Civil Society Perspectives on Responsibility While Protecting

In early June, the International Coalition for the Responsibility to Protect (ICRtoP) contacted Members and colleagues on the topic of Brazil’s concept of ‘responsibility while protecting’ (RwP) for an upcoming feature blog post (icrtopblog.org). Contributors considered the following questions, as well as provided further thoughts related to the Brazilian concept and the RtoP:

1) Has Brazil’s concept of RwP affected your understanding and/or support of RtoP? If so, how?
2) This year, the UN General Assembly will host its fourth annual informal interactive dialogue on the Responsibility to Protect, where the topic of discussion will be measures under the norm’s third pillar – timely and decisive response. How might Brazil’s RwP concept enrich this discussion? Do you have any concerns about its impact?
3) What do you think the long-term impact of Brazil’s RwP concept will be? More generally, do you think Brazil’s RwP will impact the way in which the international community responds to situations of mass atrocities?

The perspectives of the following ICRtoP members and colleagues are featured below:

Dr. Andrés Serbin, Coordinadora Regional de Investigaciones Económicas y Sociales
Dr. Bob Zuber, Global Action to Prevent War
Dr. Kwesi Aning and Frank Okyere, Kofi Annan International Peacekeeping Training Centre
William R. Pace, World Federalist Movement-Institute for Global Policy
Nana Afadzinu, West Africa Civil Society Institute
Fergus Watt, World Federalist Movement-Canada
Dr. Noel Morada, Asia-Pacific Center for the Responsibility to Protect
Alexandra Buskie, United Nations Association-United Kingdom
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ICRtoP Members

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1) Brazil’s concept of “responsibility while protecting” has affected us as an organization and personally. About a year and half ago we wrote a joint-publication with a Brazilian colleague about the importance of exhausting all the preventive measures before moving to any decision regarding the use of force. In some ways, this new document by Brazil is a reflection of our own thinking- in terms of what civil society should promote as an approach to the Responsibility to Protect, particularly in a region like Latin America and the Caribbean which are sensitive regarding issues related to intervention and national sovereignty.

2) I think of the Brazilian document, in reference to the discussion of the 3rd pillar, in terms of two things. First, before moving to the use of force or any kind of intervention it is very important to exhaust all preventive and diplomatic measures. More importantly, it presents the idea of clarifying or establishing clear rules regarding the application of the 3rd pillar of RtoP, an idea sometimes brought up in discussion at the UN but that is not so clear in
RtoP documents - what exactly are the rules to apply RtoP and on how to proceed. In this regard, I think Brazil is very clear that a last decision should be made by the UN Security Council, but there should be some discussion about these rules in the General Assembly.

If the UN dialogue brings the question of establishing new or clear rules, RwP is going to have a very important impact. Particularly, I’m concerned with what is going on in Syria right now and how, if there is eventually going to be an intervention by the international community, actors will move away from attempts to mediate between the two contending groups, how the intervention will help the process of overcoming the conflict and stopping the mass atrocities, and if clearer rules will be defined in terms of what is going to happen after the intervention ends. My impression, from the experience of Libya, is that it is not clear what the international community should do once the intervention is over. There is a need to have clarity and precision about post-conflict situations.

3) I think the concept of RwP is helping to establish a dialogue with two polarized groups of countries in our region, Latin America, and providing nuances to the way of addressing the RtoP. I think the document is going to impact the way in which the international community responds to situations of mass atrocities, mostly because it is in the political interest of Brazil to become a global player and, in such, Brazil is going to push this idea as much as possible to try to garner support from the rest of Latin America through its position as a regional leader. Politically, it is going to have a very important impact on RtoP. I know there are several people and analysts who are a skeptical of that, but already Brazil is getting some support from the region, and also from several UN member states.

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We appreciate the opportunity provided to us by the ICR2P to weigh in on what, for us, was perhaps the single most important, positive development on RtoP over the past year. Indeed, we are grateful to the ICR2P for the comprehensive summary they provided of the February 21, 2012 informal discussion on Responsibility while Protecting (RwP) organized at UN Headquarters by the government of Brazil. This discussion was based on an earlier Brazilian presentation to the Security Council on November 9, 2011.

During the February discussion, H.E. Ambassador Antonio de Aguiar Patriota of Brazil noted that RwP advocates both the need to “exhaust all peaceful means available in the protection of civilians under threat of violence” and to ensure that any use of force produces “as little violence and instability as possible.”

The attractiveness of the complementary, normative benchmark (our term) of RwP is in part a function of its simplicity as well as its direct references to common sense obligations. In our everyday life, it is important that our “responsibility to protect” is exercised within well-defined legal and ethical frameworks. Parents seek to protect their children, but locking them away in isolation from the world or inflicting severe punishment for disobedience is inappropriate, if not abusive behavior. Police are responsible to protect residents, but police activity characterized by a disproportionate application of force, that projects authority in a discriminatory manner, or that uses formal authority to facilitate informal corrupt practices is not acceptable by any standard. In the realm of protection, prevention is preferable and coercive responses must be carefully measured.

