

# THE ROLE OF THE RESPONSIBILITY WHILE PROTECTING INITIATIVE IN PROMOTING THE RESPONSIBILITY TO PROTECT

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## Abstract:

*After severe criticism of humanitarian intervention, the Responsibility to Protect (R2P) emerged as a new approach to protecting civilians from serious crimes, reconciling the principle of sovereignty with the duty to intervene. R2P is based on three pillars: the responsibility of the state to protect, international assistance and capacity-building, and a timely and decisive response. However, the deviation in the application of R2P to the conflict in Libya in 2011 revealed numerous flaws within the principle. In response, Brazil proposed a new initiative called 'Responsibility While Protecting', which emphasises that the international community must demonstrate a high level of responsibility while providing protection. Despite the support it received from the then UN Secretary-General, it also faced significant criticism and was rejected by most major states, ultimately leading Brazil to abandon its initiative.*

**Keywords:** Responsibility to protect; Responsibility to protect pillars; Responsibility while protecting.

## INTRODUCTION:

After the international reality showed that humanitarian intervention has not practically achieved its intended goals, it became necessary for the international community to seek alternative means capable of protecting human rights on the one hand and respecting state sovereignty on the other. This quest led Canada to establish the International Commission on Intervention and State Sovereignty in 2000, whose mandate was to establish new foundations for humanitarian intervention by reconciling the international community's duty to intervene in the face of violations of humanitarian norms with respect for the principle of state sovereignty.

A year after its establishment, the Commission presented its report, which called, inter alia, for a shift from the concept of sovereignty as authority to the concept of sovereignty as responsibility. From this point, discussions began on the formulation of a new concept of intervention, known as the "responsibility to protect", which was articulated and applied in numerous discussions and resolutions of both the Security Council and the United Nations General Assembly. Indeed, the principle of the responsibility to protect was activated by the UN Secretary-General's 2009 report entitled "Implementing the Responsibility to Protect".

In fact, the responsibility to protect was implemented through Security Council Resolution 1973 on the situation in Libya in 2011, which authorised military intervention in that country. Given the excesses that occurred during the implementation of this intervention, particularly with regard to regime change, Brazil proposed the Responsibility to Protect initiative, which included a set of standards and procedures aimed at upholding the responsibility to protect. This included limiting the use of military force and protecting civilians, as well as emphasising the accountability of leaders of intervening states to the Security Council, which authorises the intervention.

To what extent can the Responsibility to Protect initiative serve as an additional, complementary and reinforcing support to the Responsibility to Protect, taking into account the shortcomings revealed by the application of the latter and the set of principles and procedures proposed by this initiative?

In response to this question, we have decided to divide the study into two parts. The first part is devoted to the concept of the Responsibility to Protect and the clarification of its foundations, while the second part is devoted to the Responsibility While Protecting initiative and its impact on strengthening the Responsibility to Protect.



## 1. The concept of the responsibility to protect and its foundations

The Responsibility to Protect (R2P) is a new concept based on the idea of a shared responsibility between states and the international community to protect human rights, prevent conflict and protect populations from persecution. R2P is realised through the implementation of preventive measures that states are obliged to take to prevent international crimes. In cases of failure or unwillingness, the international community must take subsequent action to adopt deterrent measures to stop violations and remedy situations. R2P thus rests on three pillars: the state's responsibility to protect, international assistance and capacity-building, and timely and decisive response.

### 1.1 The Responsibility to Protect

In a letter of 26 July 2002 from the Permanent Representative of Canada to the United Nations to the Secretary-General, which included the report of the International Commission on Intervention and State Sovereignty<sup>1</sup>, it was stated that the principle of non-intervention was being superseded by the international responsibility to protect. This marked the first appearance of the idea of R2P, which is an evolution of the principle of humanitarian intervention. The term "right to humanitarian intervention" was replaced by "responsibility to protect" to be used in the discussions within the report of the Commission on Intervention and State Sovereignty. The Commission put forward several arguments for this change, including that the traditional language did not adequately take into account the need for prior preventive efforts or subsequent assistance and monitoring.

#### 1.1.1 Definition of the Responsibility to Protect

The Responsibility to Protect can be defined as "The responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity rests with each State. This responsibility includes preventing these crimes, including incitement to commit them, by all appropriate and necessary means"<sup>2</sup>

The International Commission on Intervention and State Sovereignty defined R2P in its report as: "... intervention for the protection of human beings, including military intervention, in situations of extreme gravity, where grave harm is being caused or is imminent to civilians, and where the state in question is unwilling or unable to prevent such harm, or is itself the perpetrator of such harm"<sup>3</sup>.

