sef:

From R2P to RwP.
Emerging powers and the
future of intervention

Kai Michael Kenkel

One million Rwandans perished in the 1994 genocide. A quarter of a million Syrians have fallen victim to the prolonged conflict there. In both cases, the international community has failed to intervene to prevent the on-going loss of human lives; in both cases, the nature of state sovereignty has been used to justify outsiders' inability to act within these states' borders. Sovereignty's two main components – states' right to freedom from intervention, and the protection of individuals' human rights – create a tension that remains one of the key issues in global governance today. How to balance non-intervention with the protection of civilians against genocide and large-scale human rights violations? How to prevent another Rwanda – and stop the Syrian bloodletting – without jeopardizing the crucial order state sovereignty provides?

The United Nations (UN) efforts to resolve this dilemma led to the concept of the "responsibility to protect" (R2P), put forth by a Canadian-sponsored international commission in 2001. The concept has since been extensively endorsed by the UN and its member states. While today there is broad and deep agreement among UN member states on the basic tenets of R2P – that in the most severe cases of human rights violations, individual rights trump those of states to inviolability of their borders – the question of the concept's implementation remains a matter of intense debate. Particularly after the contentious NATO-led intervention in Libya in 2011, this debate broadly pits NATO powers against emerging powers such as the BRICS (Brazil, Russia, India, China, South Africa). Generally speaking, established powers

prioritize intervention to protect individual rights, and see military force as a useful tool to do so, while emerging and postcolonial states see non-intervention as a crucial guarantee of their autonomy, and favour non-military means of assistance. In seeking to bridge these tensions, Brazil in particular has played an important role. The support of both, states from the Global North and South is, however, necessary to re-establish the effectiveness of R2P as a tool for saving human lives.

The language of R2P now structures debate and practice on intervention. The concept was endorsed by the UN World Summit in 2005; has been the subject of several Implementation Reports by the UN Secretary-General and ensuing debates in the General Assembly; serves as the basis for over two dozen Security Council resolutions, including peacekeeping mandates; and has led to the creation of a Special Advisors to the UN Secretary-General for R2P and Genocide Prevention.

R2P identifies two elements of sovereignty: a horizontal component comprised of states' protection against intervention, in the form of inviolable borders; and a vertical component consisting of states' internal duties to provide their citizens with protection and basic services. These are not new commitments or a re-definition of sovereignty, but rather a consolidation of states' existing commitments in extant treaties, conventions and customary law. R2P's key contribution is to state clearly that in cases of the severest violation, the horizontal component is subordinate to the vertical one: states that do not honour

their internal contracts with their citizens may see their right to protection from external intervention suspended. In cases where a state is unable or unwilling to fulfil its duties to its citizens, a vestigial responsibility to assist them may fall to the international community. Criteria for interventions based on this conception are guided by just war theory: right authority, just cause, right intention, last resort, proportional means, and reasonable prospects.

Making R2P work at the UN

The UN, together with member states, civil society, and academics, has worked to specify the details of this approach over the past ten years. The World Summit Outcome Document of 2005 limited its applicability to the most heinous of crimes: genocide, war crimes, ethnic cleansing and crimes against humanity. In 2009, the UN Secretary-General issued a first Implementation Report for R2P, which endorsed a "narrow but deep" approach to applying the concept. It further established three "pillars" of implementation for R2P. The first among these is that primary responsibility for the protection of a state's citizens falls to that state itself and not to external interveners. Only in a second phase is the international community called upon to assist in building that state's capacity to fulfil its duties. Finally, should all else fail, the third pillar allows for "timely and decisive response", including but not limited to military intervention. Though both the 2009 Report and even more so R2P's original 2001 conception give priority to non-military elements such as prevention and post-conflict reconstruction, debate over the concept has always centred heavily on the possibility of the use of force.

