

# The Responsibility to Protect and the Importance of International Consensus

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## The Responsibility to Protect and the Importance of International Consensus

<https://www.e-ir.info/2015/07/08/the-responsibility-to-protect-and-the-importance-of-international-consensus/>

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### INTRODUCTION

The International Commission on Intervention and State Sovereignty (ICISS) published the report *The Responsibility to Protect* (R2P) in 2001. The report was an attempt to set out a framework for *when, how, and whether* the international community can intervene in another state for human protection purposes in order to create greater consensus and unity on these highly contentious issues.[1] Despite the fact that establishing consensus was one of the core aims of the report, the concept of R2P remains highly contested and criticised by much of the developing world, such as by the states in the *de facto* alliance of the BRICS.[2]

The intervention in Libya in 2011, the first adoption of the coercive element of R2P, was followed by a wave of criticisms from many of the considerable powers outside of the West arguing the NATO overreached its UNSC mandate by orchestrating regime change for the sake of their own national interests.[3] The UNSC deadlock and the inaction by the international community with regards to the on-going civil war and humanitarian crisis in Syria are in many ways manifestations of the overreach of mandate in Libya and of how sceptical several non-Western states remain about the use of force for human protection purposes.[4] Ramesh Thakur, commissioner and author of the ICISS report, expressed a wide-held belief when he said, "Syrians have paid the price of NATO excesses in Libya." [5] The main task of ICISS' report *The Responsibility to Protect*, to establish global and international consensus, has yet to materialise. There remains a wide gap between states' attitude to interventions for human protection purposes, and R2P has not managed to bridge that gap in order to bring about consensus in an adequate way. In practice R2P is dangerously short of becoming a restatement of Western preferences which can further alienate those who remain sceptical about the concept. This will only serve to polarise the debate into a North-South dichotomy, which is the opposite of what the commission initially wanted to achieve. Recognising that the UNSC consists of two non-Western members, for R2P to have any purchasing power in practice R2P must become more digestible for *all* UNSC members and in the non-Western world as well. If not, one risks continuing the trend of polarised attitudes, UNSC deadlocks, and at worst inaction in response to humanitarian crises that urgently need external response. In an increasingly multipolar world, the need for international consensus and UNSC mandates will only become more important on the big issues of the international world. As R2P has not yet established considerable consensus, it would be too optimistic to believe that R2P as it exists today has found a solution to pleas such as "no more Rwandas".

The criticisms of R2P that come from much of the developing world have culminated in a constructive concept intended to complement R2P which reflects many of the concerns the developing world have about R2P. That concept is Brazil' *Responsibility While Protecting* (RwP). The essence of this concept is a call for better oversight mechanisms to monitor that UNSC mandates are being followed and post-factum accountability.[6] This reflects the general consensus that emerging powers are not attempting to confront the liberal international order *per se* but instead call for a greater say *within* the existing system.[7] As the purpose of R2P is to establish international and global consensus, taking into account the contributions from Brazil will be a worthwhile endeavour which can give R2P a much-needed lift as an emerging norm.

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The central question this dissertation attempts to answer is: In what ways have the crises in Libya and Syria revealed the limits of *The Responsibility to Protect* and is there a future for R2P? The dissertation has found that the main limit of R2P is the lack of a considerable international consensus which is essential for the legitimacy and therefore the effectiveness of the concept in practice. The key to the future of R2P lies therefore in establishing greater consensus around the concept, something which is best achieved through a constructive debate between the proponents and the sceptics of R2P. In this regard, Brazil's contribution to the R2P debate with the concept RwP presents a unique opportunity to engage the developing world and to achieve greater consensus. Certain Western states have expressed some concerns about RwP because it might restrain R2P to such an extent that it will become less effective. However, it will be argued that it is not unrealistic to expect Western states to accept the call for greater oversight and reviewing mechanisms to monitor the implementations of UNSC mandates as well as greater post-factum accountability as stipulated in the RwP Concept Paper. This is so because of two main reasons: *Firstly, RwP is far more similar to R2P than what is commonly accepted; its restraining effect will therefore be minimal.* Secondly, the restraining effect of RwP on the use of force is most likely less than the restraining effect of continuing having non-Western states such as the BRICS partly in opposition to R2P as a result of not taking into account their criticisms and contributions to the debate. If Western states realise this there can be a way forward for R2P.

## Road Map

The arguments of this dissertation will be developed throughout three chapters plus a final concluding chapter. *Chapter One: the evolution of R2P* will primarily outline what R2P is by describing the evolution of R2P from the original ICISS report *Responsibility to Protect* published 2001 to the unanimous endorsement of the concept by governments and heads of states at the UN World Summit in 2005. To provide a comprehensive overview of the concept and to explain what the concept actually entails are important premises that need to be laid out before the succeeding chapters which will move away from what R2P is in theory or on paper towards a discussion on how R2P has been used in practice.

*Chapter Two: R2P in Practice: The Intervention in Libya and the Non-Intervention in Syria* will look at how the practical tests R2P has faced have had an impact upon the consensus and legitimacy of the concept. It will be argued that R2P has experienced a weakening consensus globally and that the cases of Libya and Syria highlights several shortcomings in the concept, that R2P is not a deeply embedded norm in international politics, and that further consensus-building is needed in an attempt to reach greater consensus and to strengthen the legitimacy of the norm and thereby its effectiveness in practice. This chapter will also develop the argument that in an increasingly multipolar world global consensus, in particular UNSC consensus will become of greater importance in the big issues in international politics, such as interventions for human protection purposes.

*Chapter Three: How to Establish Greater Consensus on R2P* will look at how R2P can become a more acceptable norm in international politics. It will be argued that the concept *Responsibility while Protecting (RwP)* presents an opportunity to engage the global south and the post-colonial world, which will have the positive effect of moving away from the polarised North-South framing of the intervention vs. non-intervention dilemma and move towards greater international consensus. The problem is that certain Western states are reluctant to accept RwP because they believe that doing so will restrain their ability to react to humanitarian crises. However, this chapter will argue that an R2P with a broader and greater degree of consensus is likely to be more effective than one that is more contentious yet less constrained.

It will then be concluded that RwP represents a viable and realistic means to get one step closer to the original aim of the ICISS report *The Responsibility to Protect*: to reach global consensus and establish a common ground on the highly contentious issues of intervention and sovereignty. To achieve that is critical to ensure effective implementation of R2P when it is most needed.

## Methodology

This dissertation will primarily employ a qualitative and comparative research methodology focusing on content and

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discourse analysis, the rhetoric of key actors, UN and official documents that are available on the web, and relevant books, chapters, and articles. Because this dissertation is about such a contemporary issue articles from newspapers will be important sources as well. As such, empirical evidence from a wide range of secondary sources is what I will use the most. Quantitative data will also be used and is useful to back up qualitative arguments. This methodology fits with my research question(s) because my focus is on *understanding* the role of R2P in relation to state practice, not just *explaining* it as if R2P exists objectively out there and independent from intersubjective meanings. Because R2P is best understood as a norm the focus in this dissertation, in particular in chapter 2 and 3, will be to explore how R2P is understood and perceived by some of the most important players in international politics as that are important with regards to how states choose to act upon it.

