

# R2P IDEAS in brief



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## Brazil and the Responsibility to Protect

Kai Michael Kenkel

Institute of International Relations, Pontifical Catholic University of Rio de Janeiro

### Introduction - Why Brazil?

After decades of constant, yet limited, participation in multilateral interventions,<sup>1</sup> Brazil emerged as a significant contributor to UN interventions in 2004 with its assumption of a strong leadership role in MINUSTAH, the UN peace operation in Haiti. Beginning in 2009, it became a major player in the global normative debates on intervention, including the responsibility to protect (R2P). Brazil's major contribution has been a concept note launched in November 2011 entitled "responsibility while protecting." The note—an important advance in the normative conversation in its own right—reflects the origins of Brazil's posture on R2P in a combination of elements.

These elements include the country's self-identification as an "emerging power"; its alignment with the BRICS and the attendant question of its alignment vis-à-vis the current institutional distribution of influence; its move away from an anchoring in continental traditions to the concerns and dilemmas of a global player; and the increasing importance of peace operations and larger security concerns in its global posture. Finally, while much of Brazil's rise to prominence on the R2P circuit occurred under the Lula da Silva administration (2001-2010) or in its wake, the country's diplomatic profile and its overall global presence—including, clearly, in the R2P and intervention debates—has diminished considerably under the presidency of Dilma Rousseff (2011-).

### Intervention, R2P and Brazilian foreign policy

Lula da Silva's presidency brought with it a shift in Brazil's foreign policy positioning from a continental horizon to that of a global player. As a result the country's diplomacy is sorting out the normative tensions inherent to this transition, shifting from the precepts of South American security and intervention culture to the normative adherence expected of a globally active stakeholder.<sup>2</sup> South American security culture, which still holds strong sway in Brazil's international positioning, is that of a peripheral region accustomed to extensive indirect and direct interference from major powers. As a result, the defining characteristics of this security culture are: the enshrinement of non-intervention, coupled with an interpretation of state sovereignty almost exclusively focused on the inviolability of borders, as a foundation of international engagement; a very strong repudiation of the use of force



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and emphasis on the pacific resolution of disputes; and a strong dedication to the multilateral form. Legal guarantees and equal voting rights in international institutions are seen as a guarantee against the adverse effects of global inequalities of power.

The Brazilian Constitution of 1988 sets out the following principles as guidelines for the country's foreign conduct:

- I - national independence;
- II - prevalence of human rights;
- III - self-determination of the peoples;
- IV - non-intervention;
- V - equality among the States;
- VI - defense of peace;
- VII - peaceful settlement of conflicts;
- VIII - repudiation of terrorism and racism;
- IX - cooperation among peoples for the progress of mankind;
- X - granting of political asylum.<sup>3</sup>

However, the document does not prioritize these principles hierarchically, and thus does not provide waypoints for clashes, for example, between the principles of non-intervention and the defense of peace, the repudiation of terrorism, or, particularly, the prevalence of human rights. By custom, however, these principles have always been laid out in accordance with the above traditions, valuing non-intervention and inviolability of borders over other concerns, often despite strong rhetoric in favour of human rights.

Beyond its diplomatic tradition, Brazil's foreign policy from the Lula administration forward has been significantly influenced by the foreign policy preferences of the ruling Workers' Party. As these relate to intervention and global governance, they have been manifested in increased mistrust of the motives of Western powers, and in increased association with efforts to counterbalance Western influence, of which the BRICS (Brazil, Russian, India, China, South Africa) initiative is the most prominent example.

Western powers' shifting interpretation of the balance between state sovereignty and human rights in favour of the latter, increased reliance on peace enforcement measures under Chapter VII, and the advancing consolidation of R2P, have worsened the tensions inherent in Brazil's self-redefinition as a global emerging power. The country's traditional support for global governance and multilateralism, particularly the United Nations, has recently been at odds with long-held regional and national principles such as non-intervention and the non-use of force. This is further exacerbated by the emphasis placed by Lula and his then-Foreign Minister, Celso Amorim, on participation in peace operations as a means of demonstrating international responsibility and contribution to global governance. This further underscores the transition from a continentally influenced foreign policy to one based on emerging-power status.