The larger point here is that having parental, institutional or other authority to protect does not 'protect' implementers from responsibility for the manner in which they conduct their business. Indeed, we generally seek to minimize the occasions when protection – a noble instinct in its own right – is willfully divorced from ethical benchmarks and careful assessment of outcomes.

Our understanding of some of the background behind Brazil’s RwP proposal, and why we feel it continues to have so
much potential value, is the increasing concern of many states that operational, coercive UN mechanisms in response to the threat of mass atrocities do not sufficiently reflect the ethical imperatives that led the UN to contemplate remedial action in the first place. In other words, the concern for human suffering that led to the Council being ‘seized’ of a situation seems inadequately to be reflected in the methods by which the Council comes to authorize a response and set implementation in motion.

We must remind ourselves of what many member states and non-government organizations recognize: the UN’s system of atrocity crime response is inconsistent, under-resourced, and lacking in key capacities. And much of the responsibility here falls on the Council, which generally refuses to insist on robust early warning and preventive measures in the UN systems.

Additionally, the Council often resists being seized of potential problems until the violence has reached a threshold that makes it difficult to contain short of coercive intervention; and it remains allergic to any kind of transparent assessment of its authorizations and their consequences. In addition, authorizing ‘outsourced’ coercive measures causes the UN, as we saw in Libya, to lose effective control of its own narrative on mass atrocity response. As we have noted elsewhere on the ICR2P Blog, the ‘authorization’ for the Libyan no-fly zone was rarely referred to by NATO until its mission (that is as NATO “interpreted” that mission) had been formally concluded. Outsourcing responses to mass violence can too easily jeopardize the legal and ethical principles on which such responses must be based.

Moreover, the Council continues to insist on ‘flexibility’ in determining its authorized responses, an insistence that most states feel is not supplemented by acceptable levels of transparency and accountability. Thus, the demand for flexibility itself raises suspicion by member states and other stakeholders, many of which are concerned about the ‘politicized’ application of Council authorizations used to satisfy the foreign policy objectives of its permanent members.

Finally, the P5 have been particularly frisky of late in protecting the huge imbalances of power currently at play in the UN system. The P5’s reaction to a relatively benign effort by a few non-Council member states (known as the “Small Five”) raised eyebrows and reinforced an abiding concern by many states that the unlevel playing field which characterizes the UN will continue unaddressed. Membership, indeed, has its privileges and the P5 have been increasingly mindful of preserving the benefits that accrue from the security responsibilities with which it is routinely burdened.

This is not intended to place all of the challenges of atrocity crime response on the P5. But to whom much is given much is expected, and there are standards of ‘responsible response’ to which the Council must be beholden if the UN is to retain wide credibility as the primary, legitimate actor on mass atrocities. RwP points us towards a greater understanding of what those standards should look like and how they should be applied.

RwP as a ‘benchmark’ within a norm insists that the ethical framework which drives the international community to protect civilians not be compromised either by the failure to use all preventive options prior to authorizing coercive response or by means of implementation that fail to apply proportionate, measured response to Council authorizations.

Any approved use of coercion before robust preventive measures have been exhausted is ethically suspect. Any approved use of coercion that is disproportionately applied or that can be seen as a tool of national policy is further suspect.

RwP is not a replacement norm, nor is it entirely immune from the ‘mixed motives’ of geo-politics. Rather, it represents an attempt -- most welcome in our view -- to make whole the obligations embodied in the RtoP norm, insisting both on responsible, proportionate, fully assessed implementation and on full-spectrum response that seeks
to de-fuse violence before coercive authorizations are even contemplated.

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At the 2005 World Summit, United Nations (UN) member states affirmed their commitment to the Responsibility to Protect (R2P or RtoP) concept and its three-pillar approach to human protection. The Summit Outcome document places the State at the core of civilian protection while the international community plays the crucial role of providing assistance to States so as to develop the capacity necessary to discharge that responsibility. However, in the exceptional circumstance where these two pillars have failed, the international community has the responsibility to intervene to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity, collectively referred to as mass atrocity crimes.

Since then, understanding and recognition of R2P have increased dramatically, drawing popular support across a wide spectrum of civil society in recent years. Today, the debate within policy and academic circles has moved beyond international acceptance of the conceptual underpinnings of R2P to its actual application, particularly the third pillar. While it has attracted the most attention and remains the most contentious pillar of R2P, debates on pillar three have mainly centered on intervention by means of force. But of course pillar three transcends just the use of force as there are other pacific as well as non-military coercive measures including dialogue, arbitration, arms embargoes, targeted sanctions and reference to the International Criminal Court.

Responsibility while Protecting (RWP) is one notable initiative attempting to advance the debate on implementing R2P through the use of military force. Even though Brazil refers to RWP as a concept that should evolve together with R2P, it mainly focuses on the third pillar of the R2P concept, which of course is also the most contentious. It is, therefore, necessary to clarify RWP as an ‘implementing and clarifying principle’ of R2P rather than a new concept rivaling an existing concept. This will help to avoid detachment from a norm that has already received popular support. That notwithstanding, Brazil’s RWP introduces some important dimensions to the operationalisation of R2P, including the emphasis on prevention, Security Council authorization and proportionate use of force, which are already contained in the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS). However, it proposes two key issues which are considered innovative and worthy of careful consideration.