In the wider context of the debate, this dissertation is an attempt of a constructive contribution to finding a possible way forward for R2P. Much has indeed been written on R2P, but the debate since the intervention in Libya has taken the unfortunate turn into a North-South divided debate where the arguments follow a familiar stance of either pro or anti humanitarian intervention resembling the debate in the 1990s. In the theoretical debate, realists believe that R2P exerts a minimal influence on state behaviour and that if it is used in the rhetoric of states it is simply as a pretext for the advancement of self-interested goals. Liberal scholars believe to various degrees that R2P signifies the triumph of altruism over egoism and progress in the moral behaviour of states. Both perspectives represent a simplified and generalised caricature of R2P which do not adequately correspond to how R2P is used in practice. This dissertation uses therefore a middle-ground approach. It will be argued that norms, such as R2P, can serve as powerful incentives for state action, however, because this dissertation is under the impression that R2P is not widely accepted in practice it takes on a sceptical stance on R2P's ability to influence state behaviour. That is what motivates this dissertation to argue for the need to find a way to make R2P more acceptable on a global scale, not simply in the West, because a norm that is not accepted by a considerable part of the world will not be able to reach the potential of a widely accepted norm; to serve as a strong driver for behaviour as well as being a standard to which actors can be held accountable when the norm is violated or ignored, which increases the cost of not adhering to the norm. Those are the theoretical premises for the argument of this dissertation, that there is an urgent need to increase the consensus on R2P to make it more effective.

## CHAPTER 1 – The Evolution of the Responsibility to Protect

This chapter consists of two parts. Part one provides an overview over R2P, explaining the background for why the concept was invented, what issues R2P attempts to address as well as outlining the most central principles of the concepts. The evolution of R2P from the ICISS report of 2001 to the endorsement of R2P at the UN World Summit in 2005 in which the concept was considerably amended and restricted will be accounted for in this chapter. Part two argues that there is a need for R2P in international politics despite several shortcomings of the concepts. These shortcomings will be addressed in greater details in the subsequent chapters of this dissertation.

### *The Context in which R2P was Created*

“Humanitarian intervention” has been a highly contentious topic in international politics, both when action has been taken and when the international community has been passive spectators to horrendous humanitarian crises. The United Nations peacekeeping mission in Somalia in 1992-93 was a failure due to poor execution and overreliance on military force.[8] The genocide in Rwanda in 1994 represents the failure of non-intervention and the complete lack of political will among western powers to “save strangers”.[9] Just a year later, in 1995, the UN and others failed to prevent the massacre of thousands of civilians in UN “safe areas” in Srebrenica, Bosnia. In Kosovo in 1999 where NATO intervened without UNSC resolution the intervention unleashed a major debate about whether the “coalition of the willing” who bypassed the UNSC undermined the authority of the Council and whether the intervention could be justified. The Independent International Commission on Kosovo who assessed the intervention in retrospect famously concluded that the intervention was “illegal but justified”.[10] Nevertheless, it was controversial. These four historical

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landmarks in the history of humanitarian intervention (and non-intervention) in the post-Cold War era have raised many questions regarding *when, how, whether* and under *whose* authority the international community should intervene to prevent or stop large-scale humanitarian crises.

In 1999 and 2000 at the UN General Assembly the then current UN Secretary-General Kofi Annan expressed his dissatisfaction about the answers available to these questions and called for “the international community to try to find, once and for all, a new consensus on how to approach these issues.”[11] He asked the central question:

...if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?[12]

As an attempt to answer these questions the Canadian Government established in 2000 the International Commission on Intervention and State Sovereignty (ICISS). The commission, co-chaired by Gareth Evans and Mohamed Sahnoun, was tasked to:

...wrestle with the whole range of questions – legal, moral, operational and political – rolled up in this debate, to consult with the widest possible range of opinion around the world, to bring back a report that would help the Secretary-General and everyone else find some new common ground.[13]

The commission tackled this not so modest task by inventing the concept R2P which, in essence, “is the acceptance of a duty by all those who live in zones of safety to care for those trapped in zones of danger. It strikes a balance between unilateral interference rooted in the arrogance of power and institutionalised indifference.”[14] By using the term ‘responsibility to protect’ the commission attempted to move away from the negatively laden discourse of “right of humanitarian intervention” which in the developing world often was perceived as having undertones of colonialism. ‘Intervention’ is by many associated with the use of military force by the strong imposed on the weak or as war. The NATO campaign in Kosovo, labelled as ‘humanitarian intervention’, was in fact three months of bombing, which led some observers to label the campaign as ‘humanitarian bombing’.[15] The term ‘humanitarian intervention’ is by many therefore associated in negative terms, and it draws attention to the interveners rather than the victims who are, or should be, the primary cause for the intervention. Using the term R2P was therefore an attempt to draw attention to the victims rather than the interveners and to avoid combining the highly negatively laden word “intervention” with “humanitarian”, an almost contradictory combination.[16]

## *The ICISS Report*

The commission’s idea that all sovereign states have a responsibility to protect their own citizens is based on its interpretation of what state sovereignty is and what rights, privileges, and responsibilities sovereignty comes with. The commission’s conceptualisation of state sovereignty is highly central in the report and central to how one understands R2P. ICISS states in its report that state sovereignty entails a dual responsibility. First and foremost, the responsibility to protect is the responsibility that every state has towards its own citizens; to protect fundamental human rights and to protect its citizens from mass killings.[17] Secondly is the responsibility that rests at the international community when a state fails to protect its population from “suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, or is in fact the perpetrator, the principle of non-intervention yields to the international responsibility to protect.”[18] The ICISS 2001 document stated that the threshold for the international community to protect citizens of another state by the means of military force must be:

Large scale loss of life, actual or apprehended, ...which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or large scale ethnic cleansing, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.[19]

In addition to the internal and external responsibilities that sovereignty entails the ICISS 2001 report outlined three specific responsibilities in the R2P concept. Firstly, *the responsibility to prevent* which includes the responsibility to

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“address both the root causes and the direct causes of internal conflict and other man-made crises putting populations at risk.”[20] It entails that states have “a responsibility to ensure that domestic tensions are addressed before they escalate.”[21] However, realising that such measures can be difficult to implement for many states for a great number of reasons, such as endemic poverty or structural causes, strong support from the international community is often needed, “and in many cases may be indispensable.”[22] The report states clearly that “prevention is the single most important dimension of the responsibility to protect.”[23] However, although it is clear that prevention is better than reaction, both in terms of saving human lives and in terms of material costs, failure to prevent intrastate conflicts from occurring remains a persistent problem, and to react to on-going conflicts might be necessary to halt or stop man-made mass atrocities. This leads to the second responsibility; *the responsibility to react*. When prevention fails “to resolve or contain the situation, and when a state is unable or unwilling to redress to situation, then interventionary measures by other members of the broader community of states may be required.”[24] It is important to note that the responsibility to react is not synonymous with military action. The international community can, and always should, exhaust measures short of military intervention. Such non-military coercive measures include political, economic, and judicial sanctions. Only in very *extreme and exceptional* cases should military action be contemplated, and only when other measures have proved inefficient.[25] This leads to the very crux that the commission had to tackle: determining and developing consensus on *when* states can intervene for the sake of protecting humans from mass-atrocity crimes in another state. As the use of military force against another state will arguably always be contentious and a sensitive issue, it is highly important to establish clearer rules and guidelines for when it might be necessary to intervene, which is crucial for the legitimacy of an intervention.

