility to protect civilians from mass atrocities lies, primarily, with national governments, but becomes the responsibility of the international community when governments fail to protect their citizens.

Since its emergence in 2001, R2P has gone through successive reformulations. It evolved from an idea proposed in the 2001 ICISS report to a nascent norm embraced unanimously by world leaders in September 2005, which was then redesigned into a Three-pillar approach in the UN' Secretary-General's 2009 report. R2P was labelled "new thinking"⁽²⁾ because it recognized the changing nature of threats in today's world and new ways of thinking about state sovereignty, human rights, and domestic jurisdiction. After its embracement at the UN, this normative *innovation was labelled by many* "anew declaratory commitment to protect populations at risk".⁽³⁾

The responsibility to protect principle rose rapidly onto the world stage and has seen important progress in terms of conceptual development and implementation in the past twelve years. After a brief history covering the key milestones along R2P's trajectory, this paper will discuss the shift in perceptions of sovereignty that translated into a multilayered structure of responsibility. It is this structure that forms the backbone of the R2P framework. The paper will then discuss one of the key misconception related to R2P, namely

that it is synonymous with intervention. The range of tools available to implement R2P, both coercive and non-coercive, is explained in this context. The last section of the paper introduces the “responsibility while protecting” (RWP) initiative, which is the latest attempt to improve the R2P framework, with respect to its Pillar Three formulation. RWP emerged as a key interpretation of the legal implications of international responsibility, particularly after the use of force in the name of R2P, in Libya. This review of the key tenets of the R2P framework seeks to shed some light onto the role played by today’s multilayered concept of international responsibility in crisis situations.

BRIEF HISTORY OF THE EVOLUTION OF R2P

The Responsibility to Protect advanced from an idea expressed in an international commission’s report in 2001 toward a nascent norm, now used in response to international crises around the world. The cumulative impact of R2P to date has been dubbed “the most dramatic normative development of our time.”⁽⁴⁾ Two key aspects of R2P emerged in its initial formulation and remained a constant ever since: state sovereignty as responsibility and the international responsibility in cases of egregious circumstances. The former talks about the responsibility of a national government to protect its citizens from genocide, war crimes, ethnic cleaning and crimes against humanity. The latter kicks in when a national government fails in its responsibility, by permitting or conducting widespread killing or massive human-rights violations on its own populations, and this is when the responsibility to protect that population falls onto the international community of states.

That the international community has duties in the protection of individuals, rather than mere interests, has underpinnings in many

legal and political undertakings. These include the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Prevention and Punishment of the Crime of Genocide*, the Geneva Conventions and Additional Protocols, and the *Rome Statute of the International Criminal Court*. Collectively, these international obligations are fostering a “transition from a culture of sovereign impunity to a culture of national and international accountability.”⁽⁵⁾

The 2001 ICISS report put forward three components of the broader responsibility to protect umbrella, namely the responsibility to prevent gross violations of human rights from arising, the responsibility to react to them when they occur, and the responsibility to rebuild after any military intervention. Despite being eclipsed by the events of September 11, 2001 and the war on terror, R2P survived its first years with the help of norm entrepreneurs, such as the former UN Secretary-General Kofi Annan, and several noteworthy steps forward. First, R2P was endorsed in the report of the High-Level Panel on Threats, Challenges and Change (HLP) as “an emerging norm...[establishing] a collective international responsibility to protect.”⁽⁶⁾ Apart from suggesting that the UN adopt the emerging norm of R2P, the HLP also recommended that the UN General Assembly and the Security Council adopt guidelines for the use of force, paralleling those proposed in the ICISS report. The 2005 Report of then UN Secretary-General, Kofi Annan, expressed the “need to embrace the responsibility to protect, and, when necessary, [to] ... act on it.”⁽⁷⁾

Kofi Annan’s appeal to member states was answered in September 2005, when R2P was incorporated in the World Summit Outcome Document, which expressed the consensus of more than 150 heads of state and government, and marked the first time R2P was

endorsed in a universal forum. Because of the compromise required to obtain consent from concerned states, the final text of the 2005 Summit Outcome Document was weaker than the text of the ICISS report, the HLP report and that of the 2005 report of the former UN Secretary-General. However, the language was strong enough to express endorsement for a new set of principles on national and international responsibility.⁽⁸⁾ This formulation of R2P became the reference for all subsequent debates, discussions, reports and UN resolutions on matters related to undertakings to protect civilians from egregious human rights violations.

Two paragraphs in the 2005 Summit Outcome Document refer to R2P– paragraph 138 and 139 – which explicitly discuss that there is not only a state responsibility to protect its populations but also a subsidiary responsibility for the international community when a state fails to do so. To be more specific, according to paragraph 139, the international community “has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter...” and is also declares its readiness “to take collective action in conformity with Chapter VII of the UN Charter, on a case-by-case basis.”⁽⁹⁾ Given the history of the debates on humanitarian intervention up to that moment, R2P’s inclusion in the Summit’s Outcome Document was impressive.