The Commission added that R2P necessarily involves: "a wide range of actions and various supporting measures to be implemented. These actions may include both long-term and short-term measures aimed at preventing situations that threaten human security from arising, worsening, spreading or persisting, and at supporting reconstruction to prevent their recurrence. In extreme cases, at a minimum, military intervention to protect civilians at risk"<sup>4</sup>.

Eve Massingham describes R2P as: "a new approach to protecting populations from mass atrocities. This emerging principle dictates that the principle of non-intervention in the internal affairs of other states is subject to the international responsibility to protect when a state is unwilling or unable to protect its citizens from widespread actual or imminent loss of life (with intent to commit genocide or not), or large-scale ethnic cleansing."<sup>5</sup>

From these definitions of R2P, we can derive three elements of the responsibility to protect, which we clarify below.

#### 1.1.2 Elements of the Responsibility to Protect

The Responsibility to Protect comprises three elements: the responsibility to prevent, the responsibility to react, and the responsibility to rebuild, which we will present as follows:

##### 1.1.2.1 Responsibility to prevent (preventive responsibility)

Effective conflict prevention requires an understanding of the fragility of the situation and the risks associated with it, as well as an awareness of the political measures available to bring about change and a willingness to implement them<sup>6</sup>. The International Commission on Intervention and State Sovereignty stated that the responsibility to prevent requires three essential conditions:



**1.1.2.1.1 Early warning:** In the 2010 report of the UN Secretary-General on “Early Warning, Assessment and the Responsibility to Protect”, presented to the General Assembly at its sixty-fourth session, the Secretary-General clarified that the responsibilities of his Special Adviser on the Prevention of Genocide depend largely on early warning and assessment capabilities, including:

- Collecting existing information, in particular from within the UN system, on serious and grave violations of human rights and international humanitarian law of an ethnic or racial character that, if not prevented or stopped, may lead to genocide.
- To act as an early warning mechanism to the Secretary-General and, through him, to the Security Council, drawing their attention to situations that may lead to genocide.
- To make recommendations to the Security Council, through the Secretary-General, on measures to prevent or stop genocide.
- Co-operating with the United Nations in activities related to the prevention of genocide and enhancing the UN’s capacity to analyse and manage information related to genocide and related crimes<sup>7</sup>.

Moreover, early warning and analysis processes are inherently collective endeavours, based on the provision of information at the local level, including from NGOs, and the analysis of this information by officials with different levels of expertise. It also involves the assessment of public policy options and the conditions that may lead to their success, as well as the discussion of preventive strategies with relevant policy makers. In addition, UN Member States have a fundamental role to play, not only in providing material and political support to strengthen early warning capacities and the field presence of the UN and regional organisations, but also in increasing their willingness to share information on risk factors<sup>8</sup>.

#### **1.1.2.1.2 Preventive measures**

Preventive measures refer to a set of actions aimed at addressing the root and proximate causes of internal conflicts by eliminating the underlying or immediate causes of internal disputes and other crises that threaten the human rights situation in a country<sup>9</sup>.

Article 55 of the Charter states that facilitating solutions to international economic, social and health problems, as well as strengthening international cooperation in culture, education and respect for human rights, leads to the creation of conditions for stable international relations. However, there is no consensus on identifying the immediate causes of conflict; rather, there is recognition that existing conflicts cannot be understood without considering social and political causes such as poverty and political repression. The report of the International Commission on Intervention and State Sovereignty outlines specific measures to prevent the root and immediate causes of conflict, some of which are taken by governments to protect their populations, while others have an international character<sup>10</sup>.

#### **1.1.2.1.3 Political will**

It is logical that advocates of the responsibility to protect agree that the limitations of early warning are a critical issue for governments and international organisations. However, the degree of political will on the part of these governments, as well as on the part of international organisations, to analyse available early warning information and to translate it into political decisions and immediate action, is always a priority<sup>11</sup>. Political will has two aspects: first, the political will to accept the responsibility to protect, and second, the political will to provide armed forces with adequate resources and a legal mandate that enables them to provide protection<sup>12</sup>.

#### **1.1.2.2 Responsibility to respond**

The responsibility to respond entails the obligation to respond to situations of urgent human need, particularly when preventive measures fail to resolve or contain the situation and the State is unable or unwilling to address the problem. In such cases, intervention measures may be required from other members of the international community. These coercive measures may include political, economic or judicial action and, only in extreme cases, military action<sup>13</sup>. The failure of preventive measures to avert or



contain a humanitarian crisis or conflict does not necessarily entail military action; rather, wherever possible, coercive measures other than military action, including various types of political, economic and military sanctions, should be considered first<sup>14</sup>.

