

## Brazil's rendition of the 'Responsibility to Protect' doctrine

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The maintenance of 'international peace and security' was a paramount concern of the world community in the aftermath of the Second World War. What is perhaps the most important international document in history—the United Nations Charter—placed the maintenance of international peace and security in its very first paragraph and article.

In its pursuit of peace, the UN Charter outlawed the use of force (Article 2, paragraph 4<sup>4</sup>), allowing only two exceptions: (i) the use of force in self-defense (Article 51); and (ii) the use of force authorized by the Security Council under Chapter VII of the UN Charter. In addition to these provisions limiting the use of force, the UN Charter enshrined the Principle of Non-Intervention in Article 2(7)<sup>5</sup>, proscribing international interference in domestic affairs (ICJ Nicaragua Jurisdiction 1984, 426).<sup>6</sup>

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<sup>4</sup> Article 2 (4). "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations".

<sup>5</sup> The Principle of Non-Intervention also appeared in General Assembly Resolution 2625 and was recognized as part of International Customary Law by the International Court of Justice in Nicaragua case. See *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, 1986 I.C.J.14, 202 (June27).

<sup>6</sup> The Court took the view that "principles such as those of the non-use of force, non-intervention, respect for the independence and territorial integrity of States, and the freedom of navigation, continue to be binding as part of customary international law, despite the operation of provisions of conventional law in which they have been incorporated."

Another important development after the Second World War was a greater concern for the protection of individuals, even against their own state. The Charter of the United Nations pledged to promote and encourage "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." Many relevant documents ensued, such as the Universal Declaration of Human Rights (Cançado Trindade 2002, 627-670); the Convention on the Prevention and Punishment of the Crime of Genocide; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and other resolutions and treaties.

Notwithstanding the greater concern with the protection of individuals, the international community has repeatedly witnessed mass atrocities. On some occasions—such as in East Pakistan (1971), Pol Pot's Cambodia (1978), or Idi Amin's Uganda (1979)—whereas the international community stood by, foreigners chose to intervene. The absence of authorization by the United Nations Security Council and the impossibility to characterize such interventions as self-defense make them, for most scholars, illegal under international law (Byers and Chesterman 2003, 177-203), although perhaps "morally justifiable." (Buchanan 2003, 130-174)

After the end of the Cold War, the United Nations Security Council increased its activities (Saliba 2012, 401-419). However, the tragedies in Rwanda and in the Balkans were a reminder that the world community still needed a mechanism to deal with mass atrocities that, even if not perfect, would at least be of an "acceptable imperfection." Certainly, more could and should have been done to avert genocide.

In this context, the debate over humanitarian intervention<sup>7</sup> gained momentum and new contours. Humanitarian intervention has been regarded as the sole way to

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<sup>7</sup> Humanitarian Intervention has been defined in many fashions. In this sense, it is advisable to note the definitions presented by Böhlke 2011, 236-238. This article adopts the definition presented by the Danish Institute of

prevent gross and systematic human rights violations in some situations (Pattison 2010, 1-41), although some fear that it may be used selectively and become an instrument of powerful actors to promote their interests (Amaral Júnior 2003, 156-158; Evans 2006-2007, 705). An additional concern is that the principle of non-intervention and the prohibition on the use of force would be undermined by the authorization of the use of force in a fashion not foreseen in the UN Charter (Simma 1999, 1-22).

A report was issued by the International Commission on Intervention and State Sovereignty (ICISS) and presented to the UN Secretary-General in 2001 (ICISS 2001, VII). This report highlights the fact that current state practice characterizes sovereignty as a responsibility, instead of the traditional understanding of sovereignty as control (ICISS 2001, 2.15). Thus, sovereignty must be seen as an instrument for the protection of the life and safety of citizens.

The report construes intervention not as a right, but rather, as a responsibility of the international community, who must discharge it whenever a state fails to perform its primary 'responsibility to protect' the persons under its jurisdiction. Furthermore, when carrying out its responsibility, the international community must address the main causes of internal disturbance (responsibility to prevent); choose the appropriate measures to deal with the problem, only resorting to military intervention in extreme situations (responsibility to react); and offer full assistance in the aftermath of the intervention so as to render possible the reconstruction of the state (responsibility to rebuild) (Evans 2006-2007, 709).

At the 2005 UN World Summit, the assembled heads of state endorsed the concept of "Responsibility to Protect," which has been enshrined in UNGA Resolution

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International Affairs, according to which Humanitarian Intervention means "coercive action by states involving the use of armed force in another state without the consent of its government, with or without authorization from the United Nations Security Council, for the purpose of preventing or putting to a halt gross and massive violations of human rights or international humanitarian law." See Danish Institute of International Affairs 1999, 1.