The UN Security Council has referred to R2P in several resolutions since then, either in relation to the protection of civilian in armed conflict or in response to specific crises situations. The first SC resolution reaffirming R2P was resolution 1674 (April 2006) on the protection of civilians in armed conflict. In August 2006, the Security Council passed resolution 1706 that demanded a rapid deployment of UN peacekeepers in Sudan, which also made explicit reference to R2P. Then, in 2008, the new UN Secretary-General, Ban Ki-Moon, declared his personal commitment to making R2P a reality, in a July

2008 speech in Berlin. It was in this speech that he first sketched R2P as a “three pillar” approach. That same year, the UN Secretary-General appointed his Special Advisor on issues related to R2P, Ed Luck.

In January 2009, the Secretary-General released his report, *Implementing the Responsibility to Protect*.⁽¹⁰⁾ This was the first of five annual reports on the Responsibility Protect Ban Ki-Moon has released to date. In the 2009 report, the three-pillar framework of the responsibility to protect is clearly explained: R2P includes, first, the responsibility of each state to protect its own population from the four types of crimes (genocide, war crimes, crimes against humanity and ethnic cleaning), second, the commitment of the UN member states to help each other exercise this responsibility, and third, the collective international responsibility to respond to crises through the UN, using Chapter VI, VII and VIII, when states are manifestly failing to protect their populations from the four types of human rights violations. It is this formulation of R2P as comprising three pillars that is discussed in this paper. The three-pillar approach to the responsibility to protect drew from its previous representations starting with the ICISS report, but was fundamentally defined by the provisions in paragraphs 138 and 139 of the 2005 Summit Outcome Document.

The past five annual debates by the UN General Assembly on the Secretary-General’s annual reports on R2P have contributed to clarifying the meaning, boundaries, agents and tools of R2P. For instance, the first General Assembly debate of July 2009 on Ban Ki-moon’s report on R2P, was held after controversial discussions on the concept in regard to Burma, South Ossetia, and Sri Lanka. Even so, almost two-third of all speakers reaffirmed the 2005 consensus on R2P, and it is worth noting that these speakers came from Africa, Asia and Latin America. As Liberia’s President Ellen Johnson Sirleaf argued in 2009, the world advanced from a position “of non-

interference in our internal affairs to respect for the principle of the responsibility to protect.”⁽¹¹⁾

Efforts to integrate R2P across the UN system intensified, especially with the work of the Joint Office of the two Special Advisers to the Secretary-General (on the Prevention of Genocide and on the R2P), and frequent references to R2P by the Secretary-General, The High Commissioner for Human Rights, the Human Rights Council and the Security Council. Another Security Council resolution on the protection of civilians referenced R2P in November 2009 (S/RES/1894), before the two Security Council resolutions on Libya in 2011.

2011 marked a major milestone in the evolution of the R2P norm, with the application of the responsibility to protect to the crisis in Libya. Libya “proved to be almost a textbook illustration justifying R2P principles...[and] the first road test of R2P’s coercive element (also known as Pillar Three).”⁽¹²⁾ In response to the Gadhafi regime’s crackdown on peaceful demonstrators in Libya, the UN Security Council adopted two resolutions, 1970 and 1973 referencing R2P, in February and March, respectively, of 2011. Resolution 1970 referred the situation in Libya to the International Criminal Court and imposed targeted sanctions, and Resolution 1973 imposed a no-fly zone in Libyan airspace and authorized the use of force. While this marked the first time the UN Security Council invoked R2P under Chapter VII of the Charter, there was no initial dissent, and Resolution 1973 was adopted by a 10-0-5 vote (with Russia, China, Brazil, Germany, and India abstaining). Although successful, the intervention in Libya became very controversial, particularly among emerging powers. NATO exceeded its mandate, and the intervention translated into regime change, which shows why the potential misuse of R2P remains a matter of concern.

Even so, and perhaps somewhat surprising in light of the debates

on R2P after the intervention in Libya, the UN Security Council invoked R2P more often in its resolutions after March 2011 than it had done in the previous five years, between 2006 – 2011. This includes UN Security Council resolutions S/RES/1975 on Cote d'Ivoire (March 2011), S/RES/1996 on South Sudan (July 2011), S/RES/2014 on Yemen (October 2011), S/RES/2016 and S/RES/2040 on Libya (October 2011 and March 2012, respectively), S/RES/2085 and S/RES/2100 on Mali (December 2012 and April 2013, respectively), S/RES/2109 on Sudan/South Sudan (July 2013), S/RES/2117 on small arms and light weapons (September 2013), and S/RES/2121 on Central African Republic (October 2013). In addition to these, there were also several presidential statements which made reference to R2P, in relation to the maintenance of international peace and security, the protection of civilians in armed conflict, peace and security in Africa, children and armed conflict, and also region specific, such as on Middle East and Central Africa (LRA).⁽¹³⁾

The most recent Interactive Dialogue on the Responsibility to Protect (R2P) was held by the UN General Assembly in September 2013, to discuss the UN Secretary-General's fifth report on R2P, entitled *State responsibility and prevention*. It was in this context that it became clear that some member states had taken concrete steps to implement R2P at the domestic level, especially through the R2P Focal Points. Eighteen states (including Australia, Belgium, Côte d'Ivoire, Germany, Ghana, Spain, Switzerland, and the United Kingdom) talked about their appointment of an R2P Focal Point, particularly in regard to the prevention aspect of R2P. The Focal Points represent an initiative of the governments of Australia, Costa Rica, Denmark and Ghana in collaboration with the Global Centre for the Responsibility to Protect in New York that focuses on ways to operationalize R2P at national, regional and international levels.⁽¹⁴⁾