Firstly, it advocates a strict chronological sequencing of the three pillars to avoid the hasty use of military force. However, as much as all peaceful means should generally be exhausted before consideration of the use of force, it is also imperative to ensure that this procedure can stand the test of time as each case of violence is unique in many respects. Collective action under Chapter VII, as contained in paragraph 139 of the 2005 Outcome Document, should be considered on a case-by-case basis rather than on predetermined chronological sequence. Even though this has the tendency to create room for unilateral intervention, a chronological sequencing of events could lead to avoidable delays in responding to the most egregious atrocities that require timely and decisive action. As the Secretary-General notes in his 2009 report on ‘Implementing the Responsibility to Protect’, “All three must be ready to be utilized at any point, as there is no set sequence for moving from one to another, especially in a strategy of early and flexible response”.

Secondly, it argues for monitoring and assessment procedures on interpreting and implementing Security Council resolutions. Analyzing from its perspective on enhanced Security Council procedures, RWP is viewed as a call for accountability of intervention to ensure that any implementation of R2P mandate conforms to its stated objectives. This is a legitimate concern even though some commentators have cautioned against micro-management. But the Brazil concept paper does not call for extreme or excessive supervision and control of military action but rather
enhanced procedures to monitor and assess the way resolutions are interpreted and implemented. However, besides the additional human and material resources required to conduct effective monitoring and review of actions throughout the duration of the authorization, it is essential to ascertain how realistic such measures can be applied in the gravest situations of mass brutality.

Although these propositions do not change the understanding and or support of R2P, the introduction of such mechanisms is likely to influence its normative discourse with significant impact on how the international community responds to future R2P situations and implement such mandates. Adoption of such guidelines can have the effect of either hastening or obstructing timely and decisive response, depending on what measures are eventually established.

With hindsight of the upcoming UN General Assembly (GA) fourth annual informal interactive dialogue on R2P, the Brazil paper is timely given the controversy surrounding the implementation of UNSC Resolution 1973 and NATO’s justification of ‘regime change’ as a legitimate measure within the mandate to protect Libyans from the atrocities perpetrated by the late Muammar al Gaddafi regime. This still remains a very contentious issue as far as implementing R2P is concerned and it is argued that the lack of consensus within the international community on responding to the Syrian crisis, reflected in the deadlock of the Security Council, is a direct result of this perception. Given the above, a call for the development of models for implementing R2P, as reflected in the Brazil concept paper, should be accorded the necessary attention so as to create an environment for the re-establishment of the desired consensus within the Security Council.

The risk of dismissing RwP as a mere hindrance to timely military intervention is the likelihood to entrench the disagreements within the Security Council and UN member states even on measures taken under pillar two of the R2P norm. The RwP concept paper thus offers the UNGA the opportunity to collectively address the issues around intervention within the third pillar in a manner that will not jeopardize the crucial element of timely and decisive response. Such deliberations should focus on de-emphasizing intervention by force and projecting the other peaceful and coercive non-military measures as equally effective tools available to the international community in situations of mass atrocity.

Additionally, in addressing the often divisive issue of collective military intervention, the UNGA can further develop the monitoring and review parameters and procedures contained in Brazil’s RwP concept paper to make future military interventions under R2P more transparent and less contentious. Ultimately, it is critical that while exercising the responsibility to protect innocents, care must be taken not to do more harm than good. Otherwise, R2P is of no relevance to humanity.

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1) Brazil’s concept of RwP has stimulated a deeper understanding of the principles of RtoP that were agreed upon at the Summit in 2005. The basis of Brazil’s paper and proposal was its disagreement over how the UN Security Council resolution on Libya—that was based upon RtoP principles—was implemented. Their argument, I think, was that there were aspects of how NATO and countries working with NATO to enforce the no-fly zone over Libya overreached the mandate of the Security Council resolution. The essential issue, in my understanding of Brazil’s initiative, was the need to have the Council implement its resolutions with greater consistency and transparency. This has to do more with the operations of the UNSC and not with the principle of RtoP. Coincidentally, during the last year, 5 small countries (S5) advanced a resolution on “Enhancing the accountability, transparency and effectiveness of the Security Council” (A/66/L.42/Rev.1) in the GA addressing the deficiency in the working methods of the UNSC and this
resolution, called S5 resolution, included a very important provision (recommendation #20) in which the GA asks the permanent members of the Security Council that possess vetoes to consider not using their veto to block action by the Council when RtoP crimes are occurring. The ICRtoP strongly endorsed this provision of the S5 proposal and we hope that this provision and others encompassed in this resolution will be reintroduced, hopefully by many more countries than the S5 in the upcoming GA dialogue.

2) The concerns with the UNGA interactive dialogue for me have been primarily the repeated inability of the Secretary General and the GA President to announce the dialogue with enough advanced time so civil society around the world and governments can properly prepare to participate in the dialogue. Similarly the report from the SG has been delayed and comes out in the UN languages sometimes only days before the actual meeting. Our hope is that we can, in 2013, find a way with the new GA President, the Secretary General and new Under Secretary General (Adama Dieng) to secure the date of the 5th meeting and ensure that the report for the 5th meeting is completed much earlier than has been the case.