60/1, (UNGA 2005, Resolution 60/1)<sup>8</sup> incorporating many elements of the report produced by ICISS (Kolb 2012, 5-6). Brazil has actively participated in the debate around the "Responsibility to Protect" (R2P) doctrine. More recently, has even proposed what it believes to be a new approach—the "Responsibility while Protecting" corollary to R2P. The aim of this article is to analyze the Brazilian reaction to "Responsibility to Protect" and its recent proposal of "Responsibility while Protecting." This analysis will be based mostly on the statements of Brazilian Presidents and Ministers of External Relations.

## **2. The Brazilian Position on the "Responsibility to Protect" Doctrine**

### **2.1. Brazilian Foreign Policy in the Twentieth Century**

Brazil's international cooperation standards regarding peace operations have varied considerably through the twentieth century. Initially, Brazil provided aid to efforts undertaken by the League of Nations, to the United Nations operations in Sinai (UNEF I) in 1956—which aimed to hold the ceasefire between Israel and Egypt—and to Congo from 1960 to 1964 (Nasser 2012, 213-241).

Nevertheless, during the 1970s, Brazil distanced itself from the United Nations, since authorities believed that the UN was contributing to the preservation of an old-fashioned international structure in which only a few states had power (Diniz 2006, 303-334). Therefore, during the 1970s and part of the 1980s, Brazil did not take a non-permanent seat at the United Nations Security Council (UNSC) and refused to engage in peace operations (Nasser 2012, 213-241).

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<sup>8</sup> This resolution recognized the primary obligation of each individual state to protect its population from gross violations of human rights and international humanitarian law. However, it stressed that, should peaceful means be inadequate and the primary duty of the state to protect its population be disregarded, the international community would be entitled to take collective action in an appropriate manner.

In 1988, Brazil's election to a non-permanent seat at the UNSC resulted in a change in Brazilian foreign policy. Despite its more active stance towards international issues, Brazilian diplomacy maintained its pro-peace tradition and emphasized the need for peaceful settlement of controversies, absolute respect for state sovereignty, and the principle of non-intervention as centerpieces of the UN Charter (Alsina Júnior 2003, 74).

Consequently, Brazil has only participated in UN peace enforcement operations under Chapter VI of the UN Charter, which does not involve resorting to military measures. This exclusion of military means from the Brazilian foreign affairs agenda accompanied the cultivation of an image of peaceful power (Mead 2011)<sup>9</sup> and the reinforcement of diplomatic solutions as the most suitable manner to deal with political and social crises.<sup>10</sup>

Nevertheless, it can be argued that peaceful diplomacy did not emerge as a calling, but rather as a need. This can be seen from the pragmatic and goal-oriented way in which the Baron of Rio Branco (the Brazilian diplomatic corps' patron) handled political controversies by way of peaceful diplomacy in the beginning of the twentieth century—at a time when Brazil did not have as many strategic possibilities as it enjoys in contemporary world politics (Pereira 2012; Goes 1991, 143-177). In this regard, it is also worth mentioning that this peaceful tradition, evinced chiefly through the reinforcement of state sovereignty and non-intervention, has been upheld by Brazil and many other South American states as a way to prevent the United States from meddling in their domestic affairs (Kenkel 2012, 5–32).

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9 As the Brazilian Former President Fernando Henrique Cardoso affirmed in this interview: 'The point is that we may become the world's first 'soft' superpower because of our strengthening economy, size and population alone, and this is such an historically novel phenomenon that maybe we should be on the Security Council'.

10 In this regard, it must be mentioned Brazilian accession to the Treaty on Non-Proliferation of nuclear Weapons in September 18<sup>th</sup> 1998. Moreover, Brazil also enshrines in Article 4 of its Constitution the peaceful settlement of controversies as a cornerstone of its Foreign Policy.