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Prior to assuming a leadership role in MINUSTAH in 2004, Brazil had adhered to a strict policy of limiting its material contribution as well as rhetorical and voting support to peace operations and humanitarian interventions which fell under Chapter VI of the United Nations Charter. It had rejected Chapter VII mandates even in the face of situations such as the Rwandan Genocide. Indeed, once MINUSTAH was underway, the country's diplomats continued for a decade to insist that its core mandate was not based on Chapter VII. Nevertheless, Brazil has seen a considerable increase in its peacekeeping participation (from token contributions to 2,200 at the peak of the MINUSTAH deployment, as well as a 300-man contingent with the UNIFIL maritime task force in Lebanon)<sup>4</sup> and in its presence in R2P and broader intervention debates. Its story has been one of oscillation between global and traditional tenets, and of seeking to exercise its natural vocation as a builder of bridges between the global North and South.

### **Brazil and R2P at the UN**

Brazilian representatives' first response to the ICISS Report<sup>5</sup> launching R2P reflected South American diplomatic culture, and varied between studied silence and reflexive rejection. One of the first statements came from Amorim, who labelled the concept as merely "the *droit d'ingérence* ... in new clothes."<sup>6</sup> In a move that would later be taken up into the "responsibility while protecting" (RwP) paper (see below), Amorim also objected to the "right authority" criterion in the ICISS report, reflecting a smaller power's fear that "[t]he door is thus left open for certain countries to arrogate to themselves the right to intervene, without the express authorization of the Council or monitoring by a truly multilateral body."<sup>7</sup>

Amorim subsequently laid out what has always been Brazil's greatest concern with the implementation of R2P: its perceived increased reliance on the robust use of force. Given its historical tenets, Brazil has always been more sceptical of the utility of the use of force to resolve conflict than its BRICS brethren, a viewpoint which would come to the fore with the Libyan crisis in 2011 and eventually serve as the main catalyst for the development of the R2P paper. Amorim couched his objection in the traditional Brazilian preference for the pacific resolution of disputes:

We have been called upon to deal with new concepts such as "human security" and "responsibility to protect". We agree that they merit an adequate place in our system. But it is an illusion to believe that we can combat the dysfunctional politics at the root of grave human rights violations through military means alone, or even economic sanctions, to the detriment of diplomacy and persuasion.<sup>8</sup>

In the meantime, R2P's increased momentum within the UN system created tensions for Brazil between its commitment to a global organization which increasingly endorsed R2P and its principled objections to the concept. These first came to a head at the 2005 World Summit. During the run-up to negotiations, Brazilian officials cautiously began to

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acknowledge if not R2P itself, then the importance of the global conversation on intervention issues. There were initial efforts to frame the concept in a manner conducive to established Brazilian interests.<sup>9</sup> In particular, this meant emphasising those elements of R2P where a contribution could be made without recourse to the use of force.

With respect to the debate at the World Summit itself, Brazil emphasised three main points: the issue of the state's own primacy in fulfilling its sovereign duties (last resort); a perceived permissiveness regarding the possibility of great power appropriation of the concept for self-interested unilateral action (right intention); and the related issue of the final arbiter (right authority) of international action. These were, in fact, duly taken up into the Outcome Documents and several later UN documents including the Secretary General's 2009 Implementation Report (SGIR).

The SGIR and its attendant debates in the General Assembly represent a further turning point in Brazil's engagement with R2P, taking up as it did for the first a number of key Southern-state elements. The enshrinement of states' own responsibility in Pillar One was particularly received as an inclusion of the traditional sovereigntist sceptical viewpoint, such as that of the Non-Aligned Movement. Their support did not extend, however, to buying into Ban Ki-Moon's characterization of R2P as an "ally of sovereignty".<sup>10</sup>

Indeed, a key element of the Brazilian position with regard to R2P as a guiding concept for state practice is a desire to contribute substantively to the creation and refinement of international norms; more accurately, there is an acute aversion to any perception that the country is simply following, yet again, a norm created by major powers in the West. As a result, Brazil, while needing to show support for the global debate on intervention and sovereignty, would not come to fore as a key supporter of R2P unless the concept were freed from an association with the interests of Western powers. The adoption of the concept of "non-indifference,"<sup>11</sup> of African origin, was one attempt to initiate such a process; however, it would be the clear overlap of NATO interests and the mobilization of R2P in Libya that would lead to the RWP paper, Brazil's most substantive contribution to the normative debate.