When contemplating action against another state for humanitarian purposes, the norm of non-intervention must be the starting point, but it cannot be an absolute which make it a shield in which brutal state leaders can hide behind. There should be exceptions to the non-intervention norm in extreme cases, such as “violence which so genuinely shock the conscience of mankind, or which present such a clear and present danger to international security, that they require coercive military intervention.”[26] The report proposes six criteria for military intervention that ought to be given the most careful consideration. The six criteria can be listed as: *just cause, right intentions, last resort, proportional means, right authority, and reasonable prospects for success*. [27] The intention of the commission by setting out these criteria is to

...strengthen the order of states by providing for clear guidelines to guide concerted international action in those exceptional circumstances when violence within a state menaces all peoples, it is not to license aggression with fine words, or to provide strong states with new rationales for doubtful strategic designs.[28]

With regards to the just cause criteria the commission agreed that for an intervention to be justified it must be a response aimed at halting or averting “large scale loss of life” or “large scale ethnic cleansing” – actual or apprehended. Minimum one of these must be evident in order for the intervention to fulfil the just cause criteria. When that is the case the interveners have to fulfil the other criteria as well. That brings the report to the criteria of right intention. The primary purpose of the intervention must be to “halt or avert human suffering” and to protect the victims that were the initial justification for the intervention. When too much self-interests are involved non-humanitarian objectives may be prioritised over the victims of mass atrocity crimes and thereby obscure the effectiveness of the humanitarian objectives. Objectives such as alteration of borders, advancement of a particular combatant group’s claim to self-determination, or toppling of regimes, cannot be justified.[29] A crucial way of reducing the promotion of self-interests in interventions on humanitarian grounds is to always act multilaterally, to have support in the region of where the intervention takes place and to have support by the people for whose benefit the intervention is intended.[30] Any intervention must not only be driven by just cause and right intentions, it must also always be last resort. Every non-military means to halt or avert the mass-atrocities must have been explored extensively. However, this does not mean that every thinkable measure must have been tried and failed before a military intervention can take place, as there might not be time for that, it must, nevertheless, be reasonable and solid grounds for believing that other measures will not be adequate.[31] These criteria can be said to correspond with the *jus ad bellum* (right to war) element of Just War Theory.

The other criteria correspond with the second element of Just War Theory, the *jus in bello* (justice in war), which are the rules that govern how the war, or intervention in this case, is conducted. These two criteria are proportional

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means and reasonable prospect for success. With regards to proportional means, “the scale, duration, and intensity of the planned military intervention should be the minimum necessary to secure the humanitarian objective in question.”[32] Furthermore, the effect on the political system of the targeted country should be limited to what is strictly necessary to accomplish the purpose of the intervention. The commission is implicitly arguing that any intervention in the name of human protection which adheres to the principles of R2P must be neutral and apolitical. The criteria of reasonable prospect of success implies that if actual protection cannot be achieved, or if the cost and consequences of intervention outweigh the benefits, that is, if intervention is likely to produce more bad than non-intervention, it cannot be justified. For example, if a military action is likely to trigger a larger conflict, if it risks destabilising a whole region or involves major military powers, then coercive military action cannot be justified.[33] Some human lives are just not possible to save unless at unacceptable high costs; sometimes non-intervention is more humanitarian than intervention.

This leads to the criteria of right authority: *who* is to decide when the criteria just mentioned are fulfilled and that military response should go ahead? The commission strongly stresses that the UNSC must always be the primary source of authorisation for both non-military and military action in the face of humanitarian crises. It is strong consensus worldwide that “it is the Security Council which should be making the decisions to mobilise effective resources, including military resources, to rescue populations at risk when there is no serious opposition on sovereignty grounds.”[34] However, the commission also notes that while the UNSC should always be the first source of authorisation to consult, it should not be the last if the Council fails to act, for instance in the case of deadlock due to a single veto and there is imminent and pressing needs for action to be taken to halt or stop a large scale loss of lives. The Commission then outlines two other possible sources that can authorise military action for humanitarian purposes while possibly maintaining a degree of legitimacy. The UN General Assembly’s “United for Peace” procedure of 1950 was established to address to situations where the UNSC, because of a deadlock among the permanent five members (P5) fails to “exercise its primary responsibility for the maintenance of international peace and security.”[35] The United for Peace procedure requires a two-thirds majority in the General Assembly and would therefore, if invoked, exercise a degree of legitimacy despite failure to reach consensus among the P5. However, reaching a two-thirds majority is not always attainable and a third possibility is to act multilaterally through regional organisations, such as NATO or the African Union.[36] The third responsibility in R2P is *the responsibility to rebuild* – or post-intervention obligations. In order to create a lasting peace and to prevent the recurrence of conflict and killing the interveners must be prepared to stay in the intervened country for some period of time to address the root problems of the conflict. Rebuilding measures will vary from case to case but may in general include peace building and/or statebuilding efforts.[37]

## *R2P and the 2005 World Summit Outcome Document*

Since the ICISS published the report, R2P has been widely cited, endorsed, criticised, and amended. At the 2005 World Summit in New York the final *Outcome Document* included two paragraphs, 138 and 139, which explicitly endorsed the notion of a responsibility to protect. However, although this was considered as a success for those championing R2P, the concept had to be amended in order to secure the inclusion of these paragraphs. It was a compromised and limited R2P that was finally endorsed at the World Summit in 2005. For instance, the two paragraphs explicitly states that the UNSC is the exclusive source of authorisation and restricted “mass killings” and “large scale loss of lives” to the four mass-atrocity crimes genocide, war crimes, ethnic cleansing and crimes against humanity.[38] The *Outcome Document* excluded as such non-man made catastrophes such as natural disasters where governments fail to give adequate aid and protection to its population and refuse external help, something that was included in the original ICISS report. Furthermore, uncertainty about what to do, or what is legitimate to do, in the face of a UNSC deadlock during on-going mass-atrocity crimes prevail. This led some commentators to argue that the threshold for when the UNSC can legitimately intervene had been restricted; the bar for when to intervene was effectively set higher than in the original ICISS report.[39]

As it was the R2P as outlined in the *Outcome Document* that was unanimously accepted at the 2005 World Summit, it is that R2P, rather than the original ICISS report, which constitute the agreed meaning of R2P.[40] R2P as articulated in the *Outcome Document* was further reaffirmed in 2009 at the General Assembly debate and in the UNSC in 2006 and 2009. This suggests that there is in principle consensus about R2P as it appears in the *Outcome*

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## *Document.*

Kofi Annan and his Special Adviser on The Responsibility to Protect, Edward Luck, further developed R2P in the report UN *Implementing the Responsibility to Protect*, published in 2009. In that report R2P was divided into three pillars which correspond to the responsibilities that R2P entails. Pillar one is the “enduring responsibility of the State to protect its populations... from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitements.”[41] Pillar two is the responsibility of the international community to assist states in meeting their responsibilities as states in pillar one. Pillar three is the “responsibility of Member States to respond collectively in a timely and decisive manner when state is manifestly failing to provide such protection.”[42] The framing of R2P in terms of these three pillars is now how R2P is commonly understood.

