THE RESPONSIBILITY TO PROTECT IN THE CASE OF LIBYA. PERSPECTIVES AND ARGUMENTS FROM BRICS COUNTRIES

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Abstract: *The article focuses on the intervention in Libya and analyses the context in which Resolutions 1970 and 1973 were unanimously adopted in the United Nations Security Council. The main goal of the paper is twofold. First, we aim to discuss the relevance of the Responsibility to Protect (RtoP) in the context of the Libyan humanitarian crisis and the swift response of the UNSC. Secondly, our research objective is to present and analyse the consistency of arguments formulated by BRICS countries (all of them members in the UNSC during the Libyan intervention) with respect to RtoP. The central research question is: what does the case of Libya reveal about BRICS' attitudes regarding the responsibility to protect civilians?*

Keywords*: responsibility to protect; BRICS; Libya; United Nations Security Council*

1. INTRODUCTION

The mail goal of this article is to investigate whether the Responsibility to Protect (RtoP) norm divides the members of the United Nations Security Council (UNSC) and, by extrapolating, the states within the international community into two opposing camps. One group which favours the norm by strengthening a global responsibility to protect civilians and the need to use military force against governments which fail to protect the human rights of their citizens (or are themselves the perpetrators of abuse or crimes against humanity) is usually associated with the West. On the other hand, the countries commonly referred to as BRICS, namely Brazil, Russia, India, China and South Africa, are often analysed as revisionist actors in world politics, reluctant to employ military force against other state actors, and apparently opposed to the Responsibility to Protect (RtoP) norm.

The Responsibility to Protect is often presented as a Western conceptual construction meant to safeguard civilians trapped in internal civil wars. In fact, the concept is the result of various debates and represents an attempt to reconcile state sovereignty and the rule of non-intervention in states' internal affairs (often favoured by BRICS countries), and intervention meant to protect innocent civilians who face imminent or unfolding violence on the territory of other states.

According to Oliver Stuenkel,

the discussion about RtoP today continues to be largely seen in the context of a pro-interventionist Global North and a pro-sovereignty Global South, together with the BRICS bloc (Stuenkel, 2014:7; Stuenkel, 2016:1).

Therefore, the question is whether the BRICS reject the essentials of RtoP as such, or merely Pillar 3 provisions, which they construe an assault on states' sovereignty.

The case of the Libya intervention is extremely relevant from at least two perspectives. First, the protests and brutal governmental reaction led to an imminent humanitarian tragedy which triggered the swiftest response of the UNSC. However, initial consensus among all members of the United Nations Security Council, including all BRICS countries, was replaced by dissent and by formulations of stark criticism from BRICS by the end of NATO's operation in Libya.

Therefore, the main research questions in this article are: What exactly is the point of dissent between the groups (Western states, on the one hand, and BRICS, on the other hand)? Do they perceive human rights differently or do they have opposing views on the means employed in order to protect human rights? What does the case of Libya reveal about these different views?

The article is organised into three main parts. The first briefly investigates the essentials of RtoP and the

three pillars included in the norm. The second presents the events in Libya in 2011 leading to the humanitarian crisis and explains the reaction of the UNSC. Finally, the third presents the criticism formulated by BRICS countries and attempts to identify the core issues of dissent.

2. THE RESPONSIBILITY TO PROTECT IN THE CASE OF LIBYA

2.1 The responsibility to protect and its pillars. In 2000, following the initiative of the Canadian government, the International Commission on Intervention and State Sovereignty (ICISS) was established at the UN Millennium Assembly. In 2001, ICISS issued the Report entitled *The Responsibility to Protect*. It stated that "sovereignty implies responsibility" by assigning the primary responsibility for the protection of people to the states themselves. Moreover, the Report argued that "where a population is 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, the principle of non-intervention yields to the international responsibility to protect" (ICISS, 2001:XI). The reconceptualization therefore entails the shift from "sovereignty as authority" to "sovereignty as responsibility." The Commission also emphasized three responsibilities corresponding to specific phases: the responsibility to prevent (ICISS, 2001:19-27), the responsibility to react (ICISS, 2001:29-37), and the responsibility to rebuild (ICISS, 2001:39-45).