All these developments illustrate both the momentum and the

political significance of the R2P framework, twelve years down the road it embarked upon when it emerged as just an idea in the 2001 ICISS report. However, the implementation of the most coercive, military end of R2P's third pillar in 2011 in Libya shows that the global consensus on R2P remains fragile.¹⁵

SHIFT IN PERCEPTIONS OF SOVEREIGNTY AS RESPONSIBILITY

R2P puts forward the most dramatic revision of the Westphalian concept of state sovereignty to date. This, in itself, caused significant discomfort among some states who perceive the responsibility to protect framework as a direct attack on state sovereignty. However, sovereignty has always implied both rights and responsibilities. It is the latter that came to the forefront in the R2P formulation. According to R2P, sovereignty is seen as assisting states in fulfilling their responsibilities to protect their populations from extreme situations like mass atrocity crimes. As noted earlier, a state's responsibility to protect its own population is a well-established legal principle, with roots in existing customary international law and treaty law, including the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, international humanitarian law provisions, and the Rome Statute of the International Criminal Court.⁽¹⁶⁾

The reinterpretation of sovereignty as responsibility, rather than control, is the most significant conceptual contribution of the responsibility to protect. However, R2P was not the first to propose this revolutionary approach to state sovereignty. Francis Deng first came up with the "sovereignty as responsibility" formulation, when discussing the protection of internally displaced populations. Although not acknowledged in the ICISS report, it was Deng's own work on internal displacement from the late 1980s, together with Roberta

Cohen's emphasis on the internal dimension of protection that marked the origins behind the ICISS formulation of sovereignty as responsibility.⁽¹⁷⁾ Even so, it is worth noting that it was the ICISS report that produced the loudest resonance of the "sovereignty as responsibility" approach after adopting it as a key element of the R2P framework.

Sovereignty remains a highly contested notion. For the most part, the disputes over sovereignty question whether the concept is absolute or not and whether it implies solely a legitimate authority or if it also requires the power to perform that authority. Debates generally assign various degrees of importance to the two major aspects of sovereignty, internal and external. The traditional meaning of sovereignty can be reduced to internal control and external autonomy, encompassed under the sovereignty "as authority" terminology. This interpretation implies both an internal and external dimension, emphasizing mainly the capacity of state sovereignty to act as a barrier to unwanted external intervention. Legal scholars have argued that a state possesses sovereignty when it is able to act independently of the consent or control of another state.⁽¹⁸⁾

Sovereignty is often connected with the norm of non-intervention, which is generally regarded as a basis for the well-functioning of international society. Despite the fact that non-intervention is one of the most basic international law norms, it is common knowledge that states have intervened in the affairs of other states in the past, for various reasons, including strategic interests, security of their territory, and humanitarian motives. The non-intervention principle has been weakened in recent thinking, as suggested by the shift in sovereignty as a feature of governments to sovereignty as a functional concept for societies. This has taken place at the level of political theory, international law, and practice.

In terms of scholarly debates, most scholars now seem to agree

that sovereignty is not absolute and that any defense of state sovereignty cannot be made by claiming that a state can do whatever it wants to its own people. There is growing acceptance that humanitarian objectives advanced in extreme cases of human rights violations are permissible in accordance with international law and cannot be held hostage to the norm of state sovereignty, classically understood. While some heralded a decade ago that sovereignty “is no longer sacrosanct”,⁽¹⁹⁾ others were somewhat less direct and argued instead that sovereignty is becoming less than absolute.⁽²⁰⁾ Even some of the strongest supporters of the traditional concept of sovereignty suggest there is a certain hierarchy with respect to each sovereign state’s responsibilities, which ultimately includes humanitarian objectives. Robert Jackson, for instance, argues that the first-tier responsibility of a state is focused on national and international responsibility, and so humanitarian responsibility is simply subordinated to these two types of responsibilities a state has on the international stage, thus playing a secondary role.⁽²¹⁾

In the realm of practice, after the General Assembly endorsement of R2P in September 2005, policy makers from around the world ponder the sovereignty versus responsibility dilemma. Three UN Secretaries-General, Boutros Boutros Ghali, Kofi Annan, and Ban Ki-Moon, declared that sovereignty is no longer absolute and that it can be overridden in exceptional circumstances. Annan, in particular, has achieved impressive progress in advancing his argument on the existence of “two concepts of sovereignty”, and that the international community should embrace the one that encompasses the responsibilities of statehood, along the rights.⁽²²⁾ Concrete examples of the sovereignty as responsibility approach include the limitations of absolute immunity for heads of state, which culminated with the 1998 Rome Statute of the ICC, or the willingness of some states to voluntarily embrace international agreements, such as the Kyoto treaty

against global warming.