## *R2P as a Norm in International Politics*

Because R2P has not changed legal structures or entails any formal obligations the utility of R2P can therefore be said to rest on its normative power. The concept of R2P is indeed often described as an emerging norm which in principle is agreed upon by all UN Member States. Aidan Hehir argues, “The fact that R2P does not constitute a legal reform means that its entire utility is predicated on its ostensible *normative* power more than its actual enforceability.”[43] That is, in fact, true, but norms can serve as powerful incentives for taking action, and R2P is therefore not necessarily “devoid of political utility”, as Hehir argues.[44] The invention of R2P has certainly not ended mass atrocities once and for all, which is all too evident in the current situation in Syria, but rejecting the concept for that reason is a fallacy equivalent to rejecting an awareness campaign about using seat belts because it won't make *everyone* use them.

Norms can shape state behaviour and it is not entirely correct that R2P ought to entail legal obligations or to radically restructure the whole UN system, as proposed by Hehir[45], to serve a function. Because R2P is inherently a norm it will be useful to outline how norms can be understood and how they can contribute to shape behaviour. Norms can at the most basic be understood as “collective understandings of the proper behaviour of actors.”[46] Norms entail a quality of ‘oughtness’, and violating collectively legitimated norms can result in “counteraction that will make it costly or ineffective” to do so.[47] By securing collective legitimisation of one's policies one eases the pursuit of those policies.[48] To make R2P more effective building a gradual consensus among the society of states is highly important, as R2P is still a fragile norm in international politics. When a norm is deeply embedded and internalised it can serve as “a prevailing standard of appropriateness” in which its enabling and constraining effects will be high.[49] That is arguably what the ICISS hoped that R2P would achieve. On the contrary, if the internalisation of the norm is shallow it will be ineffective in legitimating behaviour or as a standard which actors can be held to account.[50] As the case studies of Libya and Syria will demonstrate, R2P is in a fragile state and for most states it is not a deeply internalised or embedded norm, especially with regards to Pillar three of R2P.

The fact that R2P does not entail any legal obligations for states to respond to the four mass-atrocity crimes has led several commentators to argue that R2P is no more than high-sounding rhetoric, echoing what Otto von Bismarck famously said: “When a man says he approves of something in principle, it means he hasn't the slightest intention of carrying it out in practice.” Others have stressed the possibility of misuse of the concept, that R2P is susceptible to being used as a pretext for the pursuit of national interests and that it will be used selectively.[51] Those are familiar criticisms which predates R2P which may suggest that R2P has not managed to adequately produce some sort of common ground, which it was originally set out to do.

## *Conclusion*

This chapter has provided an overview of R2P, explained what the ICISS has tried to achieve, to create consensus and establish a common ground on the contentious issue of intervention for human protection purposes, and how the ICISS attempted to do so. It has been argued that R2P is best understood as a norm and that its utility depends on how widely it will be accepted and how deeply it will be embedded in the consciousness of states. The succeeding chapter will develop the argument that the intervention in Libya, the first implementation of R2P's pillar three, has increased the fragility of R2P, making it less widely accepted on a global level. This lack of global consensus on R2P

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is currently manifesting itself in the international community's lack of response to the humanitarian crisis in Syria.

## CHAPTER 2 – R2P in Practice: The Intervention in Libya and the Non-Intervention in Syria

Since the concept of R2P was introduced in the ICISS report in 2001 the concept has been put at test most notably in Libya in 2011 where primarily NATO members under UNSC resolution 1973 swiftly intervened as a response to the on-going civil war to protect civilians, and then in Syria in which the international community is plagued by UNSC deadlock and inaction. Recalling the aim of the *Responsibility Protect* report from ICISS – to find consensus and common ground on when, how, whether and under whose authority states can intervene for human protection purposes – this aim seems even more distant today than before the humanitarian crises in Libya and Syria which have contributed to a greater division between the proponents and the sceptics of R2P. Many of those who were hesitant to endorse the concept have tipped towards a more sceptical position. The main aim of this chapter is to demonstrate how the use of R2P in Libya has significantly reduced R2P's global legitimacy and consensus, something that has manifested itself in the international community's divide over the humanitarian crisis in Syria. It will be argued that R2P is in desperate need for both wider and deeper consensus if it is to serve its intended purpose.

### *R2P in Libya: Overreach of Mandate?*

By February 2011 the Arab Spring had spread from Tunisia and Egypt to Libya. The Libyan protesters in Benghazi were met with violent oppression by the Gaddafi regime and within a month the situation had turned into a civil war. At March 17 the UNSC adopts resolution 1973 calling for the implementation of a no-fly zone over Libya and authorised "Member States ...to take all necessary measures to protect civilians..."[52] By 19 March several NATO members had intervened in Libya answering resolution 1973 and by 31 March NATO had taken the sole command over the international military effort in Libya.[53] The swift response to the humanitarian crisis in Libya, both with regards to the quick adoption of the UNSC resolution 1973 and the quick military response assumed by UN Member States and NATO, was initially seen by many as a triumph for the concept of R2P.[54] Alex Bellamy argues, "The Responsibility to Protect played an important role in shaping the world's response to actual and threatened atrocities in Libya."[55] Ramesh Thakur said in a similar fashion, "R2P was a game changer which acted as a powerful new galvanising norm over Libya."[56] And Michael Doyle stated three days after the UNSC resolution 1973 was adopted that "Resolution 1973 ...marks the first Security Council approval of force in the name of R2P."[57] However, this initial R2P optimism was soon criticised from many holds, in particular from the states which abstained from the vote over UNSC resolution 1973 (China, Russia, Brazil, India, and Germany) and also from several Western commentators.[58]

The most common criticisms of the intervention in Libya are that NATO overreached the UNSC mandate by supporting the rebels in toppling the Gaddafi regime and that the intervening states were more motivated by self-interests rather than humanitarian concerns. And that does not reflect the criteria for military intervention as originally set out in the ICISS report.[59] Most of the criticisms was not directed towards the intervention *per se* but rather to *how* the intervention unfolded and that the precautionary principles of R2P were not paid enough attention to. For instance, Grant Dawson argues that the intervention in Libya was "legal but illegitimate" referring to the intervention in Kosovo which was famously labelled "illegal but legitimate".[60] Dawson points to the fact that at 19 March 2011, the day the first states intervened in Libya, between 1000-2000 casualties had been recorded and by 20 October the same year, the day the rebel forces executed Gaddafi without trial, casualties had reached 30,000 with 50,000 wounded.[61] In addition to that, the post-Gaddafi government has proved too weak to effectively protect civilians, and unrest and insecurity continue to characterise the situation in Libya. This makes him argue that the intervention probably caused more harm than good as well as being motivated more by regime change than protecting civilians, which are violating the criteria for military intervention as stipulated in the ICISS report.[62] Those criticisms reflect many of the concerns the non-Western world have towards R2P. The leading intervening states were quick to



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respond to such criticisms that regime change was in fact necessary to fulfil the UNSC mandate.