The proud Brazilian tradition of pacific diplomacy was strengthened by the promulgation of a new Federal Constitution in 1988, when, for the first time in Brazilian constitutional history, it delivered a set of legal principles to serve as 'legal ratio' and influence the Brazilian diplomats' positions on international legal issues.<sup>11</sup> With respect to principles enshrined in Article 4 of the Brazilian Federal Constitution, the principles of non-intervention, state sovereignty, and peaceful settlement of controversies, which are considered cornerstones of Brazilian foreign policy ever since it became a republic in the late nineteenth century, are worth citing.<sup>12</sup>

Concurrently, even after the end of the Cold War, Brazil maintained its opposition to the concept of humanitarian intervention, which was considered a violation of international principles, especially that of state sovereignty, and was thus contrary to the notion of cooperation and strict equality among states (Lafer 1992, 75).<sup>13</sup> Besides, Brazil has highlighted that the use of force based on humanitarian intervention would undermine the UN Charter provisions concerning non-interference and the prohibition of the use of force, since this treaty did not authorize the use of force on these grounds (Amorim 2002-2003, 58-59).

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11 One can still find an updated version of this argument in Brazil's governmental option not to invest in military, but in social policies instead, what denotes the level of priority attributed to the latter to the detriment of the former, as well as a Brazilian perspective of transforming into 'soft-power weaponry' its alleged expertise over social policy management.

12 For a version of Brazilian Constitution in Portuguese, see [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm), accessed February 5<sup>th</sup> 2013.

13 "Maintaining updated the perception of the international conjuncture, Brazil might search to strengthen its participation in the decision process, including the process which leads to the discussion of the so-called transnational themes. Themes of humanitarian and ecological character allow conclusions – such as the *droit d'ingérence*- which breach principles of international law such as the respect for State sovereignty. Under Brazilian Foreign Policy perspective, the relationship among the States is – and must continue to be – dependent on stimulation and limitation of cooperation and not on impositions. This means to uphold a positive agenda of international relations, instead of a negative one. And, exactly, the manner in which we condemn the thesis of a right to intervene, contrary to a world structure based on equality, and the manner in which we support, because of a basic human solidarity issue, that the international community offers – through United Nations, International Committee of the Red Cross and other entities – effective assistance to men, women and children in critical situation."

In a manner consistent with the reasoning mentioned above, Brazil has expressed its position through statements made by the authorities and votes in international organizations. First, it is worth drawing attention to a Brazilian statement condemning the US intervention in Grenada Island, whereby Brazil upheld the principle of non-intervention and the principle outlawing the use of force in international relations.<sup>14</sup> The Brazilian Minister of External Relations concluded, moreover, that resorting to force to sort out the issue was inconsistent with the UN and OAS Charters (Saraiva Guerreiro 1983, 119).<sup>15</sup>

Second, it is important to mention that, especially during the government of Lula da Silva, Brazil abstained from following UNGA decisions concerning the situation of human rights in Iran (United for Iran 2012; Conectas 2011), and from a resolution presented by the United States to the UN Human Rights Commission condemning the situation of human rights in Cuba (Council on Hemispheric Affairs 2005). In addition, relying on the principles of non-intervention and state sovereignty, Brazil, as a non-permanent member of UNSC, abstained from a proposed resolution under Chapter VII of the UN Charter that addressed the situation in Darfur (UNSC 2005, Resolution 1593).

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14 As a response to this event and to other military interventions in Central America (for instance, operations in Nicaragua and El Salvador), carried out by the United States during the government of Ronald Reagan, some Latin American states (Mexico, Panama, Venezuela and Colombia) have created the Contadora Group to manage peaceful solutions for Central America instability. Brazil, alongside other South American states (Argentina, Uruguay and Peru), has framed the Support Group in order to back actions of Contadora Group. In 1986, both groups merged into the Rio Group. See Cervo and Bueno 2012, 482-483; Visentini 2013, 81-82.

15 "Despite understanding that the deterioration of internal situation in Grenada led to extreme limits, capable of provoking legitimate preoccupation among neighboring states, Brazilian government deplore the resource to armed force, breaching the principle of non-intervention, laid down in UN and OAS Charters, especially in its article 18. Brazilian government stresses its loyalty to the principle prohibiting the use of force in international relations and reassures its understanding towards the full validity of the principle of non-intervention, principles with which every Party to the AOS Charter and to the UN Charter is bound to comply. In this extremely serious moment to the lives of all Latin-American nations, Brazil warns to the risks of worsening the situation in the hemisphere and urges strongly to an honest and effective political effort so as to diminish the tensions and to peacefully settle the existing problems."