The SC was blocked on dealing with the RtoP crimes occurring in Syria because, in fact, Russia and China exercised their veto. It was the GA that passed a resolution that asked Kofi Annan to be the Joint Special Envoy. Very few people realize it was the GA that stepped in to try and take action on a peace and security issue in Syria when the Council was being blocked from doing so. I think the GA has a much greater role to assume on peace ‘management’, on making sure that the SC and the UN are much more successful in maintaining international peace and security. I very much welcome that the governments are coming back even if it’s just for one or two days each year to address how they can better operationalize the historic principles of RtoP, on prevention and stopping these worst crimes in international law – war crimes, crimes against humanity, genocide and ethnic cleansing - from occurring.

I think the issues raised of RwP could very much add to the dialogue but they should not be raised in a way that tries to reopen the definition that was agreed to unanimously at the Summit in 2005.

3) One of the issues that the Brazil initiative and concept paper has raised is to clarify that the operationalization of the three aspects of the three pillars of RtoP are not sequential but are interactive and, in many instances, need to operate simultaneously. The Brazil concept paper suggested that there should be a sequence between the pillars and so I think the process has helped clarify that this is not an appropriate characterization. The tragic reality is that whenever a conflict has proceeded to the point where RtoP crimes are occurring and the only way to address the situation is through coercive military measures, whenever a situation has progressed to that point, the international community has failed on so many levels. The national government of course has primarily has failed, but then the neighbouring and international community have also failed. Let’s hope that one of the impacts of RwP discussions will become what needs to happen to try and address these growing situations much quicker and more effectively at an earlier stage to try and avoid the serious occurrence of these crimes and the necessities to try and stop.

I think history is going to look at the way the international community, especially the Security Council, addressed the situation in Libya and the situation in Syria and it will be a very strong endorsement of the importance of the RtoP... of the historical importance and the historic potential of RtoP. There have been dramatically different outcomes, from the early consideration and the quick decisions of the Council and actions taken by the international community in Libya, to the now 15 months of almost no decisions from the Council on Syria.
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Location: Accra, Ghana

1) Brazil’s RwP concept expresses a dimension of RtoP that had probably been taken for granted; one that says, that the international community will, in trying to protect citizens of any country from mass atrocities, ensure that any actions taken are done responsibly, with the interests of the citizens being the foremost consideration. Events in Libya (NATO intervention) especially, and to some extent, Cote d’Ivoire (France intervention) raised doubts about this. The RwP will restore confidence in the RtoP where that has been eroded. Personally, it strengthens my support for the RtoP because if endorsed it will curb the excesses of member states that may want to misuse RtoP to serve their own geo-political interests, and gives the assurance that the norm will be used responsibly.

2) The RwP concept might actually change the dynamics of the discussion and get many more member states that have been hesitant with their support for it, and have criticized the way it has been used in the past, to now give more support. It also emphasizes the ‘preventive pillar’ which is one that the African Union and ECOWAS have promoted strongly. This was reiterated at the third annual dialogue on the responsibility to protect, and supported by civil society.

I have no concerns about its impact and actually believe that we do need the guidelines that the RwP concept provides, to enable the international community to act responsibly in its bid to protect citizens of another member state from mass atrocities.

3) Specifically, as stated above, it will compel the international community to ensure that any measures taken to protect citizens of a member state from mass atrocities, actually achieve that objective with as minimum damage to those citizens as possible.

Generally, it will restore confidence in the RtoP. It will give developing countries the assurance that the RtoP is not just a tool for promoting an imperialist agenda. It will to a large extent create a more responsibly responsive international community.

Name: Fergus Watt  
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1) The Brazilian initiative provides, on balance, encouragement for those of us in the R2P community, in the sense that a state that clearly had concerns early on with the application of R2P in Libya (as evidenced by abstention on SC 1973) is nevertheless willing to invest substantial time and political capital in this constructive contribution to debate on the doctrine. When such an important government has concerns, yet engages constructively (rather than criticizing or attempting to limit application and/or development of the norm) this reinforces the fact that R2P has truly arrived.

2 & 3) A few thoughts:  
- A lot will depend on the Brazilians. With the passage of time and the debate now taking place months later than most expected, the Brazilians will need to be proactive if they want to ensure that the RwP still features significantly in the GA discussion of timely and decisive response. The RwP is perceived (for better or worse) as a reaction to Libya and R2P. But Libya is “yesterday’s news” for many. The unfortunate circumstances in Syria and SC near-paralysis has aroused different, competing concerns regarding the efficacy of R2P.
One hopes that the Brazilians do make the effort to remind others of their RwP initiative and that it does influence the GA debate. There are a lot of potentially positive impacts that the RwP material offers. These include:

1) The overall emphasis, throughout the RwP documents, on prevention. This still needs to be reinforced. In too many capitals R2P is associated with intervention that involves use of force.

2) When prevention fails and use of force is required, RwP emphasizes strict conformity with SC mandates, IHL and law of armed conflict, proportionality etc.