The formulation of sovereignty as responsibility generally makes critics announce the demise of the state,⁽²³⁾ given its acceptance of outside intervention in the internal affairs of a state. The R2P approach to sovereignty does pose important challenges to the traditional concept of sovereignty; however, it does not announce its demise. R2P actually reinforces the importance of state sovereignty, while acknowledging the changes in how sovereignty is accepted and perceived on the international stage and in evolving customary law. R2P reaffirms the non-intervention principle as default, through its focus on independent statehood. This is the primary way in which it meets any objection to humanitarian intervention. According to its initial formulation, in the ICISS report, “non-intervention...is the norm from which any departure must be justified...[and] exceptions to the principle of non-intervention should be limited.”⁽²⁴⁾

It is noteworthy that the responsibility to protect is a constant in the context of state sovereignty. In the UN Secretary-General’s words, the “responsibility to protect applies all the time.”²⁵ That is, states always have a responsibility to protect their populations from genocide, war crimes, ethnic cleaning and crimes against humanity. The framework’s intention has never been to replace the state in meeting its responsibilities. Pillar three of R2P, or “collective action by the international community to protect populations is not called for where a State fully discharges its sovereign responsibility to protect.”⁽²⁶⁾

Apart from emphasizing independent statehood, another way in which the R2P report meets the main objections to humanitarian intervention is by focusing on the equality of states. And yet, critics of R2P have suggested that the sovereignty as responsibility approach has negative consequences for sovereign equality. That is explained by the fact that sovereignty is the only shield that weak states have

against the intrusive powerful ones, and so undermining state sovereignty results in generalized world disorder.⁽²⁷⁾ According to R2P, the responsibility to intervene in a state where extreme violations of human rights are taking place comes from the failure of that state to meet its responsibilities as a sovereign member of the international community. As such, the ICISS report encapsulates the shift in the culture of sovereignty from one of impunity to one of accountability and responsibility of states in light of their obligation to protect. The essence of this shift, however, entails reformulating, not abandoning, the default position of sovereignty and its correlate, the principle of non-intervention. Starting with the Commission's proposals and continuing in all reformulations of the framework until the three pillar approach in 2009, R2P has respected what is important in sovereignty, namely the non-intervention principle as a basis for the international society, to protect against outside interference. As Ramesh Thakur accurately noted, "the continuing validity of the non-intervention norm needed restatement and got it in R2P."⁽²⁸⁾

According to R2P, it is *only* when states fail to prevent or put an end to the gross human rights violations taking place within their borders that the responsibility to protect falls on the international community, as a second tier of responsibility.⁽²⁹⁾ As expressed in the 2005 Summit Outcome Document, member states emphasized the role of the international community in assisting states to protect their populations from these crimes, including by "assisting those which are under stress, before crises and conflicts break out." But as the second pillar of the responsibility to protect suggests, international actors are expected to work in partnership with states that are able to protect their populations to assist these states in exercising their responsibilities to protect – which is, without doubt, supportive of sovereignty.

And then, the third level of responsibility is expressed in

paragraph 139 of the 2005 World Summit Outcome Document: member states agree to “take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter of the United Nations, 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 are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.” This further highlights the enduring importance of states, and contradicts the thesis announcing the demise of state sovereignty. After all, the expectation to pick up the responsibility to protect innocent civilians elsewhere falls on *other states*.

As such, R2P entails a multilayered structure of responsibility according to which states must now earn the right of non-interference in their internal affairs. That is because the essence of the sovereignty as responsibility approach favours a state’s responsibility over its control. As the UN Secretary-General argued in his 2012 report, “responsibility is an ally to sovereignty, in that collective action by the international community...is not called for where a State fully discharges its sovereign responsibility to protect.”⁽³⁰⁾ Such responsibility is owed by the state to its citizens, to the international community, and to the institutions representing it. And so, it does become more difficult for states to hide behind the concept of sovereignty in order to conduct widespread violations of the rights of their populations.

THE KEY MISCONCEPTION ABOUT R2P

The key misconception about R2P is that it is synonymous to military intervention, regardless of the designation it might get disguised as. To its critics, R2P appears to threaten state sovereignty through not

respecting the non-intervention principle enshrined in international law, if framed mainly as coercive action. This section will clarify why the R2P framework is not solely about the use of military force, but comprises a range of tools available to provide protection.

R2P is certainly a very complex norm. While its first pillar discusses the responsibility of individual states to protect their populations from genocide, ethnic cleansing, crimes against humanity and war crimes, its second pillar talks about the international community's responsibility to assist states to fulfil their individual responsibilities to protect. Only the third pillar refers to the residual responsibility of the international community to respond, collectively, when states "manifestly fail" to protect their populations. The range of tools under pillar three comprises political, economic, and military responses. The use of force is, therefore, only one option available in the third pillar toolkit. And yet, while there has been overall agreement on the existence of pillar one and pillar two, controversy persists about pillar three, and in particular, about its implementation. It is because of this that the global consensus on R2P continues to be a delicate one.