The framework of RtoP was officially incorporated by the United Nations in 2005 during the UN World Summit (Herța, 2019b). The UN General Assembly issued the World Summit Outcome Document. This was a unanimously supported resolution that endorsed the scope of the responsibility to protect. Article 138 of the document specifies the

> responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity" and emphasizes the responsibility of each state which "entails the prevention of such crimes, including their incitement, through appropriate and necessary means (A/RES/60/1, United Nations General Assembly Resolution, World Summit Outcome, 2005: 30).

Additionally, Article 139 of the World Summit Outcome Document made clear pledges towards collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity (A/RES/60/1, United Nations' General Assembly Resolution, World Summit Outcome, 2005: 30).

The responsibilities are centred on specific situations, such as mass atrocity crimes, genocide, ethnic cleansing and other large-scale crimes against humanity. These conditions should not be mistaken for human security in general or human rights in general (Evans 2011:36). The responsibilities associated with all the above mentioned crimes against humanity are in fact consistent with legal obligations enshrined in the United Nations' Charter and in the Convention on the Prevention and Punishment of the Crime of Genocide; the latter has been ratified or acceded to by 152 States (as of July 2019). Alex Bellamy argued that, precisely because all the crimes mentioned in the World Summit Outcome Document were already prohibited, the principle attached to responsibility to protect was not "a new legal principle but rather a political commitment to implement already existing law" (Bellamy, 2011:22).

In 2009, UN Secretary-General Ban Ki-moon released the report *Implementing the Responsibility to Protect,* in which he outlined three pillars attached to the three responsibilities (to prevent, to react, to rebuild). The first (called The protection responsibilities of the State) refers to the "enduring responsibility of the State to protect its populations, whether nationals or not, from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement", while pillar two (titled International assistance and capacity-building) pledges "the commitment of the international community to assist States in meeting those obligations" (Implementing the responsibility to protect, 2009:10-21). Pillar three (Timely and decisive response) refers to "the responsibility of Member States to respond collectively in a timely and decisive manner when a State is manifestly failing to provide such protection" (Implementing the responsibility to protect, 2009:22-28), According to many voices, the report of the Secretary-General "diluted the central defining feature of RtoP" (Thakur, quoted in Weiss, 2011:7).

Pillars 1 and 2 focus on the states' capacity and responsibility to protect human rights and therefore do not outline any imposition on state sovereignty. Pillar 3, however, mentions a "wide range of non-coercive and non-violent response measures" associated with Chapter VI provisions of the UN Charter, but also sanctions and "robust steps" associated with articles 41 and 42 of the UN Charter (Chapter VII), referring to collective enforcement measures (sanctions or coercive military action). According to the Report,

"when a State refuses to accept international prevention and protection assistance, commits egregious crimes and violations relating to the responsibility to protect and fails to respond to less coercive measures, it is, in effect, challenging the international community to live up to its own responsibilities under paragraph 139 of the Summit Outcome" (Implementing the responsibility to protect, 2009: 25).

2.2 The intervention in Libya. Peaceful demonstrations (inspired by similar actions across North African countries as part of the Arab Spring) began in February 2011 in Libya. Very soon, protests turned into anti-government demonstrations and demanded the removal of Muammar Gaddafi (Gebremichael *et al.*, 2018: 3). The protests were met with brutality by police and security forces and the opposition leaders retaliated. Very quickly, innocent civilians were endangered and violence mounted in three Libyan cities, Benghazi, Bani Walid and Darnah (Gebremichael *et al.*, 2018:3; Odeyemi, 2016:4). Gaddafi tried to shut down all protests and opposition by recourse to military force, called protesters "cockroaches" and in March threatened the residents of Benghazi that "soldiers would be coming tonight and would show no mercy" (Brockmeier, Stuenkel, Tourinho, 2015:4).