## *How the Intervention in Libya has affected R2P*

Whether the intervention caused more harm than good and whether it was legitimate to intervene or not are highly debateable issues but this dissertation will not attempt to pass a judgement on that matter. What is of greater importance is that regardless of whether one considers the intervention a success or not, the intervention *did* contribute to a weakening of the global consensus on R2P.[63] States that are sceptical about the concept fear that “interventionists will use the mantle of R2P to pursue mandates that prioritize national agendas over protection of civilians.”[64] And considering the on-going crises in Somalia, Congo, and Syria the sceptics rightly point out that R2P suffers from a selectivity problem; the concept is more likely to be implemented where the interveners reap political and economic benefits.[65] Those are concerns that several states have expressed with regards to the intervention in Libya. Russian President Vladimir Putin, who was Prime Minister at the time NATO intervened in Libya, said in a statement that had he been the president he would have, unlike his predecessor, used Russia’s power in the UNSC to veto the intervention.[66] China has expressed similar concerns, and China, just as Russia, chose to abstain from voting over resolution 1973. Jiang Yu, Foreign Ministry spokeswoman, said just a few days after the intervention had been initiated that, “We believe that the objective of enforcing the UN Security Council resolution is to protect humanitarian (objectives) and not to create an even bigger humanitarian disaster” and “Beijing has been very clear in its position that the coalition air attacks risk killing civilians and should be halted immediately.”[67] Andrew Garwood-Gowers argues that China’s abstention from the vote over UNSC resolution 1973 should not be seen as “a softening of Chinese attitude towards R2P” and that the abstention was instead a result of “an unusual set of political and factual circumstances.”[68] Brazil and India have expressed their shared concern with Russia and China with regards to the intervention in Libya. And South Africa, who voted in favour of UNSC resolution 1973, has shifted ground and has now joined Brazil, Russia, India, and China in openly criticising the intervention in Libya for using the concept of R2P as a pretext for advancement of national agendas.[69] “When NATO used the UN mandate in Libya to justify regime change, BRICS countries only hardened their support for non-intervention...” Chris Keeler argues.[70] That all the BRICS states have expressed criticisms against R2P has revealed that the norm is not widely accepted.

The BRICS states are important economic powers, or emerging powers, and Russia and China have a special place in international politics, as they are the only non-Western permanent members of the UNSC. In what many describes as a decreasingly unipolar world and a gradual shift towards multipolarity, reaching global legitimacy and consensus in important international issues are getting even more important. As in the case of R2P, without the support of key international players such as the BRICS, and especially Russia and China with their veto powers, effective implementation of the concept can prove to be far more difficult in the future than it was in Libya. Bellamy argues that the quick response to the crisis in Libya was an exception due to a wide range of unusual factors which made the intervention possible, and cannot be considered as the norm in international politics.[71] As R2P has become increasingly contentious among non-Western states the prospect for gaining global support and a UNSC resolution in the face of humanitarian crises in the future may prove to be difficult unless some serious effort is done to restore and increase the legitimacy of the R2P norm in international politics. India, Brazil, and South Africa are also important actors in the sense that they are regional powers and are often considered as representing and promoting the interests of the developing world, a huge proportion of the world’s states. If these states do not support the R2P norm, especially referring to the pillar three responsibility, the concept cannot be said to enjoy global consensus, which may have negative consequences for its effective and legitimate implementation in the face of future humanitarian crises which clearly require external response.

## *Understanding the Non-Intervention in Syria*

In many ways the Syrian Civil War share many key characteristics with the Libyan Civil war. In Syria, just as in Libya, a wave of protests started in March 2011 which called for political reform and democratisation. Bashar al-Assad, the Syrian President, responded to the protesters violently and oppressively. His security forces opened fire and killed hundreds of protesters, which made the protesters no longer call for reform but for regime change. Although the causes of the protests can be seen as a result of long-term structural causes in the Syrian government, the uprising

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was largely triggered and inspired by the Arab spring and the successful toppling of the dictatorships in Egypt and Tunisia. This trigger was further intensified when the Syrian opposition saw the robust backing the opposition in Libya received from NATO.[72] However, the Syrian regime has been far more resilient to the uprising than in Egypt, Tunisia, and Libya. More than three years into the devastating civil war in Syria, Assad remains in power, and despite that his legitimacy as a leader has been greatly deteriorated both externally and internally, there is no immediate end to the humanitarian crisis in sight.

The death toll in Syria has recently exceeded 140,000, which is as much as 140 times more than the death toll in Libya the day the Western powers intervened, and one third of the casualties in Syria are civilians, Syrian Human Rights Observatory claims.[73] It is by far the worst humanitarian crisis in the 21<sup>st</sup> century and in addition to the tragically high number of casualties, the civil war in Syria has also led to 6.5 million internally displaced people and 2.5 million have fled to neighbouring countries such as Turkey, Lebanon, Jordan, and Iraq, according to the UN High Commissioner for Refugees.[74] The total number of internally and externally displaced people in Syria represents close to one half of the Syrian population.[75] Yet, the disastrous humanitarian situation in Syria has led to only very limited response from the international community.