The main confusion about R2P is illustrative of the inadequate understanding of the third pillar of the responsibility to protect. An overview of all the tools available under pillar three is thus necessary in order to clarify this confusion, in parallel with a synopsis of concrete examples of how pillar three of R2P was implemented in real-life crises. To begin with, there is a wide range of tools available for implementing pillar three. They fall under three separate Chapters of the UN Charter: Chapter VI, which refers to the pacific settlement of disputes; Chapter VII, which comprises actions in response to threats to the peace and acts of aggression; and, Chapter VIII, which covers actions undertaken by regional and subregional organizations. The measures available include fact finding missions, diplomatic

persuading and negotiation, suspension from international and regional organizations, targeted sanctions, arms embargoes, the threat of International Criminal Court referral, and the use of force.

First, pillar three includes non-coercive tools, which fall under Chapter VI of the UN Charter, and can range from negotiation, mediation, arbitration, judicial settlements to other peaceful means. The appointment of special envoys or eminent persons represents an important tool in the preventive diplomacy or mediation kit. Examples of diplomatic initiatives falling under pillar three of R2P include post-2007 election violence in Kenya, especially in regard to the African Union's mediation efforts from 2008. Kenya is particularly worth noting because it illustrates how prevention is a significant tool in the R2P kit.

Public advocacy on the part of the UN Secretary-General, the High Commissioner for Human Rights, and the Secretary-General's two Special Advisers represents another measure in line with Chapter VI prescriptions. It was used in recent years in relation to Cote d'Ivoire, Libya, Yemen, Sudan and Syria. The Security Council, the General Assembly and the Human Rights Council can also remind states of their responsibility to protect their populations. The Security Council did so in relation to Libya and Yemen, the General Assembly has referred to the state's responsibility to protect in Syria, and The Human Rights Council discussed R2P in relation to Libya and Syria.⁽³¹⁾ Other non-coercive measure available under pillar three of R2P include the establishment of fact-finding missions and commissions of inquiry, monitoring and observer missions deployed under Chapter VI of the UN Charter, and the threat of referral or the actual referral to the International Criminal Court. This was the case, for example, in Sudan, Kenya and Libya. States can also bring crises and violations related to R2P to the attention of the Security Council, a tool belonging to the category of non-coercive measures, and still

under Chapter VI of the UN Charter. This is precisely what happened in 2011 with respect to Libya, when the League of Arab States requested the Security Council to step in to protect.

Second, when diplomatic and other peaceful measures fail, pillar three offers the option of resorting to coercive tools. Even so, the range of coercive measures available for implementing R2P does include sanctions, in addition to the use of force. Coercive measures under Article 41 of the UN Charter include freezing of financial assets, suspension of credits and loans from international financial institutions, controlling the availability of weapons and related materials, limiting diplomatic contacts, or applying embargoes. According to Article 42 of the UN Charter the use of force becomes an option only when the Security Council assesses that peaceful measures provided for under Article 41 of the Charter are insufficient. Coercive military action in itself can take several forms. Apart from the use of force, the imposition of no-fly zones or the deployment of military personnel for deterrence purposes represent other coercive means available under Chapter VII.

In terms of concrete examples, we have seen this in the first crisis situation where the Security Council used the R2P language, namely in Darfur. The UN Security Council unanimously authorized the hybrid UN-African Union (AU) Mission in Darfur (UNAMID) to take action to implement the Darfur Peace Agreement and to protect civilians and its personnel.³²UNAMID was unprecedented at the time both because it was the largest and most expensive UN peace operation in history and because it was the first hybrid mission with the AU. Apart from the mission, the Security Council embraced other measures as well, including referral to the International Criminal Court (ICC).

In 2011, the Security Council invoked R2P for the first time under Chapter VII of the UN Charter in response to the crisis in Libya. And more importantly, as Ramesh Thakur aptly noted, “R2P was the

discourse of choice in debating how best to respond to the crisis.”⁽³³⁾ The UN Secretary-General together with the Special Adviser on R2P and the Special Adviser on the Prevention of Genocide and the High Commissioner for Human Rights commented on the need to implement R2P in Libya. The General Assembly suspended Libya from the Human Rights Council in March 2011. The Human Rights Council established an international commission of inquiry into the alleged violations of human rights in Libya. The Security Council adopted two resolutions in response to Gaddafi regime’s crackdown of protesters in Libya. Resolution 1970 condemned the violation of human rights and humanitarian law in Libya, imposed targeted sanctions, and unanimously referred the situation in Libya to the International Criminal Court.³⁴ When the crisis worsened, the Security Council adopted resolution 1973, which authorized member states to take all necessary measures to protect civilians in areas under threat of attack – thus authorizing the use of force – and imposed a no-fly zone in Libyan airspace.³⁵ Gaddafi had been ousted and then killed, but the NATO’s military campaign was later criticized for over-interpreting the Security Council mandate to protect civilians, as it ended up in regime change.

Regional and sub-regional organizations also play a role in implementing pillar three of R2P. One example in this context was the Economic Community of West African States (ECOWAS) which mobilized the multilateral efforts to respond to the crisis in northern Mali in 2012. When discussing tools available under pillar three of R2P it is important to acknowledge the difference between R2P as a principle and R2P as a policy or guide to tactical choices.⁽³⁶⁾ Nowhere was this more evident than in the protracted struggle between regime and rebels in Syria.