In recent years, sanctions targeting leaders and organisations responsible for serious human rights violations, known as “smart sanctions”, have emerged. The Security Council currently recognises the need to exempt materials and supplies essential to human life from the scope of international sanctions. Efforts to identify more effective sanctions targets - aimed at reducing their impact on civilians while increasing their impact on decision-makers - focus on three areas:<sup>15</sup>

1. Military domain: Sanctions in this area can include bans on arms sales and the cessation of military cooperation and training programmes to force a state to comply with international rules.
2. Economic domain: The imposition of financial sanctions on the foreign assets of a state, terrorist organisation or rebel movement may include restrictions on economic activities and oil products, as well as flight bans to and from certain locations<sup>16</sup>.
3. Political and diplomatic areas: The imposition of restrictions on diplomatic representation, including the expulsion of international staff, or travel restrictions against certain leaders and individuals, as well as the possibility of suspending or denying a state’s membership in an international body or organisation<sup>16</sup>.

Therefore, while military intervention is aimed at preventing the outbreak of conflicts and humanitarian emergencies or reducing their severity, spread or recurrence, planning for such intervention should prioritise the importance of establishing a post-intervention strategy. Consequently, the aim of this strategy should be to prevent the recurrence of the underlying causes that led to the military intervention<sup>17</sup>.

#### **1.1.2.2 Responsibility to Reconstruct**

Responsibility for reconstruction requires that, when military intervention takes place under the responsibility to protect, there must be a genuine commitment to help restore lasting peace and promote good governance and sustainable development. It is essential that international personnel work with local authorities<sup>18</sup> to create conditions conducive to the restoration of public safety and order, thereby transferring authority and responsibility for reconstruction to local authorities. The responsibility to protect encompasses not only prevention and response, but also follow-up and reconstruction, meaning that military intervention due to state collapse or loss of capacity or authority requires a genuine commitment to assist in reconstruction<sup>19</sup>.

Responsibility for reconstruction includes ensuring adequate resources for the task and working closely with the local population. It may also be necessary to remain in the intervened state for a period after the initial objectives of the intervention have been achieved. In the past, there has sometimes been a lack of recognition of the responsibility for reconstruction and a lack of sufficient commitment to support, leaving post-intervention countries still struggling with the same problems that led to the intervention in the first place<sup>20</sup>.

Thus, it can be said that responsibility for reconstruction is a process that begins at the end of an armed conflict and involves efforts by various international and national actors aimed at sustaining the progress made towards ending the conflict and establishing a new phase that ensures the sustainability of these gains<sup>21</sup>. In addition, emphasis should be placed on preventing the recurrence of atrocious crimes by supporting national authorities in fulfilling their responsibilities to provide protection, strengthen governance institutions and develop their economies. In addition, efforts should be made, within the framework of international assistance, to address the root causes of conflict and serious crimes and to promote practices that support reconciliation and the peaceful resolution of disputes when they arise<sup>22</sup>. The United Nations has established several mechanisms related to post-conflict peacebuilding, including the establishment of the Peacebuilding Commission in 2005, the Peacebuilding Support Office and the Peacebuilding Fund in 2006. The Security Council also adopted Resolution 2009/2011 on 16 September 2011, establishing the United Nations Support Mission in Libya for a period of three months, and Resolution

2016/2011 on 2 December 2011, extending the mandate of the United Nations Support Mission in Libya until March 2012 and adding to its mandate the provision of assistance and support to Libyan national efforts to address the risks of proliferation of weapons of mass destruction and related issues<sup>23</sup>.

## **1.2 The Pillars of the Responsibility to Protect**

The report of the UN Secretary-General to the General Assembly at its sixty-third session in 2009, entitled “Implementing the Responsibility to Protect”, outlined that the responsibility to protect rests on three pillars:

### **1.2.1 The responsibility of the State to protect**

The primary responsibility for the protection of human rights lies with the State, as prevention and protection start from within. The protection of the population, whether citizens or foreigners, is a fundamental principle that determines the sovereignty of a State and its status as a legitimate State. Respect for human rights and the responsibility for prevention and deterrence in this area are key indicators of responsible sovereignty<sup>24</sup>.

The responsibility of the State to protect entails the continuing obligation of the State to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity, as well as from incitement to such acts<sup>25</sup>. In the Summit Outcome Document, Heads of State and Government reaffirmed that the responsibility to protect rests primarily with States and derives from the very nature of State sovereignty and the legal obligations that States have historically assumed<sup>26</sup>.

Thus, the state always has a sovereign responsibility to protect its population, regardless of their citizenship status. The importance of prevention is underlined, as the Committee on Intervention and State Sovereignty firmly believes that the responsibility to protect includes a concomitant responsibility to prevent. The need for preventive action and the exhaustion of preventive options before resorting to intervention is considered the most effective and least costly approach, which can only be achieved by respecting State sovereignty in the exercise of this responsibility to protect<sup>27</sup>.