The lack of effective response to halt or ameliorate the humanitarian crisis in Syria as opposed to the response in Libya has led many commentators to point out the shallowness of the R2P norm, that it will only be applied to cases where national interests can be pursued simultaneously as a half-hearted humanitarian mission and that R2P hasn't really changed the underlying causes of ineffective response to humanitarian crises, mainly lack of political will.[76] The intervention in Libya and the subsequent toppling of Gaddafi have greatly limited the options available to respond to the crisis in Syria, as China and Russia, among others, fear that a neutral intervention for human protection purposes in Syria will end like Libya and have therefore used their veto powers to obstruct Western interference in Syria.[77]

However, it is far from clear-cut that the non-intervention in Syria signifies an absolute ineffectiveness of the R2P norm. The Syria case differs from the case of Libya in four main ways. Firstly, Syria is a large country with a population of 21 million people and has a considerable military force much greater than that of Gaddafi making large-scale losses on both sides almost inevitable. Secondly, Syria has great regional support, most notably Russia and Iran, but also China, which are all opposed to any form of coercive measures against Assad's regime. An intervention could therefore risk setting off a much larger conflict and potentially destabilise the whole region. This is again a situation in stark contrast to that of Libya in which the intervention, at least in the very beginning, enjoyed great regional support from the African Union and the Arab League, which China and Russia said were essential to their decision not to veto and thereby block the UNSC resolution 1973.[78] Thirdly, the national interests certain NATO members had in getting rid of Gaddafi, the long-time vilified tyrant who has actively supported terrorist groups, have not been equally present with regards to getting rid of Assad. Fourthly, the rebel opposition group in Syria is severely fractured and consists of no clear leadership, which makes it difficult to contemplate who should replace Assad. The opposition consists partly of Muslim extremists and there is great scepticism about whether such groups will manage to create a better Syria.[79]

The inaction in Syria is not simply a result of lack of political will among Western powers and other potential interveners but a result of several factors that make intervention for human protection purposes far more difficult than in Libya. Therefore, the coercive element of R2P, pillar three, does not necessarily apply to Syria because of the potential consequences. Recalling the Just War Theory element of the R2P, that an intervention must not only have a just cause but also a reasonable prospect of success and must not create more harm than good. With regards to Syria the potential consequences of intervention have been a major obstacle to such response. As Ramesh Thakur argues, "there is no humanitarian crisis so grave that an outside military intervention cannot make it worse." [80] Aidan Hehir argues in a similar fashion that although Rwanda was a clear example of "unhumanitarian" non-intervention, there can be humanitarian crises where non-intervention is the most humanitarian.[81] The crisis in Syria does nevertheless reveal a strong commitment by many states to the principle of non-intervention as well as how polarised the debate on R2P has become after Libya. Even condemnations and sanctions have been blocked in the UNSC by Russia and China, which indicates that the opposition is not simply a result of the practical difficulties of intervention but partly as a tit-for-tat response to what they regarded as an overreach of mandate in Libya and partly

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because of a commitment to the traditional Westphalian order.

## *Conclusion*

Despite the optimism among several NATO members with regards to what they considered a success in Libya and a triumph for R2P, that event has revealed how divided the global attitudes to R2P are, something which the crisis in Syria has further illuminated. It has been argued in this chapter that regardless of whether one considers the actions taken by NATO in Libya as necessary or redundant and excessive, the intervention did spur scepticism and criticism of R2P among states such as the BRICS. And that has led to a weakening of the global consensus on R2P. Because of the complexity of the crisis in Syria it is not necessarily the case, however, that R2P has proved entirely useless. However, it has certainly curbed the intervention optimism among many Western states that are increasingly realising that it is not realistic to expect future humanitarian crises to get Libya treatment. The next chapter will look at how the criticisms from the BRICS states, and in particular Brazil, provide an opportunity to reach some common ground which is exactly what is needed to give R2P a much needed push in the right direction.

## **CHAPTER 3 – How to Establish Greater Consensus on R2P**

### *Responsibility while Protecting*

So far it has been discussed how the practical testing of R2P in Libya and Syria have illuminated and uncovered that despite the unanimous acceptance of R2P in principle at the UN World Summit in 2005 there remains great scepticism about the concept, primarily outside of the West. The need for consensus is further amplified by the emergence of the BRICS states which have already shown that they demand a greater say in the important issues of international politics. This evident lack of consensus about R2P may have the effect of increasing the political costs of acting in the name of R2P without these states' consent and will thereby reduce the political will to act in cases which require the implementation of R2P's third pillar. Many of the humanitarian crises during the 1990s taught us that there is a great scarcity of political will to "save strangers" in peripheral countries. This chapter will explore one possible means to construct greater consensus which is an important step towards making R2P more effective because it can reduce the political cost of invoking R2P's third pillar and thereby potentially increase the political will to act.

This chapter will discuss Brazil's contribution to the R2P debate, the *Responsibility While Protecting* concept, and how that can help bringing new life to the R2P debate as well as bridging the vast gap between those promoting and those opposing the concept of R2P. The underlying theme of this dissertation has been the importance of consensus building with regards to R2P effectiveness, something that have proved difficult to achieve in practice. The RwP proposal, as a complementation to R2P, provides a constructive means to foster a much-needed consensus on R2P, but this depends to a large extent on the West's willingness to accept Brazil's contribution which is perceived by some Western states as a critique of the NATO intervention in Libya and a way to further harness and restrain the West's ability to use force in the name of R2P. However, this chapter will argue that RwP is much more similar to R2P than what is commonly accepted, but because of the fact that the concept comes from an emerging non-Western and postcolonial state RwP can turn out to be exactly what is needed to gradually establish a wider and deeper consensus on R2P among many of the increasingly important non-Western emerging powers. RwP may prove to be a gateway concept to R2P.

During the NATO campaign in Libya on 21 September 2011, Brazil's president Dilma Rousseff said in a speech to the UN General Assembly: "Much is said about the responsibility to protect; yet we hear little about the responsibility in protecting." [82] In the following months the Brazilian government developed the concept *Responsibility While Protecting (RwP)*, which was presented on 9 November 2011 to the UNSC by the Brazilian UN Ambassador Maria Luiza Ribeiro Viotti. [83] In comparison to the ICISS report which consists of 85 pages, RwP exists in the form of nine

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short bullet points, yet, it has attracted widespread attention.

The initial response to RwP by Western powers was deep scepticism, although the RwP actually explicitly supports R2P.[84] RwP consists of two key elements. The first element is largely a restatement of the core principles of the ICISS report, perhaps intended as a “reminder” of what R2P ought to be like and as a way to point out the elements of R2P Brazil considered to be violated or ignored during the NATO campaign in Libya. The first paragraphs of the RwP document stress the importance of prevention, that force must always be last resort, and that the use of force must “produce as little violence and instability as possible and under no circumstances can it generate more harm than it was authorised to prevent.”[85] The first element of RwP is therefore no different from R2P which also stresses the importance of the *precautionary principles* which include *right intention, last resort, proportional means, and reasonable prospects for success*[86] and that “prevention is the single most important dimension of the responsibility to protect.”[87]