The ongoing crisis in the past two years in Syria is a good illustration of the key misconception about R2P. Many heralded the

end of the R2P norm because of the lack of military intervention in Syria to protect civilians and stop the violence. The UN Security Council has been paralyzed in terms of finding ways to react to the mass atrocity crimes in Syria, which also included the use of chemical weapons on August 21, 2013, on the outskirts of Damascus. It is evident that this paralysis raised questions about the utility of a norm such as R2P that is so difficult to implement when the Security Council is divided on the issue. And yet, whether military intervention was mounted or not is beyond the point of the discussion in this section. R2P is about much more than the use of force, and this is apparent in Syria as well as in the other crisis situations mentioned earlier.

The R2P framework does put the decision to use coercive measures in the hands of the Security Council. And so the failures to exercise coercive measures in Syria are a direct result of the failure of the UN Security Council to reach agreement on appropriate course of action in Syria.

As many commentators have recognized, the Syrians did pay the price of NATO's excessive interpretation of their mandate in Libya.⁽³⁷⁾ The R2P framework exists in conjunction with other considerations, of a political and military nature, that take precedence over humanitarian ones, at times.⁽³⁸⁾ Humanitarian imperatives are always weighed against considerations such as inherent risks and uncertainties, and ultimately questions of whether the use of force on the ground would achieve good results. R2P did trigger debates on the most appropriate responses to the conflict in Syria. However, responses have been painstaking slow, despite recognition since the summer of 2011 that crimes against humanity were taking place in Syria, which made it a matter of international concern.

Other UN actions, short of military intervention, included calls from a very vocal Secretariat, reminding the Security Council to act to

halt mass atrocities from being committed. But, as noted above, the Security Council was mostly paralyzed on the issue.⁽³⁹⁾ The UN Secretary-General relentlessly drew attention to the gross violations of human rights committed in Syria and urged action, and so did his two Special Advisers on the Prevention of Genocide and the Responsibility to Protect.⁽⁴⁰⁾ The UN High Commissioner for Human Rights, Navi Pillay, has also been very vocal with respect to Syria, reminding states of their responsibilities to protect. Pillay argued that civilians are the ones paying the price for the Security Council's inaction, and called onto the Council to refer the situation in Syria to the ICC.⁽⁴¹⁾ The Human Rights Council was also very active in its commission of inquiry on Syria, and the General Assembly repeatedly called onto Syria to uphold its responsibility to protect.⁽⁴²⁾ Such efforts illustrate how the use of force to protect civilians is only a small element of the R2P agenda.

RESPONSIBILITY WHILE PROTECTING

It was the use of force component of R2P, and in particular the way it was implemented in Libya, that caused a huge stir and backlash against R2P. While initially none of the BRICS (Brazil, India, South Africa, China and Russia) countries voted against Resolution 1973 on Libya, the emerging powers' support turned into loud criticism once it became apparent that NATO used the civilian protection mandate for regime change. The Brazilian president, Dilma Rousseff, introduced the Responsibility while Protecting (RwP) initiative during the UN General Assembly debates in September 2011, in response to NATO's implementation of the UN Security Council Resolution 1973 in Libya. The fact that RwP emerged as the brainchild of a Global South member helps to address some of the lingering postcolonial critiques voiced against R2P. RwP was discussed in the UN Secretary-

General's report on *The Responsibility to Protect: Timely and Decisive Response*, of July 25th, 2012, and became part of subsequent discussions on the international responsibility to protect civilians at risk. This constructive formulation of the issue of responsibility appears to have the potential to move the R2P norm forward, by clarifying the most controversial aspect of R2P's pillar three, namely the use of military force.

"The Responsibility while Protecting" formula proposed complementing R2P with a set of principles that guide the decision-making process about the use of force and ensure accountability of interveners. RWP has been described as an attempt to bridge the widening gap that had emerged in the aftermath of NATO's intervention in Libya. As such, it can serve as a "lynchpin" for reducing claims of politicization and aversion to the use of force.⁽⁴³⁾ What is even more important is that RWP introduces an "alternative discourse", which permits disentangling R2P from the precedents set by the situations in Libya and Syria, "thus hopefully sav[ing] it from the current impasse."⁽⁴⁴⁾ And yet, this rescue operation initiative builds on R2P's core principles.

RWP introduces three main concerns: first, the adoption of criteria for the UN Security Council's decision-making process on the use of force; second, the adoption of criteria to inform the implementation of Security Council resolutions authorizing the use of force; and, third, the creation of a monitoring and review mechanism to ensure accountability for how member states implement Security Council resolutions.