The latter issue in particular has divided powers in the Global North and South. Many Southern states are averse to the use of military force and still fear it may be used against them. Their historical traditions and economic situations prioritize other forms of assistance and conflict resolution. Emerging powers in the Global South have seen their potential for increased global influence tied, in some instances, to participation in – or support for – a pattern of armed intervention that runs counter to these traditions, placing them before a strong normative dilemma.

RwP: value added from the Global South

This dilemma came to a head with the contentious NATO-led, R2P-based intervention in Libya in 2011. In its wake, Brazil attempted to bridge the gap in visions of R2P's appropriate implementation by launching the corollary notion of the "responsibility while protecting" (RwP). China similarly launched its concept of "responsible protection".

Brazil's attitude towards intervention are deeply steeped in both South American regional security culture and the typical concerns of an emerging global actor. Its diplomatic and security culture strongly favours the pacific resolution of disputes — with a very strong aversion to the use of force, externally — and has a strong commitment to the multilateral form, particularly the UN. At the same time, as it shifts from a regional to a global horizon — a change initiated under the Brazilian President Lula da Silva from 2003 onward — it has highlighted even more than previously what it sees as an unjust distribution of decision-making power within international institutions, particularly the Security Council. In addition, Brazil has sought to formalize alternative institutional arrangements centred on the Global South, such as the BRICS and IBSA (India, Brazil, South Africa) groupings. This has placed the country increasingly at odds with the West and particularly NATO; this is a result of both a general contestation of the global distribution of influence and specific programmatic differences from the Western outlook.

The negotiation process for Resolution 1973, which mandated the Libyan intervention, had a profound effect on emerging powers' future engagement with R2P and intervention issues. All five BRICS countries – permanent members China and Russia, as well as elected members Brazil, India and South Africa – were on the Security Council at the time. The lead-up to the vote in the Council left these powers with the impression they had been excluded from the process; all except South Africa abstained from voting, believing that action was necessary, but that the Resolution was not sufficiently restrictive in its wording. Indeed, the NATO-led coalition's later focus on regime change in Libya was seen as an overstepping of the mandate and a deliberate misleading of Council members.

In this sense, three main factors spurred the writing of the RwP concept note, which was launched at the UN in November 2011 and focused largely on concerns over the utility of the use of force. The first trigger was direct concern over the manner of the Libyan intervention's negotiation and the exclusion of debate by the relevant resolution's three permanent "western" members of the Security Council ("P-3"). The second was the identification by Brazilian diplomats of an opportunity for the country to gain profile by making a normative contribution to a key global debate. The third was genuine concern over the implementation of the Libyan mandate: while on board with R2P's tenets of political-level protection of individuals, Brazilian representatives legitimately doubted the utility of the use of force in achieving a satisfactory end to the Libyan conflict in human terms.

Limiting the use of force

The RwP note has made several contributions to structuring the subsequent debate on R2P's implementation, based mostly on stricter guidelines to resolve R2P's crisis of legitimacy after Libya: the sequencing of R2P's pillars; increased restrictions on the use of force; and more proactive monitoring by the Security Council of the following of guidelines by ongoing missions.

Analytical criticisms of the RwP note can be roughly divided into five major categories:

1. that the concept represents a reiteration of previously established attributes of R2P with little value added;

2. that the initiative's intention was to work against the institutionalization and concretization of R2P;

3. specific observations about the political, moral and military feasibility of RwP's concrete suggestions, particularly as noted above: sequencing, proactive monitoring, and further limitations on the use of force;

4. RwP's perceived conflation of *jus ad bellum* and *jus in bello*;

5. the contention that Brazil withdrew diplomatic capital from the concept too early, before giving it the time truly to come to fruition as a unifying concept.

In terms of states' reactions, the RwP concept was initially met with scepticism from both Northern and Southern states. Some Southern states did not agree with the note's seeming endorsement of R2P's normative acquis of prioritizing individual over state rights, and removing sovereign's potential as a shield against influence-taking by more powerful states. Northern states in turn perceived it as an attempt to limit their range of action, coming from a state with little history of active participation in robust military interventions. The note was perceived by some as part of a broader challenge to Western influence, and an attempt to delegitimize NATO's post-Cold War role in interventions.