One way of upholding resistance to R2P as a binding norm while engaging in the debate was to describe R2P as political guidelines rather than a norm.<sup>12</sup> This coincided nicely with Brazil's emerging-power agenda.<sup>13</sup> In the subsequent UNGA debates, Brazil's representatives highlighted the acceptability of the first pillar from a Southern point of view.<sup>14</sup> A further important element is the growing opening for the inclusion of development concerns—a key tenet of Brazilian foreign policy and that of many other developing states, and one juxtaposed to the security aspects dependent on the use of force. In this sense, the country's strengths in development can be seen as contributing to addressing the root causes of security threats:

On the other hand, a mission that protects civilians under imminent threat, but makes no progress in helping address the underlying causes of the conflict or in

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peacebuilding tasks will not lead to a sustainable peace. Helping States onto the path of peace, stability and development is, ultimately, the best way for the United Nations to contribute to the long-term protection of civilians.<sup>15</sup>

### Libya and RWP

Launched on 9 November 2011, the “responsibility while protecting” note<sup>16</sup>, is the high point of Brazilian engagement with R2P and intervention norms. NATO’s 2011 intervention in Libya served to inscribe the intervention issue as a larger locus of normative contestation between established and emerging powers. Viewed by some states as a clear case of overstretch of a legitimate mandate by a NATO seeking to advance its own interests under the guise of R2P, it marks the moment at which that contestation shifted away from the appropriateness of R2P as a concept and towards strongly divergent views on its acceptable implementation. Here, the debate centres not only around operational overstretch but the manner in which Resolution 1973 was negotiated in the UNSC—in a manner felt to be extremely exclusionary by the five BRICS members on the Council at the time; they all eventually abstained from voting.<sup>17</sup>

Brazilian, BRICS and Global South scepticism following Libya is still considerable, and the RWP initiative should be viewed as a product of the fear of abuse of the concept by Western powers for non-humanitarian purposes<sup>18</sup>, which left a “trust deficit”.<sup>19</sup> Brazil’s main concern, beyond the potential hijacking of the norm, was with the utility of the use of force in putting an end to the Libyan conflict—an element where their scepticism has perhaps been vindicated in the wake of the country’s situation in 2014 and the spillover escalation of conflict in Mali. R2P’s latest developments reflect emerging powers’ resistance to Western normative preponderance, turning it into the stage for a broader contestation of a changing global distribution of power. RWP/R2P thus goes well beyond the immediate link to the Libyan case, standing more importantly as a case of broader emerging-power norm entrepreneurship with regard to global governance.<sup>20</sup>

### *The RWP concept note*

RWP was launched explicitly as a push-off point for further debate, and as a complement, rather than a substitute, for R2P itself.<sup>21</sup> It is more focused on UN debates, making no mention of the ICISS Report—an omission that critics claim saddles it with unnecessary redundancy with regard to elements already present in R2P’s *acquis*. While the document acknowledges an albeit quite limited utility for the use of force, this is tempered by repeated mention of the potential for R2P’s misuse by Western powers.<sup>22</sup>

The heart of the note is a set of criteria to guide Security Council deliberations:

- (a) Just as in the medical sciences, prevention is always the best policy; it is the emphasis on preventive diplomacy that reduces the risk of armed conflict and the human costs associated with it;

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- (b) The international community must be rigorous in its efforts to exhaust all peaceful means available in the protection of civilians under threat of violence, in line with the principles and purposes of the Charter and as embodied in the 2005 World Summit Outcome;
- (c) The use of force, including in the exercise of the responsibility to protect, must always be authorized by the Security Council, in accordance with Chapter VII of the Charter, or, in exceptional circumstances, by the General Assembly, in line with its resolution 377 (V);
- (d) The authorization for the use of force must be limited in its legal, operational and temporal elements and the scope of military action must abide by the letter and the spirit of the mandate conferred by the Security Council or the General Assembly, and be carried out in strict conformity with international law, in particular international humanitarian law and the international law of armed conflict;
- (e) The 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;
- (f) In the event that the use of force is contemplated, action must be judicious, proportionate and limited to the objectives established by the Security Council;
- (g) These guidelines must be observed throughout the entire length of the authorization, from the adoption of the resolution to the suspension of the authorization by a new resolution;
- (h) Enhanced Security Council procedures are needed to monitor and assess the manner in which resolutions are interpreted and implemented to ensure responsibility while protecting;
- (i) The Security Council must ensure the accountability of those to whom authority is granted to resort to force.<sup>23</sup>