First, RWP recommends that the P5 refrain from using their veto in mass atrocity situations. This formula also emphasizes the importance of setting an operational and temporal limitation for the Security Council to authorize the use of force. Second, linking R2P to the criteria for the use of force represents one way to address the

persisting controversy about how mandates are implemented. This set of criteria on the right conduct within war is not new. The criteria was included in the 2001 ICISS Report on the Responsibility to Protect, but was not part of the 2005 iteration of R2P in the Summit Outcome Document. Also, RwP reiterates that military intervention is a last-resort option. RwP stipulates that an intervention abides by the letter of the resolution mandate conferred by the Security Council, which is meant to reduce the risk of abuse. A supervision mechanism for resolution interpretation is to be created with this goal in mind. This means that the RwP framework will exclude regime change unless a change of regime is explicitly endorsed in the Security Council resolution. The specifics of these recommendations are to be further discussed but the proposed monitoring and review processes would enable all Security Council members to discuss an intervention's mandate during its implementation phase, to ensure consensus. By raising questions about the "how" and "why" of civilian protection operations, RwP emphasizes the importance of finding the right amount and type of force to be used. This implies answering questions on how to use the force to create a condition in which civilians are protected from harm, which means forging a stronger link between the concepts of civilian protection and R2P.⁽⁴⁵⁾

Several initiatives built on Brazil's RwP proposal since 2011, such as the Accountability, Coherency and Transparency (ACT) diplomatic initiative of Switzerland and others. Such initiatives are important, and help to find a solution to the impasse on R2P's most contentious aspect, the use of force. However, it should be emphasized that this impasse does not imply there is disagreement about R2P's basic tenets per se. Instead, critics are unhappy about how R2P is implemented in its most extreme context, when a military intervention occurs. The responsibility while protecting initiative has the potential to promote trust for intervention amongst R2P dissenters,

by addressing concerns regarding R2P's chronological sequencing of pillars and by enforcing accountability of interveners through review mechanisms. As such, the Brazilian proposal can play a key role in broadening global consensus on R2P. There is still a long way ahead before setting in place such review mechanisms and more debates are likely to occur.

CONCLUSION

This paper provided a short synopsis of the rapid evolution of the norm of the responsibility to protect and of the multilayered responsibility system it proposes. As with every new norm, there are still significant gaps between the evolution of R2P in legal terms and the tactics required to implement it in real conflict situations. While there is now agreement in principle on the application of R2P to mass atrocity crimes, its implications are still contested and debates continue, mostly, on who bears the responsibility to protect. However, debates are to be expected as it is in a young norm's nature to be open to controversy. The ongoing debates on R2P are mainly related to confusions regarding the specific tools comprised within the borders of the three distinct pillars of the R2P framework. Generally, there is no confusion about pillars one and two, but pillar three's components are the most contested ones, especially the use of military force. The inadequate comprehension of pillar three of the responsibility to protect produces the key misunderstanding about R2P, namely that it is synonymous to the use of force.

Since R2P is a complex norm that implies a multilayered normative structure, it is important to be very clear about what "responsibility" entails. As section two of this paper showed, acting on a state's ultimate responsibility to protect against mass violations of its citizens' most basic human right to life is much more than the use of

military force. Only the third pillar of R2P refers to the residual responsibility of the international community to respond, collectively, when states “manifestly fail” to protect their populations. And in this context, the range of tools available for implementing pillar three comprises political, economic, and military responses. The measures available include fact finding missions, diplomatic persuading and negotiation, suspension from international and regional organizations, targeted sanctions, arms embargoes, the threat of ICC referral, and the use of force. As such, pillar three includes non-coercive tools, which fall under Chapter VI of the UN Charter, in addition to the use of force, which is therefore only one option available in the third pillar toolkit.

Controversies vis-à-vis the topic of military intervention under the R2P mould intensified after the 2011 NATO intervention in Libya, which partly explain the critique that R2P is reduced to questions of the use of force. Nonetheless, the most recent debates related to the type of international responsibility that should apply to Syria, provide another illustration of the fact that R2P is about much more than just military intervention. Syria, in particular, shows how it is not only military means alone or the application of economic sanctions, but also diplomacy and persuasion that are included in the R2P toolkit. Despite not being what many envisaged in terms of the wishful R2P “automatic response” in such mass atrocity crises, R2P did translate into measures varying from negotiating aid access, providing assistance, to exerting pressure on powerful players in the region to call for dialogue on solving the crisis in Syria. This confirms there is agreement that the responsibility to protect always applies in practice, in light of the overall recognition that all states have the responsibility to protect, as expressed in the three pillars formulation of R2P. The remaining main disagreement, however, relates to *how* R2P applies in practice. As the paper argued, this controversy surrounding the

application of R2P is not automatically a problem. Rather, R2P has become the catalyst for much-needed debates on what international responsibilities entail and how they materialize whenever crisis situations emerge around the world.

In light of this, the RwP initiative in the aftermath of the 2011 intervention in Libya is a very constructive addition to the R2P framework. RwP proposes both a better assessment of states' responsibility needs as well as accountability during interventions under the R2P umbrella. RwP recognizes that the responsibility to protect framework puts forward more of an ethical and political obligation rather than a legal one, but remains a dynamic proposition, just like R2P has been a very dynamic concept to date. As the paper showed, in a decade, R2P has evolved from a set of aspirations to an agreed norm accepted by UN member states, which is and now part of the UN system. Similarly, RwP has made important contributions to the debate on the use of force in the last couple of years.