The German UN Ambassador Peter Witting voiced criticisms against RwP, which can be said to be representative of the attitudes toward the concept in other Western capitals. Witting said that the RwP lacked “a precisely defined concept of its own” and criticised the introduction of “exceptional circumstances” as a qualifying trigger in addition to the four mass-atrocity crimes.[88] Andreas S. Kolb of the Global Governance Institute in Brussels makes a similar statement, saying that; “...the Brazilian initiative (RwP) is its attempt to constrain the more coercive military means of third pillar action and in particular recourse to military intervention.”[89] However, those criticisms are not warranted for two reasons. Firstly, RwP was from the beginning not only an attempt to simply critiquing R2P and more specifically the intervention in Libya, but more importantly to complement R2P, adding an element to R2P that makes it more acceptable outside of the West. Jennifer Welsh et al. argue that, “RwP is intended as a constructive development in the larger evolution of the R2P norm.”[90] That argument is consistent with public statements from Brazil on RwP as well. Brazil’s President Roussef said in the UNSC, “I have defended the need for a “responsibility while protecting” as a necessary complement to the “responsibility to protect.””[91] Although it is clear that RwP must be understood in the context of the intervention in Libya one must not mistake it for being an attempt to replace or reject R2P. Secondly, the introduction of “exceptional circumstances” as a qualifying trigger for the use of force for human protection purposes should not be controversial and is, in fact, in accordance to the R2P framework set out in the original ICISS report. The ICISS report states clearly, “In extreme and exceptional cases, the responsibility to react may involve the need to resort to military action” and furthermore, “The criteria have to be tough, because the action proposed is itself extreme.”[92] It is difficult to see how that is inherently different from the words chosen in the RwP document: “The third pillar, which applies to exceptional circumstances...”[93] In fact, the RwP document states in paragraph (c) that, “the use of force... must always be authorised by the Security Council... or in exceptional circumstances, by the General Assembly, in line with its resolution 377 (V)”[94] Resolution 377 (V) is the “united for peace” procedure which is described in chapter one of this dissertation. Recalling that the ICISS report included the possibility of invoking the “united for peace” procedure in the case of a majority vote in the UNSC but where one veto is causing a deadlock and that that option was scrapped in the final *Outcome Document* in 2005, which states that *only* the UNSC can authorise the implementation of pillar three of R2P. As such, RwP can be said to relate more to the original ICISS report than the very limited adoption of R2P in the *Outcome Document*. The international community, or the potential interveners, would therefore be less constrained by RwP than by R2P as it exists in the *Outcome Document*.

The initial criticisms from the West about RwP are therefore a puzzle. Benner suggests that one reason why the West was initially so uneasy about RwP was because they did not accept that a non-Western state took on the role as a “norm entrepreneur”, which has for a long time been the domain of the West, especially so in the fundamental questions of sovereignty and intervention.[95] This might explain why the German UN Ambassador framed the criticisms of RwP around the difference between “extreme” and “exceptional” circumstances, a seemingly trivial issue. It was perhaps the deeper and underlying uneasiness in the West of allowing an emerging non-Western state to take the lead in developing norms about some of the most contentious issues in international politics. A second reason might be that the concept was seen as a critique of NATO’s intervention in Libya, which NATO and most of its members considered a success. RwP was presented in the UNSC just twenty days after the rebel forces in Libya had killed Gaddafi under the protection of NATO’s air campaign, and certain parts of RwP seem to be a direct reference to that event: “There is a growing consensus that (R2P) might be misused for purposes other than

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protecting civilians, such as regime change”, the RwP document states.[96] That growing concern is highly evident in the current crisis in Syria, and is part of the explanation for the difficulties in finding a coherent and viable response to the humanitarian crisis.[97] Interestingly, NATO has not been entirely unified in its stance on Libya and there seems to be a growing acceptance of the RwP concept by some NATO members. The slightly lack of unity over Libya among NATO members is evident in Germany’s abstention in the voting over resolution 1973 and criticism voiced by the Danish Defence in the aftermath of the intervention.[98] Although Denmark is a relatively minor power in NATO the criticisms gained much attention as the Secretary General of NATO during the intervention was the former Danish Prime Minister Anders Fogh Rasmussen and because Denmark was one of the most active bomber in Libya, equal to France and Britain.[99] That there is a consensus and a unitary NATO stance on Libya is therefore often an exaggeration.

The second element of the RwP concept, which is the most significant contribution to the R2P debate, is the need for a better monitor-and-review mechanism in the UNSC which is stated in paragraph (h) and (i) of the RwP document: “Enhanced Security Council procedures are needed to monitor and assess the manner in which resolutions are interpreted and implemented to ensure responsibility while protecting” and “The Security Council must ensure the accountability of those to whom authority is granted to resort to force.”[100] This second element is something that is not adequately touched upon by R2P and can be seen as a reflection of many of the concerns the BRICS states have with regards to the intervention in Libya. Many felt that as soon as NATO assumed the responsibility to act on the mandate, other states had a minimal or no say on *how* the mandate ought to be interpreted and implemented and a lack of possibility to express their views and concerns to the interveners in the aftermath of the intervention. India’s UN Ambassador, Hardseep Singh Puri, said recently, “Libya has given R2P a bad name”, referring to the overreach of mandate by NATO.[101] Diplomats from South Africa, which unlike India initially supported UN Resolution 1973 by voting in favour of it, have also expressed their dissatisfaction with the intervention: “(We) feel used and are indignant that the West ignored calls by the African Union for a cease-fire.”[102] Russia chose a far more radical rhetoric, labelling the intervention as a “Western crusade” and an “Oil War”. [103] The leading interveners in Libya responded to the criticisms by rejecting demands for accountability with regards to how Resolution 1973 had been implemented and “brushed aside criticisms in the Security Council.”[104]

Some Western states have dropped their criticisms of RwP and begun to constructively engage with it. Fogh Rasmussen stated during the conclusion of the NATO operation that, “Operation Unified Protector” (the name of the NATO campaign in Libya) “is one of the most successful in NATO history”[105], a statement that not all NATO members share. Perhaps the fact that some Westerners share some of the criticisms that come from the BRICS bloc has made it easier for RwP to gain acceptance among Western states. Germany has taken the lead in welcoming constructive debate on RwP after the initial rejection of the concept. This can be seen as the result of a belated realisation that “RwP had the potential to bridge the ever growing divide in the global debate on the Responsibility to Protect.”[106] Brazil has also played an important part in promoting RwP after the concept was initially criticised, and has attempted to find ways to increase the acceptability of RwP. For instance, Brazil has consistently stressed that RwP “was not carved in stone but a means to get global discussion going”[107], which has made certain states more willing to accept Brazil’s contribution and to engage in the debate. RwP has importantly also been greatly endorsed by one of the most vocal R2P supporter Gareth Evans, co-chair and author of the ICISS report. [108] UN Secretary General Ban Ki-Moon has also expressed an increasingly positive attitude to RwP in his report *Responsibility to Protect: timely and decisive response* from July 2012. Ban Ki-Moon writes that

“Responsibility while protecting” provides a useful pathway for continuing dialogue about ways of bridging different perspectives and forging strategies for timely and decisive responses to crimes and violations relating to RtoP.”[109]

Such support is important for RwP if it is going to serve the purpose of facilitating debate and bridging the divide between supporters and sceptics of the R2P concept. RwP has also gained support from the other BRICS states, which is significant because China and Russia have been some of the most prominent supporters of non-intervention.[110] However, India and South Africa have not surprisingly been more optimistic about RwP than China and Russia. But if Brazil together with India and South Africa continue promoting RwP it is arguably more likely that those three BRICS states can manage to increase the support from Russia and China than the West can persuade China and Russia to support R2P more sincerely. It should therefore be in the interest of those who support R2P to