One of the concepts introduced by the responsibility to protect is therefore the recognition that the primary responsibility lies with the state concerned. If the State is unable or unwilling to fulfil this responsibility, or is itself the perpetrator of the crime, then the responsibility shifts to the international community to act on behalf of the State<sup>28</sup>.

### **1.2.2 International assistance and capacity building**

The second pillar of the responsibility to protect involves the international community’s obligation to assist States in fulfilling their obligations when they fail to protect their populations. According to the principles of collective security, some of the responsibilities originally assigned to the State are assumed by the international community, acting in accordance with the Charter of the United Nations and the Universal Declaration of Human Rights, in order to assist the State to build the necessary capacities or to provide protection in each specific case<sup>29</sup>.

The second pillar of the responsibility to protect is thus activated when a state is unable to respond to humanitarian suffering. In this case, the international community should assist states in fulfilling this responsibility. Paragraphs 138 and 139 of the General Assembly Resolution on the Outcome of the 2005 World Summit indicate that this assistance can take four forms: 1) Encouraging States to fulfil their responsibilities under the first pillar. 2) Supporting States in the exercise of these responsibilities. 3) Assisting States in building their protection capacities. 4) Assisting states experiencing tensions before crises or conflicts erupt<sup>30</sup>.

Consequently, the responsibility for prevention is not only the duty of the State, but also requires the cooperation of the international community. Therefore, formal early warning and analysis mechanisms should be established and the role of the UN Human Rights Council should be activated through the reports it prepares. With early information, preventive measures can be taken, including political, economic and diplomatic means to prevent the escalation of conflicts and to contain them at their onset<sup>31</sup>.



### 1.2.3 Timely and decisive response

The third pillar entails the responsibility of States to act promptly in a decisive collective response when it becomes clear that a State is unable or has failed to protect its population. This pillar draws on various means under Chapters VI, VII and VIII of the UN Charter.

Paragraph 139 of the Summit Outcome Document refers to the need for timely and decisive collective action in accordance with the Charter. The Security Council can authorise such collective action under Articles 41 and 42 of the Charter. Coercive measures under Article 41 may include sanctions such as freezing the financial assets of all members of a government or regime and imposing travel bans and restrictions on the provision of financial services to governments or officials as individuals, among other non-military sanctions. These sanctions may be designed to target primarily state officials while minimising the impact on the civilian population. Furthermore, paragraph 139 states that the international community may resort to a wider range of peaceful and non-peaceful collective action if two conditions are met: A) a failure of peaceful means, B) a clear inability of national authorities to protect their populations. With regard to these two situations, the same paragraph emphasises that the Heads of State or Government express their willingness to take collective action in a timely and decisive manner through the Security Council and in accordance with the Charter, including Chapter VII<sup>32</sup>.

The use of armed force can only be authorised by the Security Council under Article 42 of Chapter VII of the Charter. In addition, military force may take various forms, such as the use of UN-authorized multinational forces to establish security zones, to impose no-fly zones and to establish military presences on land and at sea for the purpose of protection or deterrence, or by any other means determined by the Security Council<sup>33</sup>. If the Council explicitly rejects a proposed intervention despite significant humanitarian or human rights concerns, or fails to act on such a proposal within a reasonable timeframe, alternative means of upholding the responsibility to protect cannot be entirely ignored<sup>34</sup>.

In such a case, military action can be requested from the General Assembly, convened in a special extraordinary session under the “Uniting for Peace” procedures. These procedures were developed in 1950 specifically to deal with situations where the Security Council was unable to reach a consensus among its permanent members to carry out its primary responsibility of maintaining international peace and security. Since speed is often of the essence, it is stipulated that the special extraordinary session of the General Assembly must not only convene within twenty-four hours of the request, but also, according to Article 65 of its rules of procedure, “meet in open session and proceed directly to the consideration of the item of the agenda proposed for discussion in the request for the session, without first referring it to the Bureau or one of its principal committees”<sup>35</sup>.

There is also the possibility of collective intervention by a regional or non-regional organisation acting within the limits of its mandate. Many humanitarian disasters have a direct impact on neighbouring countries, whether through the flow of refugees across their borders or the use of their territory as a launching pad by rebel groups. These neighbouring countries usually have a strong collective interest in responding quickly and effectively. Experience has shown that countries are often better placed to act through regional or non-regional organisations than through the United Nations<sup>36</sup>, which recognises the legitimate role of regional organisations and arrangements in Chapter VIII of its Charter, provided that the Charter stipulates that the actions of regional organisations are always subject to the prior approval of the Security Council<sup>37</sup>.