Both RwP and R2P are still evolving and will continue to shape the international discourse on the responsibility to protect civilians at risk in mass atrocity situations, as well as influence state practice. But ongoing evolution is to be desired and growth expected in such instances, especially in light of the fact that concrete measures to implement RwP need to be established. It takes quite a long time for norms to become embedded in those institutions with enough power to shape government policies and become international law. After all, the lifespan of successful norms is measured in centuries, not in decades.⁽⁴⁶⁾ For instance, nobody expected the Universal Declaration of Human Rights (UDHR) to work successfully in the early 1960s, which was over 12 years since its emergence in 1948. However, we now fully acknowledge the significant normative role the UDHR has played since its emergence 65 years ago. But even 65 years later, human rights are not universally observed.

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23. There is a variety of positions within this one side of the argument about the demise of the state: for instance, what Kurt Mills (1998, *Human Rights in the Emerging Global Order: A New Sovereignty?*, London: Macmillan) understands by the transformation suffered by the sovereign state as a result of the focus on human rights is different from what another proponent of the demise of the state thesis, David Chandler (2002, *From Kosovo to Kabul:*

Human Rights and International Intervention, London: Pluto Press), understands by the end of sovereign equality.

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28. Thakur, R. 2006. *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect*, Cambridge: Cambridge University Press, p. 257.

29. ICISS, 2001, p. 69.

30. United Nations, 2012, Report of the UN Secretary-General, A/66/874-S/2012/578, p. 5.

31. For examples of such non-coercive tools, see Security Council resolutions 1970 (2011) and 2040 (2012) on Libya, and resolution 2014 (2011) on Yemen; General Assembly resolutions 66/176 and 66/253 on Syria; and, Human Rights Council resolutions S-15/1 on Libya and S-16/1 and S-18/1 on Syria.

32. See United Nations Security Council Resolution 1769 of 31 July 2007.

33. Thakur, R. 2013, p. 69.

34. United Nations, S/RES/1970, 26 February 2011, paras. 9-25.

35. United Nations, S/RES/1973, 17 March 2011, paras. 4 and 6.

36. The former Special Adviser to the Secretary-General on R2P, Eduard Luck, among others, emphasized this point in Luck, E. "The Responsibility to Protect: The First Decade", 2011, *Global Responsibility to Protect*, 3, pp. 387-399.

37. See, for example, Foust, J. 2012. "Syria and the pernicious consequences of our Libya intervention," *Atlantic*, February 6; Thakur, R. 2013; and, Evans, G. 2013. "R2P down but not out after Libya and Syria," *Open Democracy*, 9 September.

38. For just one example of the deep political ramifications of the conflict in the region, on September 1, 2013, during the meeting of the League of Arab States (LAS) in Cairo, the Syrian government was openly blamed for the August 21 chemical weapons attack, but at the same time LAS emphasized their opposition to military action. While the Secretary-General

of the League of Arab States called upon the international community to “assume their responsibilities in line with the UN Charter and international law by taking the necessary deterrent measures,” he also said a military option was “out of the question.”

39. Apart from some very modest efforts to ensure humanitarian access, the Security Council’s main resolution on Syria was Resolution 2118 of September 27, 2013, when the Council unanimously agreed to enable the destruction of Syria’s chemical weapons stockpile according to the terms and procedures established by The Organization for the Prohibition of Chemical Weapons (OPCW), and to consider Chapter VII measures, in the event of non-compliance.

40. Just a couple of examples from the multitude of the Secretary-General’s efforts in this sense, include the appointment of Kofi Annan as the UN-League of Arab States Special Envoy on Syria, tasked with diplomatically engaging with relevant interlocutors within and outside Syria to bring an end to all violence and promote a peaceful solution to the crisis (on February 23, 2012). After his resignation on August 2, Annan was replaced by Lakhdar Brahimi as the new JSE for Syria on August 17, 2012. On January 12, 2013, the UN Secretary-General reminded the international community about its responsibility to protect its population, as well as holding accountable those responsible for committing atrocities. The two Special Advisers of the Secretary-General on the Prevention of Genocide and the Responsibility to Protect were also very vocal, with one example being their joint statement on June 14, 2012 on the escalation of targeted attacks against civilians which “underscore the Syrian Government’s manifest failure to protect its population.”

41. For instance, on February 12, 2013, the UN High Commissioner for Human Rights estimated that Syria’s death toll was close to 70,000 and argued that civilians were paying the price for the Council’s inaction. On May 14, 2013, she urged the Syrian armed opposition to halt the commission of war crimes and repeated her call to the Security Council to refer Syria to the ICC. On August 2, 2013, the High Commissioner urged an independent investigation into the possible commission of war crimes by armed opposition groups who allegedly executed dozens of captured government soldiers in Aleppo.

42. For one of very many examples of the Human Rights Council’s work, see the May 29, 2013 resolution condemning the systematic gross violations of human rights by government and affiliated forces, including the use of heavy weapons against civilians (particularly in al-Qusayr), and demanding the Syrian authorities to allow unimpeded

humanitarian access and to meet their responsibility to protect the Syrian population. One example of a General Assembly resolution in point is the one from November 27, 2012 condemning the continued widespread and systematic gross human rights violations, and calling on the Syrian government to immediately end all such attacks against civilians, to protect its population, and to comply with its international law obligations.

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46. Luck, E., 2011, p. 389.