Brazil was asked, including by UN Special Advisor for R2P, Jennifer Welsh, to develop a specific suggestion of utility to all actors involved in crafting the international community's response to crises. However, with regard to ordering R2P's pillars, Western states in particular questioned the sagacity of strict sequencing. Many argued that neither the UN Secretary-General's Implementation Reports, nor the UN Charter, nor broader international law called for the stringent chronological sequencing of R2P's pillars. This subordination to strict sequencing was seen as all-too limiting of the Council's options, and the strict limits on the use of force as counterproductive to the very diplomatic efforts meant to preclude its use. Such a strict formula, it was argued, would tie the international community's hands in the case of the specific requirements of actual crises. Some Western states criticized the perceived loss of efficacy such limits might produce, with attendant results for the credibility and legitimacy of the UN as a conflict resolution actor.

The future of R2P: legitimacy and participation by the Global South

Southern states are likely to derive their notion of legitimacy from global representativeness rather than military efficacy. Their participation in the R2P conversation – both in terms of dominant states' conceding the space for them to do so, and Southern states' development of greater protagonism and stakeholdership in the process – is, however, crucial.

The Brazilian RwP initiative provided waypoints for structuring the R2P conversation around elements likely to produce buy-in from emerging and other powers in the postcolonial realm. Accordingly, defenders of the responsibility to protect, now faced with a problematic outcome in Libya and paralysis and inefficacy in Syria, should identify in reviving the RwP initiative a key step towards resuscitating the concept's legitimacy and, therewith, its efficacy as a means of atrocity prevention.

The key points here include, for Northern states:

1. Engagement with the question of the utility of the use of force, both per se as a tool of conflict management, and in relation to other elements in the prevention toolbox, including confronting not only potential positive counterfactuals, but its potentially counterproductive nature.

2. Widening the R2P toolbox — and, by extension, the definition of international responsibility in security matters — to include policies and practices where the Global South can make significant contributions based on domestic experiences; these often include programmes designed to tackle the "root causes" of persistent conflicts, such as poverty and inequality, hunger, and a lack of basic health services.

3. Increasing monitoring of activities by the UN Security Council, based also on the consistent application of rules and norms to all powers, including the permanent five members of the Security Council ("P5"), for example through support for the French "responsibility not to veto" initiative. This is coupled with a return — in demonstrably humanitarian situations — to prioritizing the

Security Council vis-à-vis regional organizations such as NATO, whose decision-making processes are less inclusive.

In the case of Southern states, important points include:

1. Gradual acceptance of a stronger stakeholder role in international security issues, including remedial responsibility for humanitarian crises by which they are not immediately affected — R2P, including pillar III, is a key guideline and consensus-building mechanism here.

2. Full endorsement of the operationalization of R2P within the United Nations system, beyond the Security Council — including in the field — as a corollary to increasing Southern states' capacity to contribute actively within a broader definition of security which addresses, notably, the security-development nexus.

3. Harnessing comparative advantages in experience and success by contributing to an incipient division of labour within international interventions in which robust peace enforcement is conducted, when necessary, by (largely Northern) states inclined to do so, and development-related tasks handled by Southern states with exportable internal experience in tackling root causes.

Author

Prof Dr Kai Michael Kenkel | Institute of International Relations Pontifical Catholic University of Rio de Janeiro.:

Further information

The International Commission on Intervention and State Sovereignty: The Responsibility to Protect, Ottawa December 2001 (**http://responsibilitytoprotect.org/ICISS Report.pdf**).

Permanent Representative of Brazil to the United Nations: Responsibility while protecting: elements for the development and promotion of a concept, New York November 2011 (**http://undocs.org/A/66/551**).

Kenkel, Kai Michael: "Brazil and R2P: Does taking responsibility mean using force?" Global Responsibility to Protect. Vol. 4, No. 1 (2012), pp. 3-29.