During the sixty-fifth session of the General Assembly in 2011, the Secretary-General presented a report on “The Role of Regional and Non-Regional Arrangements in Implementing the Responsibility to Protect”, in which he stated that regional and non-regional bodies have been at the forefront of international efforts to establish principles of protection and the tools necessary to implement them. The report added that under Article 52(2) of the Charter, Member States must make every effort to seek peaceful solutions to local disputes through these regional organisations or agencies before referring them to the Security Council. Article 53(1) of the Charter also states that such organisations or regional bodies may not take enforcement action without the authorisation of the Security Council<sup>38</sup>.



Finally, despite international efforts to implement the Responsibility to Protect as outlined in the World Summit Outcome Document and the decisions of UN Secretaries-General, the international situation has not fully reflected these trends. Perhaps the greatest evidence of this is the military intervention in Libya in 2011, which exposed many of the shortcomings of the Responsibility to Protect.

## **2 The Responsibility While Protecting initiative and its impact on strengthening the responsibility to protect**

Many international circumstances contributed to the launch of the Responsibility While Protecting initiative by Brazil, most notably Brazil's continuous efforts to establish itself among the great powers through its foreign policy and diplomacy. The opportunity arose after the overreach of the intervention in Libya in March 2011. Brazil proposed the Responsibility While Protecting initiative, which included a set of principles and procedures that Brazil believed could support the Responsibility to Protect. Despite the positive reactions the initiative received from the UN Secretary-General, many countries - especially the major ones - opposed it, resulting in insufficient support for the initiative and a decline in its promotion.

### **2.1 The emergence of the Responsibility While Protecting concept as a new perspective on the Responsibility to Protect**

The Responsibility While Protecting emerged as a Brazilian initiative to support international efforts to address genocide and other serious crimes. This responsibility emphasises the need to exhaust all possible means before resorting to the use of force, focuses on prevention and seeks to establish a framework for monitoring the countries entrusted with the task of intervention.

#### **2.1.1 Conditions for the Emergence of the Brazilian Initiative on Responsibility While Protecting**

After decades of continuous yet limited participation in multilateral interventions, Brazil emerged as a significant contributor to UN interventions in 2004, taking a strong leadership role in the United Nations Stabilization Mission in Haiti. Starting in 2009, Brazil became a key and active player in global normative discussions regarding intervention, including the Responsibility to Protect. Brazil's main contribution was a conceptual note launched in November 2011 titled "Responsibility While Protecting." This note signifies an important advancement in normative dialogue, reflecting Brazil's position on the Responsibility to Protect within a set of elements<sup>39</sup>.

Brazil participated in several informal dialogues on the Responsibility to Protect conducted by the UN Secretariat following the reports presented by the Secretary-General. These dialogues allowed Brazil to discuss the Responsibility to Protect in more realistic terms, emphasising that the Responsibility to Protect is not a new legal formula, but rather a "strong political call" for States to comply with their legal obligations stemming from the UN Charter, relevant human rights treaties, international humanitarian law and other instruments<sup>40</sup>.

In the context of the international intervention in Libya in 2011, based on Resolution 1973 and inspired by the Responsibility to Protect discourse, Brazil introduced a new concept known as 'Responsibility to Protect'. This represents Brazil's first serious effort on a key normative issue within the United Nations. This concept emerged as a response to the aforementioned resolution that led to military operations in Libya, in particular the practices of the United Kingdom, France and the United States, which exceeded the content of Resolution 1973 in terms of the limits, duration and scope of the responsibility to protect. These practices led to a change of regime in Libya, providing Brazil with an opportunity to protest against international intervention and the use of force under the auspices of the United Nations<sup>41</sup>.

Brazil abstained from voting on Resolution 1973, and this abstention can be interpreted as a protest against the ambiguity of the resolution's text, which left wide discretion to the intervening states, as well as the text's explicit disregard for the Arab League's concerns about stopping the violence in Libya. Indeed, Brazil questioned the impact that any foreign military action could have on the broader political narrative behind the Libyan uprising, as it could exacerbate tensions on the ground and harm those the intervention sought to protect. It could also change the local nature of the rebel narrative, thereby jeopardising opportunities for a lasting solution to the conflict<sup>42</sup>.



In an informal dialogue at the General Assembly on 12 July 2011, following the presentation of the Secretary-General's third report on the role of regional and sub-regional arrangements in the implementation of the responsibility to protect, Brazil criticised the manner in which resolution 1973 had been implemented. It stated that the implementation of the third pillar of the Responsibility to Protect principles (timely and decisive response) should be done with caution and moderation, and should not be used as a pretext for regime change or to authorise interference in the internal affairs of another state. In addition, Brazil emphasised the importance of preventive measures and actions taken under the second pillar, as well as the political interdependence and chronological sequence between the three pillars of the Responsibility to Protect. In particular, Brazil consistently insisted on the need to understand the Responsibility to Protect solely as a political call to comply with the principles and rules set out in the UN Charter. Brazil believed that this call should be addressed to intervening States so that they could exercise appropriate responsibility while providing protection<sup>43</sup>.