Finally, Brazil also upheld Security Council Resolution 1244, which, pursuant to the Brazilian Foreign Minister Celso Amorim, recalled the commitment of all UN Members to the sovereignty and territorial integrity of Yugoslavia. In this regard, Brazil also ascertained that the states that had recognized Kosovo's independence prior to a final decision by the United Nations disregarded the prevalence of the United Nations' multilateral decision on this issue (G1 2008).<sup>16</sup>

## **2.2. The Brazilian Military's Deployment to Command UN Peacekeeping Operations in Haiti and the Idea of 'Non-Indifference'**

In 2004, despite its support for the principles of non-interference, prohibition on the use of force, and state sovereignty, Brazil evinced an emerging support for interventions to ensure democratic order when President Lula agreed to deploy Brazilian armed forces in Haiti to command a UN Peacekeeping Operation authorized by the UNSC under Chapter VII of the UN Charter (UNSC 2004, Resolution 1576).

In his statement regarding this issue, President Lula highlighted the necessity of developing a South American cooperation arrangement in the field of defense; he also stressed that this process must respect the principles of non-intervention and national sovereignty (Lula da Silva May 23<sup>rd</sup> 2008).<sup>17</sup>

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<sup>16</sup> "Brazil supports the prevalence of a constructive orientation and political will which render possible the reaching of a satisfactory solution and urges the actors involved in the process to act calmly in order not to threaten the peace and security in the region, as well as to ensure an appropriate protection to the minorities. Brazil upholds the continuity of negotiations under the orientation of United Nations and considers that a solution must take place on multilateral basis."

<sup>17</sup> "It is time to deepen our South American identity also in the field of defense. Our Armed Forces are committed with the peace build. The presence of many of our States in MINUSTAH, United Nations force responsible for granting security in Haiti, is an example of this determination. We must articulate a vision of defense in the region relying on common values and principles, such as the respect for sovereignty and for self-determination, territorial integrity of States and non-intervention in domestic affairs."



Participating in the UN Peacekeeping Operation in Haiti represents a shift in Brazilian foreign policy since it indicates that, although the principles of state sovereignty and non-intervention still play a pivotal role in its foreign policy, Brazil has perceived that these international rules must be interpreted in a manner consistent with the idea of non-indifference (Amorim 2010; Amorim June 6th 2005).<sup>18,19</sup> This notion might be defined, from a Brazilian perspective, as the willingness to provide assistance, mainly in terms of diplomacy, when required, and when a state deems it pertinent, so as to settle a political or social crisis (Amorim September 24<sup>th</sup> 2004; Amorim November 25<sup>th</sup> 2005).<sup>20,21</sup>

### **2.3. The "Responsibility to Protect" (R2P) Doctrine**

#### **2.3.1. The Prevalence of Non-Coercive Measures and Peaceful Settlements of Disputes**

After the 2005 UN World Summit, when the assembled heads of state endorsed the concept of "Responsibility to Protect" through UNGA Resolution 60/1 (UNGA 2005,

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18 "The respect for self-determination alongside with the decision of helping those who are extremely needed is what we call the 'non-indifference', principle which does not affect the non-intervention, but brings a new perspective on it."

19 "Brazilian Diplomacy relies its activity upon the principle of non-intervention in domestic affairs, which is enshrined in our [OAS] Charter. The Government of President Lula associates this basic principle with the attitude that we describe as of 'non-indifference'."

20 "Maybe the most important influence, given the circumstances of our times and the importance acquired by Brazil, is that which, without setting aside the fundamental principle of non-intervention, complement it with the so-called 'non-indifference'. This means offer our support, chiefly diplomatic, to help, when required and when we deem pertinent to undertake it, to settle crisis (...)"

21 "Also in January 2003, occurred a fact that would evince the adoption by Brazilian government of an attitude of active solidarity in regional matters. To the principle of 'non-intervention', so important in Brazilian diplomatic tradition, it has been added the principle of 'non-indifference'. In fact, considering it is proscribed to intervene in sovereign right of each people to solve their own problems, it is necessary that States with capacity show their willingness to collaborate, whenever required to do so, chiefly when the signs of political and social crisis are evident."

Resolution 60/1), Brazil delivered statements discussing its concerns about the emerging notion of R2P.

Brazil has upheld the idea that there should be subordination and a chronological sequence among the three pillars of R2P, stressing that the protection of human rights, democracy, and respect for the rule of law hinge on the adoption of preventive measures, which must be discharged simultaneously with policies stimulating social and economic development in order to achieve political stability and peace (Viotti July 12<sup>th</sup> 2011, 4-5; Amorim September 17<sup>th</sup> 2005, 3-4).<sup>22,23</sup> It has thus concluded that political solutions, such as mediation and diplomacy, are the most suitable means to address the political and social crises which led to gross breaches in international law.