3) Furthermore, when prevention fails, RwP emphasizes that use of force “must produce as little violence and instability as possible and under no circumstance can it generate more harm than it was authorized to prevent.” This makes sense when one considers it in the abstract, but ain’t so easy in the fog of war. But it is nevertheless a vitally important principle to uphold. Here the Brazilians potentially open up wider (and overdue) discussion on criteria for the use of force, a crucially important debate and one that was well ventilated in the ICISS report but hasn’t received sufficient attention (yet) post-2005.

4) Also significant is the call in the RwP documents for “enhanced Security Council procedures” to monitor and assess the implementation of resolutions. This recalls the unfortunate defeat earlier this Spring of the S5 resolution, another effort to make the SC more transparent and accountable. This is an area that should be of perennial relevance in our R2P work. The Brazilians only scratch the surface; hopefully others will pick up the chase when the GA debate takes place.

Those are the positives. The primary area of concern with the RwP is the undue emphasis on sequencing of R2P responses. It is all well and good to uphold “use of force as a last resort” as an important principle. However, one should not be too dogmatic when insisting on real world applications. Sometimes events move quickly and there just isn’t time for diplomacy and preventive measures to run their course. Often, for example, timely and decisive response involving use of force can (and should more frequently) entail preventive deployment of troops. [This is one reason I believe R2P would be enhanced if the UN had its own rapid reaction capacity, something like the proposed UN Emergency Peace Service.] Consider how fortunate we were in Cote d’Ivoir, where there were troops available to act quickly and forestall much wider violence.

However, I believe the Brazilians have heard often by now this critique of their over-emphasis on sequencing of R2P responses. I don’t anticipate any adverse impacts on the GA discussions.

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1) Brazil’s RwP initiative is a welcome proposal in that it brings to the fore the question of accountability in implementing R2P when there is manifest failure on the part of states to protect people. While it is still a work in progress, it basically captures the many issues related to operationalizing Pillar 3 of the principle, in the aftermath of UN SC resolution 1973 Libya. In my mind, the RwP initiative should continue to be debated so that certain problems in R2P’s implementation—in particular the issue of regime change and proportionality in the use of coercive measures—could be refined further. For many states and societies in the Asia Pacific, the value of RwP is that it articulates the importance of legitimacy of operations and accountability of actors in carrying out the mandate of the UN SC under Pillar 3. There is no doubt in my mind that following NATO operations in Libya and the issue of regime change have had some negative impact in the way that R2P has been viewed in the region.
2) This year’s interactive dialogue in the UN General Assembly on the SG’s Report on Timely and Decisive Response should be a welcome opportunity for Member States as well as representatives from civil society to think through the concrete steps on how to advance the RwP idea. In particular, the P5 should consider the RwP initiative of Brazil to look at how existing mechanisms in the UN could be enhanced further to improve information analysis, monitoring, feedback, and accountability in the use of Pillar 3. There are indeed important lessons that could be learned from the crises in Libya, Syria, and other parts of the world and RwP may serve as a useful framework for enhancement and innovation of tools in responding to manifest failure. P3 members in particular should not be dismissive of the RwP initiative of Brazil and instead appreciate the fact that, in the long-run, it could help restore the consensus on R2P after the crisis in Libya. They should in fact contribute to enhancement of the RwP concept within the multilateral framework of the UN. China and Russia should also be engaged in the dialogue on RwP as they no doubt have an important role to play in restoring that consensus given their double veto on Syria since October 2011.

Brazil’s initiative will certainly not prosper if it is viewed only as a response from IBSA or the Global South in the aftermath of Libyan crisis. The weight of the initiative is pretty much anchored on the legitimate issues that it articulates, which finds a lot of support and sympathies from many developing countries. The dialogue in the UN GA should therefore consider the merits of the initiative especially in enhancing the legitimacy of Pillar 3 operations and how it could help restore the consensus on R2P.

3) RwP should be seen as a framework for enhancing the effectiveness, efficiency, and legitimacy of timely and decisive response to mass atrocities. The current deadlock on Syria is a result of the rift in the aftermath of the crisis in Libya not just among the P5 members but also between the Global North and South. There is still lingering concern about the excessive use of force in Libya and the unresolved issue of R2P and regime change. The Brazilian initiative should foster dialogue and healthy debate on these issues and the way forward is for Member States in the UN GA to contribute as much to its refinement in order for the international community to respond efficiently and effectively to mass atrocities.

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The proper implementation of the Responsibility to Protect (R2P) has been intensely debated from the principle’s inception. The Brazilian concept of “Responsibility While Protecting” (RWP) is an encouraging step by a rising power to re-frame the discussion for those states that have legitimate concerns about the use and abuse of the concept. With the General Assembly about to host its 4th formal interactive dialogue on R2P’s third pillar later this year, it is important that Member States have clarity on the boundaries and limitations of taking “timely and decisive action” to halt mass atrocity crimes.