Speaking at the 66th session of the United Nations General Assembly on 21 September 2011, former Brazilian President Dilma Rousseff said that Brazil strongly rejects the brutal repression of civilians. However, she is convinced that the use of force by the international community must always be a last resort. She added that much is said about the responsibility to protect, but little is heard about the responsibility while protecting; these two concepts must be developed together. She also noted the crucial role of the Security Council, stating that the more legitimate its decisions, the better it fulfils its role<sup>44</sup>.

Following up on the outcome of the Millennium Summit, during an open debate in the Security Council on the protection of civilians in armed conflict on 9 November 2011, the Permanent Representative of Brazil to the United Nations, Maria Luiza Ribeiro Viotti, expressed her country's view that the international community, in exercising its responsibility to protect civilians, must demonstrate a high level of responsibility while providing protection. In that regard, the Brazilian representative attached to her message of 9 November 2011 to the Secretary-General a concept note prepared by the Brazilian Government entitled "Responsibility While Protecting: Elements for Conceptualisation and Strengthening"<sup>45</sup>.

The conceptual paper, which was distributed for discussion in the Security Council, emphasized the politically dependent nature and strict chronological order of the three pillars of Responsibility to Protect. However, it can be argued that this interpretation contradicts the intentions of former Secretary-General Kofi Annan, as expressed in his report dated January 12, 2009, submitted to the General Assembly regarding the implementation of the Responsibility to Protect. It has also been widely criticized for potentially leading to inaction or delays. The Brazilian position holds that the use of force should not occur without analyzing the consequences of military action on a case-by-case basis, ensuring that intervention does not exacerbate existing conflicts, thereby putting civilian populations at risk. Brazil emphasized, considering the situation in Libya, that the Responsibility to Protect could be misused for purposes unrelated to civilian protection, such as enforcing regime change<sup>46</sup>.

### **2.1.2 Content of the Responsibility While Protecting Initiative**

The most important point to focus on in the Brazilian initiative is found at the beginning of paragraph 11, which states: "In exercising the responsibility to protect, the international community must demonstrate a high degree of responsibility while protecting. The two concepts should evolve together, based on a mutually agreed set of principles, standards and procedures"<sup>47</sup>. This paragraph contains the foundation of the Brazilian Protection Initiative, namely the need to exercise responsibility while fulfilling the Responsibility to Protect.

In addition, Brazil presented nine principles, standards and procedures as part of its initiative, including the following:

1. Focusing on preventive diplomacy will reduce armed conflicts and their human costs.



2. The international community must make continuous efforts to exhaust all peaceful means available to protect civilians at risk of violence, in accordance with the principles and purposes of the UN Charter, as enshrined in the 2005 World Summit Outcome Document.
3. The use of force, including the exercise of the responsibility to protect, must be authorised by the UN Security Council under Chapter VII of the Charter or, in exceptional circumstances, by the General Assembly in accordance with General Assembly Resolution 377 (V).
4. The authorisation for the use of force must be limited in its legal, operational and temporal elements. Brazil's proposal stressed that military action should be strictly limited to the mandate authorised by the Security Council or the General Assembly and should be conducted in full compliance with international law, in particular international humanitarian law.
5. The use of force should result in the least possible violence and instability and should not cause more damage than it was authorised to prevent.
6. The use of force must be prudent, proportionate and limited to the objectives defined by the Security Council.
7. These principles must be observed from the decision to authorise until such authorisation is suspended by a new resolution.
8. There is a need to strengthen Security Council procedures to clarify and evaluate the interpretation and implementation of resolutions to ensure accountability while protecting.
9. The Security Council must ensure accountability for those who are authorised to use force<sup>48</sup>.

Regarding the adoption of criteria to guide decision-making in the Security Council, Brazil underlines the particular importance of imposing legal, practical and time-bound constraints on the Security Council's authorisation of the use of force, in order to avoid excessive action. Following the presentation of the Secretary-General's report on Timely and Decisive Responses in July 2012, Ms. Fiuti stressed to the General Assembly on 5 September 2012 the importance of the Security Council considering standards or guidelines before authorising the use of force. However, these standards are not new; they are the result of earlier work by the 2001 report of the International Commission on Intervention and State Sovereignty on the Responsibility to Protect and the 2005 report of the Secretary-General of the United Nations. The Commission's report identified six criteria that must be met before the use of force: appropriate authority, just cause, right intention, last resort, proportional means and reasonable prospects of success. In addition, the proposed standards are derived from the interpretation of the UN Charter, in particular Articles 40 to 42, which indicate that the Security Council should be guided by the principle of proportionality (Article 42 allows military action only if the Council considers that measures taken under Article 41 are inadequate). Nevertheless, the Charter gives the Council considerable discretion as to the proportionality of the measures it takes in relation to the objectives sought. It can therefore be said that these discussions predate the Responsibility to Protect and have always been at the forefront of issues relating to the authorisation of the use of force<sup>49</sup>.