However, Brazil has pointed out that the use of force, the third pillar of the R2P concept, must only take place when it is proven that non-coercive measures have been exhausted and there are no viable peaceful ways to settle a controversy (Amorim September 17<sup>th</sup> 2005, 3-4).<sup>24</sup> Likewise, it has warned against the hazardous consequences

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22 "In this endeavor, we should also add the importance of social and economic development. Brazil has emphasized that political stability and social and economic development are closely interlinked and mutually reinforcing. Prevention must also focus on helping countries to promote policies aimed at improving the standards of living of their populations. Tangible progress in economic and social issues bears a positive impact on the political and the security situation. We look forward to examining in detail the potential that strengthening the security sector, the rule of law and the provision of basic resources have in preventing mass atrocity crimes. (...) In this context, preventive measures, such as mediation and diplomacy in general have many advantages and should be used more frequently. They are better suited to tackle the root causes of conflicts. Underlying most conflicts are political problems that require political solutions."

23 "Human security is mainly the result of just and equitable societies, which promote and protect human rights, strengthen democracy and respect the rule of law, while creating opportunities for economic development and social justice."

24 "The United Nations was not created to disseminate the notion that order should be imposed by force. This extreme expedient can only be considered when all other efforts have been exhausted and peaceful solutions have indeed proved not viable.(...)I note with satisfaction that since the World Leaders Meeting for the Action Against Hunger and Poverty - convened last year by President Lula - we have achieved significant progress. A growing number of governments and NGOs have joined in the effort to eradicate hunger and poverty. This is the only war in which we are engaged. This is the only war we can all win."

of coercive measures, since intervention can only tackle the consequences of problems and not the root causes of human rights violations (Amorim September 17<sup>th</sup> 2005, 3-4).<sup>25</sup>

### 2.3.2. The United Nations Security Council Authorization and Necessary Reforms

In addition to non-coercive measures and peaceful settlements of controversies, Brazil initially considered consent of the affected state as a necessary condition to the legality of humanitarian intervention (UNGA 1991, Resolution 46/182).<sup>26</sup> However, considering the difficulties that this requirement would bring to this type of action, Brazil slightly changed its reasoning in order to express the fact that humanitarian intervention should *preferably* be accompanied by authorization given by the affected state (Souza Neto 2010, 191).

Furthermore, Brazil has highlighted the fact that actions on the grounds of "Responsibility to Protect" may not be taken by relying on unilateral assessments of the situation since the UN Charter only authorizes the unilateral use of force in cases of self-defense, which are, by their very nature, provisory inasmuch as these actions may only be carried out until the Security Council takes measures to deal with the matter. Hence, Brazil has concluded that if it supported a unilateral use of force that is not used for self-defense, it would be legitimizing 'the law of the strongest.' (Lampreia 1999, 327).<sup>27</sup>

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25 "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."

26 In this regard, Brazil has upheld the Resolution 46/182, which determines that: "The sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country."

27 "As a medium State, of large peaceful tradition, we may not, nonetheless, support the unilateral use of military means, even against gross violators of international order as Iraq. This support would legitimate the stronger law, it

In a manner consistent with this understanding, Brazil has reinforced the idea that actions based on "Responsibility to Protect" must be preceded by a multilateral decision (Amorim, March 4<sup>th</sup>2010)<sup>28</sup> of a competent UN organ, i.e. the Security Council (Amorim 2005, 3; Amorim 2003).<sup>29</sup> The pivotal role of the UNSC on this issue has led Brazil to draw attention to reforming the structure of the Security Council, a subject of major importance in Brazil's view. Brazil has thereby sustained its claim that this organ of the UN lacks representativeness insofar as it does not incorporate, chiefly as permanent members, the developing countries of Africa, Latin America, and Asia. Brazil has stressed, moreover, that the reform process is also important because of the UNSC agenda and responsibilities expanding, which entails the necessity of taking legitimate decisions and having the capacity to ensure they are followed through (Amorim 2005, 4).<sup>30</sup>

It is important to stress, moreover, that the Brazilian position regarding the role of the Security Council on the R2P issue underlies a great concern: the selectivity (Holzgreffe 2003, 46-47; Pattison 2010, 169-173; Amaral Júnior 2003, 120-124) of the operations based on "Responsibility to Protect" (Viotti July 12<sup>th</sup> 2011, 4-5). Brazil has

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would disregard the primacy of international law which is the greatest protection of States. Thus, in the Security Council, Brazil has ever defended the respect for multilateral norm."