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together with the BRICS states engage with RWP, especially when it seems to be that the alternative option is to have several of the BRICS states in opposition to R2P, which can severely restrain the implementation of the concept in practice. And arguably, that would be more restraining than adhering to the principles of RWP. For those states that have actively supported R2P it should be a good bargain to embrace RWP if that is what it takes to move towards greater consensus and to ameliorate the polarisation of the R2P debate. Xenia Avezov, at the Stockholm International Peace Research Institute, says, "Conceptually, RWP sits in the middle ground between modern humanitarian principles and strict state sovereignty." [111] However, that is slightly wrong as RWP is far closer R2P and the post-Westphalian ideals than to absolutist Westphalian ideals. That should only further increase the incentives for R2P supporters to engage with RWP. It is also a promising sign for the evolution of R2P that RWP, which is so closely related to R2P, is gathering support from outside of the West. This suggests that there might be a way forward for R2P despite the waves of criticisms that have flushed over it in recent years.

## *The Limits of RWP*

It has been argued that RWP provides a viable means to move towards greater consensus on R2P. However, it is not a flawless consensus building strategy. RWP is just one step in the evolution of R2P, but nevertheless an important step. To ensure that RWP does not fade away one should not treat it (or R2P for that matter) as an endpoint but to constructively engage with it, scrutinising its weaknesses and when those are revealed attempt to amend it to the better. RWP is in itself an attempt to improve what many states regard as R2P's weaknesses. And in the same way, RWP is not void of such weaknesses either, and the RWP concept paper raises as many new questions as it answers. These issues will be accounted for here and will serve to highlight where further research is needed. Three key issues with RWP are particularly important.

Firstly, one of RWP's main contributions to the R2P debate is the call for a better oversight mechanism, yet, Brazil has not attempted to address *how* that is to be achieved. For instance, is there a need for an independent UN oversight body, or are there existing mechanisms that can be improved? And how can one best ensure impartiality in such a body? If these issues were to be adequately addressed by Brazil it could give more weight to RWP or at least facilitate a more fruitful discussion on how RWP ought to be implemented and added to R2P. Secondly, RWP calls for better accountability which is a noble suggestion, however, will intervening actors, such as NATO, subject themselves to greater scrutiny from the UNSC? [112] And thirdly, as RWP is not unanimously accepted by all Western states Brazil should play a far more active role in clarifying that their concept is much more similar to R2P than what some Western governments recognise, as well as continuing lobbying for the concept within the BRICS states. That is something Brazil has not paid enough attention to.

## *Conclusion*

This chapter has discussed Brazil's RWP concept which is an important contribution to the R2P debate. It is important to note that RWP is not an alternative to R2P, but that it is meant to complement it. RWP is also far more similar to R2P than what is usually accepted, but because of the fact that RWP comes from Brazil and not from the West makes it easier for the BRICS and other developing countries to accept it. If RWP can seriously be added to R2P the non-Western world might feel a greater degree of ownership to the concept, making it more widely accepted which increases the legitimacy of the norm. Whether R2P recovers from the criticisms and scrutiny it has received in recent years depends to a large extent on the West's ability to incorporate the elements of RWP into R2P. It is not self-evident that this will happen, but it has been argued that doing so is a good bargain for the West for two reasons, if the West genuinely supports R2P. Firstly, because RWP is so similar to R2P it would not necessarily include a high level of political commitment and costs for Western states to include RWP into R2P; the restraining effect will be minimal. Secondly, the restraining effect of RWP on the use of force is less than the restraining effect of having the BRICS in opposition to R2P. This should increase the political will in the West to endorse RWP.

## CHAPTER 4 – Conclusion

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This dissertation has explored the evolution of R2P from its creation in 2001 by the ICISS and up to today. The ICISS report was intended to establish wider consensus and some common grounds on the highly contentious issues of intervention and state sovereignty. The unanimous endorsement of the concept at the UN World Summit in 2005 and the inclusion of R2P in the final *Outcome Document* paragraph 138 and 139 was therefore by many seen as a success for R2P. Many commentators believed that some consensus and common ground had been achieved, and that the world was steadily moving towards a more widely accepted post-Westphalian world order. This optimism was further intensified when no states in the UNSC voted against the intervention in Libya. However, it was in fact the use of R2P's third pillar in Libya, or how it was used, which severely decreased the global legitimacy of R2P. The intervention and R2P gained widespread criticisms from states such as the BRICS because of their impression that the intervention was motivated by regime change and not by humanitarian objectives and that NATO overreached UNSC resolution 1973. That R2P is not yet widely accepted or deeply embedded in the behaviour of states can be seen in the crisis in Syria which has illustrated how committed some states are to the traditional Westphalian world order.

There has been no attempt in this dissertation to either endorse or criticise the intervention in Libya or to pass judgement on whether the intervention adhered to the principles of R2P or not. It has instead been demonstrated how the intervention in Libya came to be perceived by other states, in particular the BRICS states, and how that has affected R2P's legitimacy in the aftermath. In that respect it has been argued that the intervention in Libya was perceived highly negatively by the BRICS states. They criticised NATO for overreaching the UNSC mandate by actively supporting the opposition group in toppling Gaddafi. The BRICS states have for the most part been traditional supporters of non-intervention and relatively sceptical about R2P, fearing that it might be used for the wrong reasons. In their view, the intervention in Libya only served to confirm what they feared about R2P. As the BRICS states rise economically they demand a greater say in international politics, and the voices of China and Russia have always been particularly important due to their veto power in the UNSC. And acting without a UNSC mandate has always been contentious, but even more so in an increasingly multipolar world. This dissertation has therefore stressed the importance of building consensus on R2P, because without it the implantation of R2P can prove to be very difficult. This dissertation has argued that establishing greater consensus is necessary to increase the legitimacy of R2P and thereby enhance its effectiveness and purchase power in practice. It has then been argued that Brazil's RwP provides a unique opportunity to move one step closer to the original aim of the ICISS report: to establish global and international consensus and to reach a common ground. R2P was never intended to restate the preferences of the West but to bridge the gap between sovereignty and intervention. It has therefore been argued that by including RwP into the framework of R2P, R2P can gain a much needed consensus boost. But whether that will happen depends on the West's willingness to engage with RwP in which it is too early to give a definite answer. *Western states are worried that RwP will restrain the use of force to such an extent that R2P will be less effective in practice. However, this dissertation has found that that is not the case for two reasons. Firstly, RwP is far more similar to R2P than what is commonly accepted, its restraining effect will therefore be minimal. Secondly, the restraining effect of RwP on the use of force is most likely less than the restraining effect of continuing having non-Western states such as the BRICS partly in opposition to R2P as a result of not taking into account their criticisms and contributions to the debate. If the West really supports R2P they should start supporting RwP as well.*

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Date written: May 2014