Regarding the adoption of norms to avoid exceeding the limits set in a resolution authorising the use of force by authorised States, Brazil stated that military action must be limited and in accordance with the letter and spirit of the authorisation granted by the Security Council or the General Assembly and in conformity with international law. Moreover, the use of force must be prudent, proportionate and limited to the objectives established by the Council. While these discussions on implementation are as old as the United Nations itself, Brazil's main proposal relates to the establishment of a monitoring and review mechanism for the implementation of Security Council decisions by states. This procedure would ensure the legitimacy of any action authorised by the Council by allowing all members to properly monitor the implementation of their mandates<sup>50</sup>.

In addition, Brazil stressed that actions under the Responsibility to Protect should not be taken on the basis of unilateral assessments of the situation, as the Charter of the United Nations allows for the unilateral use



of force only in cases of self-defence, which is by nature temporary. Such actions can be taken until the Security Council takes the necessary measures to address the issue. Consequently, Brazil concluded that supporting the unilateral use of force other than in self-defence would legitimise the “law of the strongest”<sup>51</sup>.

The Responsibility to Protect initiative thus represents a new and important idea in the attempt to prevent arbitrary and politically motivated humanitarian interventions. One of the main aspects of the Responsibility While Protecting is the sequential approach to the three pillars of the Responsibility to Protect; the second pillar should only take place after the first, and the third only after the failure of the other pillars<sup>52</sup>.

Therefore, Brazil advocated for the idea that there should be subordination and a timeline between the three pillars of the Responsibility to Protect. It emphasized that protecting human rights, democracy, and respecting the rule of law depends on adopting preventive measures, which must be implemented concurrently with policies that stimulate social and economic development to achieve political stability and peace. It concluded that political solutions, such as mediation and diplomacy, are the most appropriate means to address the political and social crises that lead to serious violations of international law<sup>53</sup>.

## **2.2 International Positions on the Responsibility While Protecting Initiative**

The Responsibility While Protecting initiative has seen a variety of state positions, ranging from supporters to opponents. Despite the support the initiative received from the UN Secretary-General at the time, Brazil distanced itself from further advocacy of the initiative, although many countries expected further progress on the Responsibility While Protecting initiative.

### **2.2.1 At the state level**

Some Western and major states opposed the Brazilian proposal on several grounds, including that the proposal only complicates and freezes the principle of responsibility to protect. The call for the Security Council to monitor interventions and hold implementers accountable raised concerns among NATO member states, as close monitoring of interventions by the Security Council is considered almost impossible<sup>54</sup>. However, some countries supported the Brazilian initiative, especially after the ensuing discussions, which were enriched by contributions from academics, researchers and global organisations and associations. Among the countries that supported this initiative were the BRICS countries, as well as South American countries and the Group of 77, followed by the support of Arab and African countries, as well as several European countries<sup>55</sup>.

On 21 February 2012, the Brazilian Ministry of Foreign Affairs hosted an informal discussion on “Responsibility to Protect” at United Nations Headquarters, chaired by the Minister of Foreign Affairs of Brazil, Mr. Antonio de Aguiar Patriota, and the Adviser to the Secretary-General on the Responsibility to Protect, Dr. Edward Luck. The discussions were based on the “conceptual memorandum” submitted by Brazil to the United Nations General Assembly<sup>56</sup>.

Some participants in these informal discussions expressed great enthusiasm for Responsibility While Protecting, such as Malaysia, Kenya and South Africa, the latter going so far as to state that Responsibility While Protecting “not only enhances accountability when the international community resorts to the use of force, but also, if properly managed, can foster closer cooperation between the United Nations and the international community<sup>57</sup>”.

However, some aspects of the Brazilian proposal met with strong opposition from some participants. Among others, Australia, Costa Rica, Germany, Ghana, the European Union and the United States objected to the concepts that the three pillars should follow a strict line of subordination and chronological order, and that the third pillar “will be applied in exceptional circumstances when the measures outlined in the first two pillars clearly fail, and that the international community must be rigorous in its efforts to exhaust all available peaceful means<sup>58</sup>”.