28 "Brazilian presence in Haiti, for instance, was and is motivated by the spirit of solidarity to this brother people. Or, as I have said a couple of times, by the notion that, in certain extremes cases, the non-intervention must be influenced by the non-indifference, as long as the actions rely on legitimate multilateral decisions."

29 "The United Nations Security Council is the only organ legally competent to authorized the use of force, this extreme resource which might only be used when the other efforts and possibilities have been completely exhausted." Amorim 2003.

30 "Security Council reform is the centerpiece of the reform process in which we are engaged. The immense majority of Member States recognizes the need to make the Security Council more representative and democratic. At this historical juncture, no Security Council reform will be meaningful should it not contemplate the expansion of permanent and non-permanent seats, with developing countries from Africa, Latin America and Asia in both categories. We cannot accept the perpetuation of imbalances that run contrary to the very spirit of multilateralism. Above all, a more efficient Council must be capable of ensuring the implementation of its decisions. It is not reasonable to expect that the Council can continue to expand its agenda and responsibilities without addressing its democracy deficit".

criticized the conclusion of the ICISS Report that force could be used unilaterally by "concerned states" on these grounds. Pursuant to the Brazilian point of view, this assessment might not be accepted, since it could lead to the use of force for purposes other than offering assistance to those who need it (Amorim 2011, 235).

Consequently, we can conclude that Brazil has reinforced the role of the Security Council that has a twofold objective. First, Brazil intended to restrict the use of force on the grounds of "Responsibility to Protect," which, according to Brazilian reasoning, would hinge upon a multilateral assessment of the situation—a condition expected to considerably diminish the arbitrariness in decision making with respect to the use of force. (Viotti November 11<sup>th</sup> 2011, Anex, 4, letter (i)).<sup>31</sup> Second, Brazil aimed to highlight the necessity of reform in the UNSC, since, from a Brazilian viewpoint, the decisions of this organ must be representative in order to discharge new tasks assigned to it. This second Brazilian goal became even clearer in a statement by President Dilma Rousseff at the opening of the 66th Session of the United Nations General Assembly, when she stated that the UNSC composition does not reflect the contemporary world reality and, therefore, its resolutions lack "credibility and effectiveness." (Lopes 2012, 191-199). President Rousseff also took the opportunity to assert that Brazil is prepared to bear the responsibility of being a permanent UNSC member (Rousseff September 21<sup>st</sup> 2011, 5-6).<sup>32</sup>

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31 Pursuant to Brazilian reasoning, the importance of the Security Council goes beyond the authorization to the use of force relying upon the Responsibility to Protect, since it must, moreover, ensure the accountability of those to whom authority is granted to resort to force, if they breach International Law. For further information on this perception, which has become clear in Brazilian development of the notion of the Responsibility while Protecting.

32 "Much is said about the responsibility to protect; yet we hear little about responsibility in protecting. These are concepts that we must develop together. For that, the role of the Security Council is vital - and the more legitimate its decisions are, the better it will be able to play its role. And the Council's legitimacy increasingly hangs on its reform. Mr. President, with each passing year, it becomes more urgent to solve the Council's lack of representativeness, which undermines its credibility and effectiveness. Former General Assembly President Joseph Deiss reminded me of an impressive fact: the debate on Security Council reform is entering its 18th year. We can delay no longer. The world needs a Security Council that reflects contemporary realities; a Council that brings in new permanent and non-permanent members, especially developing countries. Brazil is ready to shoulder its responsibilities as a permanent member of the Council."

### 3. The "Responsibility while Protecting" (RwP) Doctrine and First Reactions to it

Alongside its critical stance on "Responsibility to Protect" (Viotti July 12<sup>th</sup> 2011, 4-5)<sup>33</sup>, Brazil has highlighted, more recently, the fact that the international community, whilst using force on the grounds of "Responsibility to Protect," must comply with material, temporal, and formal limitations whose objective is to ensure that the operations carried out based on this exception do not worsen conflicts and harm the civilian population (Viotti November 11<sup>th</sup> 2011, Anex, 5).<sup>34</sup>

In its endeavor to limit the scope of "Responsibility to Protect," Brazil set forth that "Responsibility to Protect" must accompany "Responsibility while Protecting." This notion first appeared in 2011 during a statement by President Dilma Rousseff at the opening of the 66<sup>th</sup> Session of the United Nations General Assembly. She reminded the audience of the civilian casualties in recent military interventions and reinforced the importance of diplomacy and social and economic development during conflict prevention. In conclusion, she stated that the international community had paid too much attention to "Responsibility to Protect," but had overlooked the "responsibility in protecting" (Rousseff September 21<sup>st</sup> 2011, 5).<sup>35</sup>

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33 In this regard, Brazil has stressed the prevalence of the second pillar of this concept, related to the provision of assistance and capacity-building to the States by the international community, and has reinforced the subsidiary and last-resort character of the third pillar, which requires the previous exhaustion of all peaceful means to tackle the matter and the authorization of the UNSC to the international use of force relying on R2P.