The Brazilians have astutely put their finger on the main point of discord regarding R2P and the use of force – at what point have we met the threshold for having tried all available non-violent options? If it is time for military action, how far does the operation’s mandate go? The international community is haunted by its failure to prevent and halt genocide in Rwanda; and yet, others suggest over-action and an overly assertive attitude to intervention is worse, with the potential to provoke old and new cycles of violence and terrorism. Where is the middle ground?
In his statement during the informal discussion of RWP at the UN in February 2012, the Brazilian Ambassador spoke of this delicate balance between not doing enough to prevent mass atrocities, and doing too much. He highlighted that the UN must “fully develop an awareness of the dangers involved” in using force, suggesting that the motto for those mandated to protect civilians should be “do not cause harm”.

He also set out the precautionary principles that underpin the justification for intervention, and the nature of the use of force, as stated in the original concept note on RWP released in November 2011: all peaceful means should be exhausted before resorting to violence; action should have the proper authority of the Security Council; and, the use of force should incur as little violence as possible by being proportional and having a reasonable chance of success.

To seasoned R2P advocates, these limiting principles are not new, having been established in the 2001 report of the International Commission on Intervention and State Sovereignty. It is difficult to argue with the idea that the use of force should be properly invoked and reasonably limited in its scope; however, the neat list of limitations easily smudges and blurs in practice. Clear-headed judgement and analysis of the potential outcomes of each action is needed, and even after much debating and negotiating, there is always the potential that someone simply comes to different conclusions. The NATO intervention in Libya shows that while Member States can be in agreement that a situation calls for swift action, there can be widespread disagreement over the reach of a military mandate, and indeed, the interpretation of the mandate itself.

The Brazilians also propose that “enhanced Security Council procedures are needed to monitor and assess the manner in which resolutions are interpreted and implemented to ensure responsibility while protecting”. This suggestion could encourage fruitful debate in the General Assembly about the details of such procedures – what would they look like? Who would put them in place? On the other hand, it may lead to further polarisation among Member States, some of whom could argue that such procedures would hamper the international community’s ability to respond effectively to shifting realities on the ground. Parallel to these procedures, a process is needed for monitoring and assessing the situation on the ground, so that the international community’s response can be as flexible and as efficient as possible throughout the implementation of Pillar III.

There is no formula to predict the horrors of genocide, nor how we should respond to each case. A crucial mix of the right policy at the right time could be the difference between a full-scale Rwanda, and say, a simmering Kenya in 2007/2008. While policy makers need to play a balancing act between inaction and over-action, they also must be permitted to employ the most useful strategy when faced with mass atrocities, rather than be forced to tick the boxes in a bureaucratic “to do” list. The suggestion that the pillars should follow a set order is a cause for concern in this sense, tipping the scales too strongly in favour of hindering effective action.

The concepts of “Responsibility to Protect” and “Responsibility While Protecting” are not two separate and distinct concepts, but rather two parts of a whole and, as the Brazilians suggest, should evolve together. RWP gives those states with genuine concerns about the implementation of Pillar III a defined starting point in debates and a platform from which to negotiate with those states keen to push for the application of R2P. In the long run, further and progressive debate and discussion can only be a good thing for the establishment of the norm. However, when the international community is confronted with a situation that requires timely and
decisive action in the short term, these philosophical debates will not save lives.

Colleagues

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1) I consider that Brazil’s diplomatic concept of RwP influenced the understanding of RtoP at least in two points:

   a) Politically, prevention by diplomatic and political negotiations and measures, as well as assistance, should be stressed regionally and globally before applying the third pillar (intervention).

   b) Legally, there is a need to establish clear rules to define how an intervention should be approved and implemented. The Security Council cannot be only a channel to allow interventions, but it’s guardian and supervisor during the whole process. The powers involved in the implementation of the mandate (NATO or others) should be accountable to the SC during the whole process, not only at its end.

2) In my perspective, RwP concept enriches the debate on RtoP, by one side showing that the UN needs to invest much more in prevention and international assistance; by other side pointing out that a minimum legal framework for new interventions is expected. The debate over the legal and political bounds for the third pillar will confer more legitimacy and support for future interventions.

3) My perception is that Brazil’s concept on RwP followed an important step which is the very recognition of RtoP as a reality beyond the 2005 Summit Outcome. This political and diplomatic recognition generated itself a positive impact on RtoP if one considers that there are other countries, including Latin American ones, that are still against or resilient vis-à-vis the principle. Having chosen prevention as a priority, Brazilian diplomacy is coherent with the Latin American tradition on prevention and regional settlement of conflicts, which is expected to receive full support from South America. The support from India and South Africa (BRICS) for RwP may also influence other countries to follow the concept. If responding to situations of mass atrocities means early support for applying the third pillar, I think RwP concept could impact the international community perception towards a more cautious response.

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Brazil’s responsibility while protecting (RwP) concept should elicit mixed feelings from policy-makers and Responsibility to Protect (RtoP) advocates. From one perspective Brazil should be thanked for constructively adding to the debate on RtoP’s “third pillar”. As the world is undergoing some very important shifts in power and influence, and as emerging countries take on more global responsibility on a par with their political and economic standing, Brazil’s RwP concept shows a willingness to engage with the RtoP norm. As RtoP was agreed to at the World Summit, it should occasion no surprise to learn that countries such as Brazil will increasingly take on more ownership of RtoP. If the norm is to meet its noble objectives it needs global ownership and, as the crisis in Syria illustrates, it needs such ownership quickly. If RwP is the spark which ignites greater responsibility then Brazil will deserve much gratitude.