Initial response was cool from both the global North and South. Notwithstanding initial difficulties, the note had potential to be a crucial step in the inclusion of Southern states into the intervention debate. This was achieved in three main ways: an attempt to place R2P's pillars in chronological relation to one another (although strict sequencing was later abandoned); increased restrictions on the use of force; and more proactive monitoring by the Security Council of the following of guidelines by ongoing missions. These specific considerations, as well as broader political issues—and, crucially, several related to international law—provided the bulk of public reaction to the “responsibility while protecting” note. Sequencing was rejected outright by Northern states and was later amended to the notion of “prudential sequencing” which allows for deviation from strict chronology. For example, according to the International Coalition for the Responsibility to Protect:

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The Secretary-General never called for the chronological sequencing of the pillars but rather established them together as representative of the full scope and range of measures necessary to protect. Every crisis situation is unique and requires a response according to the circumstances and needs of the population. All actors must have the full range of tools available when operating to prevent or halt crimes under RtoP. Restructuring the three-pillar framework would risk creating a system for prevention and reaction that fails to consider the particular elements of a crisis. Furthermore, the chronological sequencing of the three pillars would risk impeding timely and decisive action by limiting the array and flexibility of measures available and establishing required actions to be taken regardless of the needs of those under threat of mass atrocities.<sup>24</sup>

UN Special Advisor Jennifer Welsh and her co-authors also questioned a logic of strict sequencing:

In pursuit of timely responses to humanitarian crises, this new document should also downplay the notion of sequencing: while force should not be the first option, and we should invest heavily in other options, it also cannot literally be the *last* option.<sup>25</sup>

Further criticism came from the note's adoption of "do no harm" principles, based on Brazilian, South American and Southern pacifist reflexes. Northern states generally responded to this point through the use of counterfactuals and the idea that a small number of casualties is acceptable if a larger number is prevented. The suggestion of increased mechanisms for accountability and monitoring by the Security Council was generally accepted, including by UNSG Special Advisor Jennifer Welsh.<sup>26</sup> Other BRICS states such as Russia and China cautiously endorsed the move as a check on Western unilateralism; China subsequently developed its own complementary concept of "responsible protection".

### **RIP for RWP?**

The RWP initiative, and Brazil's heightened engagement in intervention issues in particular, were partially a result of the personal interest of Antonio de Aguiar Patriota, who replaced Amorim and served as Foreign Minister from 2011-2013. Much of the country's momentum as a player in the UN debates on intervention, and with it the necessary political backing for the RWP note, petered out with his unceremonious dismissal from office.<sup>27</sup> In line with President Dilma Rousseff's lack of interesting foreign policy, he has since been replaced with two significantly less expressive colleagues, and the Foreign Ministry has suffered a lack of attention from governmental leadership.

Rather than being seen as a finished product meant for inclusion in the R2P normative trajectory, RWP had, and continues to have, much more potential as a stepping-off point for

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further debate. In this sense it can be said to have been withdrawn far too quickly and not backed by the necessary diplomatic capital; it represents at this time a major lost opportunity for Brazilian diplomacy. In addition, Brazilian diplomats were not prepared for the resistance with which the proposal met—particularly in the case of Southern states. In the words of one analyst,

How can we explain the decision by Brazil to abandon its RWP initiative? Brazil's top leadership clearly seems to have made a cost/benefit calculation that the initiative is no longer worth additional investment of Brazilian political capital. Its political top leadership saw the RWP is a loss-making enterprise. The political payoffs seemed far off and uncertain but the political costs were real and immediate. The latter consisted of taking political fire from many sides for the initiative. Brazil seems to have been unprepared for the criticism and pushback after it launched the RWP concept. ... Engaging in the business of norm entrepreneurship means taking risks and dealing with setbacks and criticisms – especially in a charged and contested political environment such as the debate on intervention and the use of force. That Brazil does not seem to muster the endurance necessary to push the concept forward further is as deplorable as much of the short-sighted Western criticisms of the initiative.<sup>28</sup>

The note's authors also did not include a key Brazilian comparative advantage: the capacity to use socioeconomic and development policies to tackle the root causes of conflict. As a result, what was once a promising bridgehead between North and South has perhaps met with a premature end:

Despite receiving notable international attention in a short amount of time, RWP no longer appears to be on the agenda of the Brazilian government. After a flurry of support and suggestions for improvement, Brazil now has a prime opportunity to expand and clarify the meaning of its proposal in the form of a new policy paper. It has been more than a year since the introduction of RWP, however, and it appear that the proposal has been left to the world to “do what it may” with it. Domestic priorities and a renewed focus on international trade are surely part of the explanation for this inaction. The danger, however, is that without proper leadership, RWP may not survive for long.<sup>29</sup>

During its short heyday the RWP paper went a surprisingly long way towards laying bare the basic tenets of discord over R2P's implementation, as well as providing incipient avenues for future negotiation between what are still often seen as R2P's mostly Southern detractors and its mostly Northern supporters. It remains to be seen whether in the future the domestic and international contexts will once again align to allow Brazil to play its crucial natural role as a global mediator on issues of R2P and intervention.



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## BIOGRAPHICAL NOTE AND ACKNOWLEDGEMENTS

Kai Michael Kenkel is a tenured Assistant Professor in the Institute of International Relations at the Pontifical Catholic University of Rio de Janeiro, where he is Director of Graduate Studies. He holds MA and PhD degrees from the Graduate Institute (then IUHEI) in Geneva and an AB from The Johns Hopkins University. His principal areas of expertise are United Nations peace operations, intervention and the responsibility to protect, as well as small arms. He has published and advised extensively on these topics and is the editor of three books. He has been editor of the top Brazilian IR journal *Contexto Internacional*.

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<sup>20</sup> Thorsten Benner, "Brazil as a norm entrepreneur: the 'Responsibility While Protecting' initiative", GPPi Working Paper. Berlin: Global Public Policy Institute, March 2013.

<sup>21</sup> Almeida, Paula Wojcikiewicz. "From Non-indifference to Responsibility while Protecting: Brazil's Diplomacy and the Search for Global Norms", *Global Powers and Africa Programme Occasional Paper* 138. Johannesburg: South African Institute for International Affairs, April 2013, 18-19.

<sup>22</sup> Brazil, RWP concept note, (see fn 14), paragraph 10.

<sup>23</sup> *Ibid.*, paragraph 11.

<sup>24</sup> Statement by Megan Schmidt, the International Coalition for the Responsibility to Protect, Informal Discussion on "Responsibility while Protecting", 21 February 2012, accessed 18 January 2015, <http://www.responsibilitytoprotect.org/ICRtoP%2021%20Feb%20RWP.pdf>.

<sup>25</sup> Welsh, Jennifer, Patrick Quinton-Brown and Victor MacDiarmid, "Brazil's 'Responsibility While Protecting' Proposal: A Canadian Perspective", 12 July 2013, Canadian Centre for the Responsibility to Protect, accessed 18 January 2015, <http://ccr2p.org/?p=616>.

<sup>26</sup> Welsh, Jennifer, Patrick Quinton-Brown and Victor MacDiarmid, "Brazil's 'Responsibility While Protecting' Proposal: A Canadian Perspective", 12 July 2013, Canadian Centre for the Responsibility to Protect, accessed 14 January 2015, <http://ccr2p.org/?p=616>.

<sup>27</sup> Rousseff's disinterest in foreign policy is legend, and the foreign ministry has under her leadership experienced a significant loss in prestige and funding. Patriota resigned at the president's behest after a scandal over a Bolivian opposition senator's flight to Brazil after having taken refuge in the Brazilian Embassy. Though Patriota is now the country's Permanent Representative to the UN, since his dismissal the country's normative profile on intervention has diminished considerably.

<sup>28</sup> Benner, "norm entrepreneur", 8-9.

<sup>29</sup> Welsh, Quinton-Brown and MacDiarmid, "perspective".



AP R2P

Asia Pacific Centre for the Responsibility to Protect

Building 91, 54 Walcott Street  
School of Political Science and International Studies  
The University of Queensland  
St Lucia Brisbane QLD 4072 Australia

Tel: +61 (0) 7 3346 6435  
Fax: +61 (0) 7 3346 6445  
Email: [r2pinfo@uq.edu.au](mailto:r2pinfo@uq.edu.au)  
<http://www.r2pasiapacific.org/index.html>