34 "In addition to recognizing that each individual State has the primary responsibility for protecting its own population, the 2005 World Summit Outcome placed limitations on the use of force by the international community in the exercise of its responsibility to protect: (a) material (genocide, war crimes, ethnic cleansing and crimes against humanity); (b) temporal (upon the manifest failure of the individual State to exercise its responsibility to protect and upon the exhaustion of all peaceful means); and (c) formal (through the Security Council, in accordance with Chapters VI and VII of the Charter and on the basis of a case-by-case evaluation)."

35 Afterwards, the expression "responsibility in protecting" has been replaced in Brazilian statements for the expression "responsibility while protecting", nonetheless they make reference to the same idea and have the same Portuguese translation "Responsabilidade ao Proteger".

In this regard, this concept brings to light the outrageous consequences of the failure of the international community to take appropriate measures—such as in Rwanda—and highlights the drawbacks of prior humanitarian interventions. Hence, it evinces that compliance with international humanitarian law, human rights law, and rules concerning the use of force (*Jus ad Bellum*) are essential elements of these actions, insofar as they might not cause greater harm than they try to prevent (Rousseff September 21<sup>st</sup> 2011, 3-4). Moreover, it is possible to infer from official Brazilian statements that the consequences of military intervention in Libya during the “Arab Spring” led Brazil to develop and emphasize the “Responsibility while Protecting” doctrine (Viotti January 18<sup>th</sup> 2012).<sup>36</sup>

To sum up what was at stake in this case, the Brazilian Minister of External Relations, Ambassador Antonio de Aguiar Patriota, addressed a document to the Secretary-General of the UN in which he explained the rationale behind the “Responsibility while Protecting” doctrine. According to a Brazilian perspective on this issue, recent military interventions have shown that “Responsibility to Protect” may be misused and may aggravate existing conflicts, and thereby the use of force on these grounds must accompany the idea of “Responsibility while Protecting.” (Viotti November 11<sup>th</sup> 2011, Anex, 3).

### 3.1 First Reactions

On 21 February 2012, the Brazilian Ministry of Foreign Affairs organized an informal discussion on “Responsibility while Protecting”, at the United Nations headquarters.

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36 “The way participants have referred to the Brazilian initiative on the “responsibility while protecting” has been very encouraging. I am glad they view it as useful and constructive, just as we want it to be. It is fair to say that Libya, especially in the aftermath of Security Council Resolution 1973, has been a defining moment in our reflections.”

The event was co-chaired by Brazil's Minister of External Relations, Ambassador Antonio de Aguiar Patriota, and the United Nations Special Adviser for the Responsibility to Protect, Dr. Edward Luck. The discussions were based on a "concept note" (Kolb 2012, 7-8)<sup>37</sup>, which had previously been presented to the United Nations General Assembly.<sup>38</sup>

An analysis of the speeches delivered by the states reveals different perceptions of Responsibility to Protect, as well as of Responsibility while Protecting. For instance, whereas the Australian delegation stated that responsibility to protect is now "widely accepted", Venezuela took the view that there is "no consensus on the scope and nature of the responsibility to protect."<sup>39</sup> Also, the different ways to refer to Responsibility to Protect in the discussions may demonstrate that a lack of consensus regarding its nature still persists: Australia used the word "principle", the U.S. called R2P "a concept", Kenya spoke of an "emerging norm", Denmark preferred the term "doctrine" and some others chose not to use any word or expression to qualify it.<sup>40</sup>

The discussions gave the impression that the relation between R2P and RWP still needs to be refined. Brazilian Minister Antonio Patriota proposed in his opening speech that the "concepts of 'responsibility to protect' and 'responsibility while protecting'

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37 Despite the frequent reference to the expression "Responsibility while Protecting," a clear and precise definition of the concept has not been enshrined in any of Brazilian statements. Nevertheless, it is possible to envisage its content relying on the parameters highlighted in the "concept note" presented by Brazilian Permanent Representative to the United Nations. In this sense, it is worth mentioning the emphasis on preventive diplomacy and the adoption of military action only as a means of last resort. For further comments on Brazilian "concept note".