One hopes that Brazil’s RwP concept encourages China, India, Russia and other countries to constructively engage with debates on RtoP. If emerging countries such as China and India are to take on more responsibility in world affairs – and this by extension includes ownership of RtoP, especially given that both states agreed to the concept back in 2005 – then a simple rejection of the more controversial elements of the norm is no longer possible. What is needed,
and what RwP points to, is more intelligent and substantial engagement with RtoP. The Brazilian concept has certainly led to debate and dialogue within civil society, and so this must now extend to the realm of states. From this perspective one should take RwP at face-value. One should leave aside all the possible political reasons for the timing of the concept in favour of a mature engagement with Brazil over its substance. The upcoming UN General Assembly interactive dialogue on RtoP should be the beginning of this engagement.

From another perspective however, there are problems with RwP. Indeed, in many ways the Brazilian’s say nothing new. Those of us who work on RtoP have long held that should the use of force become necessary to protect civilians then it must have UN Security Council authorisation, must be legally and operationally limited in scope to the objectives of protecting civilians and must be proportionate and not cause more harm than good. Brazil’s insistence on preventive diplomacy rather than military measures, and its wish that all peaceful means are exhausted before recourse to force, is not a new argument and merely echoes the spirit of RtoP’s “three pillar” structure. RtoP expressly sees the use of force as a last resort, and the “pillars” are designed to halt misapplication of the norm. In this regard, Brazil has made a mistake in indirectly equating RtoP with the interventions in Iraq and Afghanistan. These two interventions are not cases of RtoP precisely because they were not specifically aimed at the protection of civilians, and because, as Brazil states, they led to an aggravation of existing conflicts, allowed terrorism to penetrate into places where it did not exist and give rise to new cycles of violence.

Another problem with RwP relates to the fact that Brazil’s answer to the complexity of RtoP application, and the difficulties associated with armed intervention, is to simply improve the timing and planning of action. For example, RwP talks of the “chronological sequencing” of RtoP’s pillars and it also states that a “comprehensive and judicious analysis of the possible consequences of military action” should precede the use of force. Both of these points would undermine the flexibility of the RtoP principle. Indeed, RtoP’s “pillars” are a guideline for action but the actual diplomatic process of implementation calls for pragmatism; “sequencing” would not allow room for the flexibility to deal with the unexpected elements that arise in any civilian crisis. Furthermore, on the issue of weighing up the consequences of the use of force, RwP does not give policy-makers and advocates enough credit. Indeed, the very reason why the crisis in Syria poses difficulties is that the consequences of armed intervention – known and unknown – are on diplomatic and advocacy radars.

Yet if one looks past the problems raised above there are elements of RwP which do require serious thought. Firstly, while RtoP is not about regime change - there are examples where civil miseries have been averted without removing a government from office (e.g. Kenya) - the Brazilian’s are correct to draw our attention to some very difficult questions. Is it always possible to achieve the protection of civilians without removing the perpetrators of violence from office? Should the perpetrators be left in office, would this not impact on the chances of lasting post-crisis reconciliation and reconstruction and could it not in turn lead to future violence? After the lessons of Libya and the present crisis in Syria, these are complex and morally testing questions which those who work on RtoP will need to address more comprehensively.

Secondly, because RwP is essentially a reiteration of Just War Theory questions related to the proportionate, restrained and legitimate use of force are critical. While bearing in mind that RtoP’s “third pillar” is about much more than the use of force, as it privileges diplomatic and economic tools over military ones, it is important that RtoP be applied in a legitimate manner in keeping with the spirit of the Hippocratic Oath (“Do No Harm”). Here legitimacy comes from the Security Council and it must ensure that there is accountability when force is used. Among other issues, this will mean thinking about which military organisations are contracted to implement UN Resolutions. It will also mean being rather more careful with the wording of Resolutions to reduce the level of ambiguity over mission mandates.

For the two reasons cited above, Brazil’s RwP concept has importantly placed the issues of legitimacy and proportionality at the centre of the RtoP debate. The norm can no longer just refer to implementation but must also
now seriously deal with the manner of such implementation. While RwP has not radically altered this author’s understanding of RtoP, it will certainly add much needed impetus to the upcoming informal interactive dialogue. Brazil’s contribution should not be seen as a threat to RtoP, and it will certainly not make the implementation of the norm any easier, but it is an opportunity to further discuss the difficulties associated with the operationalisation of RtoP.

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The unforeseen and welcome introduction of Responsibility while Protecting (RwP) into discussions about the use of force and the Responsibility to Protect (R2P) in September 2011 by Brazilian President Dilma Rousseff came at a critical moment for R2P. While perhaps not the intention, RwP helped R2P overcome a backlash that was forming in response to the intervention in Libya, and in many ways aided in strengthening support for, and clarity about, R2P.