Among the reasons that have led Western and major powers to oppose the Brazilian proposal are the following:

- The proposal merely complicates and freezes the principle of the Responsibility to Protect (R2P).
- The call for the Security Council to oversee intervention operations and hold their perpetrators accountable has raised concerns among NATO member states, as precise monitoring of these operations by the Security Council is considered almost impossible<sup>59</sup>.

After the extraordinary interest generated by the aforementioned meeting in February, it was expected that Brazil would continue to prioritise Responsibility While Protecting (RwP) on its agenda, especially since the initiative benefited greatly from the personal support of former Brazilian Foreign Minister Antonio Patriota, who frequently discussed the concept both in Brazil and abroad. In September 2012, President Dilma Rousseff referred to RwP as a necessary complement to the Responsibility to Protect. A month later, during the Third Summit of Arab and South American States, member states endorsed the RwP and stated that it should be discussed in the United Nations as well as within the Union of South American Nations and the Arab League<sup>60</sup>.

### 2.2.2 At the level of the United Nations

RwP received significant support from former Secretary-General Ban Ki-moon, who welcomed the “Responsibility to Protect” initiative presented by Brazil in his report entitled “Responsibility to Protect: A Timely and Decisive Response”. He highlighted Brazil’s role in facilitating constructive and broad-based discussions among Member States and noted the considerable interest the initiative has received from UN Member States. He also clarified that these discussions and dialogues played a role in reaffirming Member States’ commitment to the principles of prevention and protection embodied in the Responsibility to Protect, as well as their shared determination to ensure the implementation of this concept in accordance with the purposes and principles of the UN Charter and the intentions expressed by Heads of State and Government at the 2005 World Summit<sup>61</sup>.

In the same context, the former Secretary-General emphasised that the essence of RwP is to do the right thing at the right time, in the right place and for the right reasons. Moreover, timely and decisive action would add greater value to the assessment and understanding of what is happening, why it is happening, and how it can help avoid or ameliorate the situation<sup>62</sup>.

### 2.2.3 Brazil’s withdrawal from the RwP initiative

Despite the continued mention of RwP during discussions, there was no longer a sense that Brazil was prioritising this issue. It refrained from issuing an official follow-up note to address some critics of its initiative and distanced itself from the strict sequential approach that had appeared in the original concept note. However, many commentators continued to read the only available document and believed that Brazil’s official position had not changed. The Brazilian government decided not to make the RwP a foreign policy signature issue during Dilma Rousseff’s first term. Although President Rousseff mentioned the issue, she declined to elaborate on it during her opening speech at the UN General Assembly in September 2012. Brazil was conspicuously absent from discussions on RwP on the sidelines of the UN General Assembly. Similarly, President Rousseff did not mention the concept of RwP during her opening speech at the UN General Assembly in September 2013<sup>63</sup>, leading Brazil to abandon the initiative, which was no longer on the Brazilian government’s agenda, especially after the dismissal of its Foreign Minister, Antonio de Aguiar Patriota<sup>64</sup>.

Brazilian diplomats point out that Brazil has succeeded in deepening the discussion on one of the most complex issues of this era. Indeed, RwP raised important questions about the use of coercive measures. Never before had issues of who should intervene, under what legitimate authority, and through what mechanisms of transparency and accountability been discussed with such clarity and detail in such a broad audience. Brazilian diplomats also claim that their absence from the UN Security Council significantly limits their ability to continue to play a leading role on normative issues related to international peace and security, although others believe that they can address this issue and move it forward<sup>65</sup>.



Instead of being seen as a final product to be included in the normative trajectory of the Responsibility to Protect, while still having great potential for further discussion, it was quickly withdrawn and not supported by the necessary diplomatic means, representing a significant missed opportunity for Brazilian diplomacy. Moreover, Brazilian diplomats were not prepared for the opposition that the content of the RWP proposal met<sup>66</sup>.

### CONCLUSION:

In conclusion, the following results can be highlighted:

1. The same reasons that gave rise to the concept of Responsibility to Protect (R2P) also gave rise to the idea of Responsibility While Protecting (RWP), namely selectivity in intervention and in dealing with different violations and crimes.
2. The third pillar of the Responsibility to Protect, “timely and decisive response”, contains a solution to the ongoing debate on the sequencing in the application of the three pillars. The phrase “in a timely manner” should be interpreted to mean that the third pillar can only be implemented after the first and second pillars have been fully applied and exhausted. Responsibility While Protecting emphasises that the responsibility of the state to protect its population, while respecting the principle of sovereignty, cannot be overlooked until it becomes clear that the state is unwilling, unable or has failed to protect its population. Otherwise, what is the point of early warning operations that seek to provide information, analyse it and assess options and conditions that could lead to crises being dealt with, in addition to discussing preventive strategies?

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