38 Most (but not all) statements made at the informal meeting are available at <<http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/4002-informal-discussion-on-brazils-concept-of-responsibility-while-protecting>> accessed February 4<sup>th</sup>, 2013.

39 Available at <<http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/4002-informal-discussion-on-brazils-concept-of-responsibility-while-protecting>> accessed February 4<sup>th</sup>, 2013.

40 Available at <<http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/4002-informal-discussion-on-brazils-concept-of-responsibility-while-protecting>> accessed February 4<sup>th</sup>, 2013.



should evolve together, based on an agreed set of fundamental principles, parameters and procedures". The Netherlands stated that "RwP is not a separate concept but a contribution to the ongoing discussion on the implementation of R2P." Ghana also took the view that RwP was not "a new concept but rather an initiative to clarify the concept of R2P. Costa Rica, however, treated RwP as a reflex of Brazil's concern regarding R2P when force is applied. Costa Rica further added that such 'concerns' are "more of an operative than of a conceptual character".<sup>41</sup>

Some points of the Brazilian proposal faced strong opposition from some of the participants. Among others, Australia, Costa Rica, Germany, Ghana, the European Union and the U.S. opposed the notions that the "three pillars must follow a strict line of political subordination and chronological sequencing", that the third pillar "applies to exceptional circumstances and when measures provided for in the first and second pillars have manifestly failed" and that "the international community must be rigorous in its efforts to exhaust all peaceful means available".<sup>42</sup>

The main grounds for objection were the need that the criteria or guidelines remain flexible "so as not to tie the hands of the Council in cases where action is needed" and the fact that even after force has been used, diplomacy may still be utilized. Additionally, in response to the proposition that the Security Council developed procedures "to monitor and assess the manner in which resolutions are interpreted and implemented to ensure responsibility while protecting", the Netherlands cautioned that "micro management from the Council might result in a decreased appetite to implement

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41 Available at <<http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/4002-informal-discussion-on-brazils-concept-of-responsibility-while-protecting>> accessed February 4<sup>th</sup>, 2013.

42 Available at <<http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/4002-informal-discussion-on-brazils-concept-of-responsibility-while-protecting>> accessed February 4<sup>th</sup>, 2013.

Security Council mandates."<sup>43</sup>

It should be noted that some participants showed more enthusiasm about RWP, such as Malaysia, Kenya, and South Africa. The latter went as far as to say that Responsibility while Protecting "not only promotes accountability when the international community has to resort to the use of force, but managed correctly, it will engender closer cooperation between the UN and the international community."

The informal meeting may have served as a first test to the Brazilian proposal, showing which points of the RWP doctrine are likely to face opposition and issues that need to be addressed in the future.

### **Concluding Remarks**

Brazilian foreign policy has continually relied upon the principles of non-intervention and state sovereignty. Brazil has continually highlighted that the use of force on the grounds of humanitarian intervention undermine the very rationale of the United Nations system, since the UN Charter has not foreseen these actions as an exception that allows the use of force.

After the development of the "Responsibility to Protect" doctrine after the report of the ICISS was published and, chiefly, through its adoption by the 2005 World Summit and Resolution 60/1 of the United Nations General Assembly, Brazil has endeavored to limit its scope. It has also stressed the prevalence of non-coercive and diplomatic measures (the second pillar of the "Responsibility to Protect" doctrine) and, thus, has drawn attention to the subsidiary and last-resource character of military intervention (the third pillar of the "Responsibility to Protect" doctrine).

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43 Available at <<http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/4002-informal-discussion-on-brazils-concept-of-responsibility-while-protecting>> accessed February 4<sup>th</sup>, 2013.

Brazil has pointed out, moreover, that the use of force based on "Responsibility to Protect" must be discharged in accordance with international humanitarian law, human rights law, and the rules regarding the use of force (*Jus ad Bellum*), since these actions should not worsen the conflicts and harm to the civilian population. Consequently, Brazilian reasoning has led to the development of the concept of "Responsibility while Protecting," which aims to show the importance of complying with a legal framework during these operations.

Brazil has set forth, likewise, the importance of reform in the structure of the Security Council so as to incorporate, as permanent members, developing states from Africa, Latin America, and Asia. Pursuant to the Brazilian position, the role of the Security Council in the "Responsibility to Protect" issue is essential, inasmuch as it must authorize all actions and ensure accountability of those to whom authority is granted to resort to force in cases that they breach international law.

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