By September 2011, the period of remarkable international – and notably United Nations Security Council (UNSC) – consensus around the need to use force to avert mass atrocities in Libya had given way to considerable rancor. Debates raged about the tactics used by North Atlantic Treaty Organization (NATO) members and its allies as well as whether their actions complied with the UNSC mandate authorizing force under resolution 1973. Of particular concern was the arming of the Libyan National Transitional Council and the specter of 1973 being interpreted in a way that legitimized regime change. There was talk that divisions in the UNSC would undermine its ability to find the unity of purpose and political will necessary to authorize such a response in the future.

Into this climate came RwP. In many ways, the idea that states must exercise every aspect of their responsibility to protect in a responsible manner is not novel. While raised in the context of R2P, RwP speaks to and reflects the age-old debate and discomfort around the authorization of the use of force. Seen in this context RwP is an important reaffirmation of intervening parties’ obligations to adhere to international humanitarian law. RwP also serves as a reminder of the need for greater accountability and transparency in reporting to the UNSC on the implementation of mandates – while also highlighting the need to re-think what this means for regional organizations vested with the responsibility of carrying out a UNSC authorized military intervention. Finally, RwP recalls, as the commissioners of the International Commission on Intervention and State Sovereignty did in 2001, that force must be a last resort and of the relevance of what could be regarded as an interveners’ ‘Hippocratic oath.’

For these reasons, RwP was an essential and fortuitously timed contribution to discussions about the use of force and R2P. RwP created a space, and an accepted discourse, that allowed states to register their concern and discuss contentious issues related to exercising force to protect civilians. These discussions were helpfully framed by the parameters set by the Brazilians, namely that RwP was not a re-writing of R2P. The Brazilian initiative lent credibility to the United Nations Secretary-General’s assertion that the debate was no longer about the abstract merits of R2P, but rather focused on how best to practically implement it.

This theme was particularly relevant for Latin American, African and Asian states who, while supportive of R2P, had misgivings about the implementation of resolution 1973. The discussion of RwP in bilateral meetings and the February 2012 RwP dialogue hosted by the Brazilian Foreign Minister, Antonio Patriota, saw these states re-engage in debates on R2P – and also saw new states enter the conversation. This was a welcome development for R2P.
Some states were, and are, concerned about RwP, perceiving it as an attempt to tie the hands of future action to halt and avert mass atrocities through the use of force. References in the November 2011 RwP concept note contributed to this concern. For example, it raised the need for new UNSC mechanisms governing the authorization and monitoring of the use of force and stated that one life lost as a result of military intervention is one life too many. Moreover, it highlighted the need for sequencing between the three pillars of R2P and the measures employed to avert and halt atrocities from least to most coercive—a requirement that fails to reflect the on-the-ground reality of how quickly mass atrocities often unfold and the flexibility needed to respond to their complexity.

However, Brazil’s careful explanation of its position and continued refinement of RwP over the past year addressed many of these concerns and affirmed its support for all three pillars of R2P. The Brazilian Ambassador to the United Nations in New York publicly stated that the pillars and measures should be used in a logical and not chronological manner, thus addressing the sequencing concerns. Brazil also clarified that it was not calling for new UNSC mechanisms and procedures that might limit the Council’s ability to act in a timely and decisive manner. Rather, it was seeking the more transparent use of existing ones.

Much of the success of RwP in highlighting implementation challenges, and in providing an outlet for states to raise constructive concerns, can be attributed to that fact that RwP is a child of Brazil. Few states could have waded into the debate about the use of force and introduced RwP with enough legitimacy to overcome skepticism of their intentions. Skepticism remains but one cannot dismiss the importance of Brazil’s voice as a rising power; a contender for a seat on a reformed UNSC; a troop contributor to peacekeeping; and a state that has experienced a military dictatorship and gross human rights violations. Brazil had to be taken seriously by northern states and for southern states, particularly smaller ones, Brazil could articulate their broader concerns.

RwP served in many ways as a bridge moving states from a debate about Libya that risked derailing R2P to a forward-looking and tangible discussion on implementation. Ideally, going forward, states and the UNSC will incorporate RwP into their day-to-day understanding of R2P and implementation efforts. This would be in keeping with the Brazilian desire to complement R2P, rather than create a parallel and competing concept.

My hope is that Brazil will continue to play an active role in conversations about R2P’s implementation, especially given its unique ability to bring southern and northern states together to advance the norm. RwP and the response to Libya showed that leadership on R2P issues, especially when questions of force arise, will need to come from southern states working with northern partners. For reasons of history, credibility and legitimacy it cannot be an exclusively northern or southern effort. Preventing mass atrocities requires a multi-lateral response predicated on discussions between actors from both the North and the South to build and crucially maintain support for preventive and protective action. Southern leaders like Brazil, and ideas like RwP, can serve as the interlocutors and basis for such discussions and for moving the R2P agenda forward.

The agenda in September 2011 had to focus on addressing concerns stemming from the Libyan intervention and the use of force. RwP provided the forum for doing so. Going forward, R2P supporters, led by Brazil, should focus on advancing an international prevention agenda. We live in a world where history has shown that far too often little to no action is taken to halt and avert mass atrocities. Prioritizing prevention should help rectify this and, in an ideal world, help render discussions of RwP moot.