The perception within the international community was that innocent people in Libya were facing imminent violence and the response of the United Nations was extremely prompt. On February 15, 2011, the United Nations Security Council issued a statement in which it requested the Libyan government "to meet its responsibility to protect its population" (Brockmeier *et al.*, 2015:3). On February 26, the UN Security Council issued Resolution 1970, in which the Council referred "the situation in the Libyan Arab Jamahiriya to [...] the International Criminal Court", imposed sanctions (arms embargo, travel bans and asset freeze), and

deplored the gross and systematic violation of human rights, including the repression of peaceful demonstrators, expressing deep concern at the deaths of civilians, and rejecting unequivocally the incitement to hostility and violence against the civilian population made from the highest level of the Libyan government (UNSC Resolution 1970, 2011).

A few weeks later, a no-fly zone was imposed under the normative umbrella of the responsibility to protect: on March 17, the Security Council issued Resolution 1973, in which military force was authorized to protect civilians and civilian populated areas. The need to protect civilians was expressed in paragraph 4 of Resolution 1973, in which the Council authorized

Member States [...] to take all necessary measures [...] to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory (UNSC Resolution 1973, 2011).

Under the coordination of the United States, UN member states initiated military action on March 19 and the initial key element of the intervention was centred on the following humanitarian rationale: creation of no-fly zone and protection of civilians, authorizing UN member states to use "all necessary measures" for that aim. French, British and American forces began the operations with the goals of imposing the no-fly area and targeting Gaddafi's military targets. After a few weeks, NATO took over the military operation.

The swift reaction of the United Nations seemed to validate the responsibility to protect norm, but also appeared to show the readiness of the Council to address gross and systematic violation of human rights. Enthusiasm related to immediate actions was voiced at the time. UN Secretary General (UNSG) Ban Ki-Moon said that

Resolution 1973 affirms, clearly and unequivocally, the international community's determination to fulfil its responsibility to protect civilians from violence perpetrated upon them by their own government (Tocci, 2015:1).

Susan Rice, who was the US Ambassador to the United Nations at that time, also commented:

I can't remember a time in recent memory when the Council has acted so swiftly, so decisively, and in unanimity on an urgent matter of international human rights (Tocci, 2015:3).

What most analysts and commentators noted was, of course, the consensus within the United Nations Security Council. Resolution 1973, which authorized the military intervention, was supported by ten members of the Council (Bosnia-Herzegovina, Colombia, France, Gabon, Lebanon, Nigeria, Portugal, South Africa, United Kingdom and United States) while five countries abstained (Brazil, China, Germany, India and Russia). No state vetoed the resolution and all BRICS countries (at the time all of them wererepresented in the Council) supported the mission in Libya.

Apart from the visible consensus among Council members that innocent Libyan civilians needed to be protected, UNSC Resolution 1973 was also unique. It was for the first time that the UN had authorized a military intervention with the aim of protecting civilians against their own government (Tocci, 2015:3; Dunne, Gifkins, 2015:522-523).

2.3 Criticism and arguments from BRICS countries. The initial support for the mission in Libya was gradually replaced by criticism from BRICS countries, as NATO decided to support the National Transitional Council of Libya, but more importantly to continue military action against Gaddafi even after his calls for aceasefire, which culminated with the overthrow of the Gaddafi regime.

In what follows, we will present some reactions from BRICS countries meant to capture the core issues of disagreement.

China criticized the lack of neutrality and lack failure to "respect the independence, sovereignty, unity and territorial integrity of the country concerned" and argued that "there must be no attempt at regime change or involvement in civil war by any party under the guise of protecting civilians" (Bellamy, 2011:20). In fact, China had always claimed to be "against the use of force in international relations" and in 2011 showed reservations with some aspects of Resolution 1973, but nevertheless supported it by abstaining from voting, partly because the League of Arab States and the African Union were adamant to support the no-fly zone measure (Odeyemi, 2016:9-10; Stuenkel, 2014:11-12).

Russia criticized the disproportionate use of force (Tocci, 2015), insisted that an immediate ceasefire had to be achieved and after Gaddafi's death in October 2011 Russian Foreign Minister Lavrov "accused NATO of having overstepped the UN's mandate to protect civilians with the attack on Gaddafi himself" (Stuenkel, 2014: 13). When later Russia vetoed resolutions concerning reactions to the deteriorating situation in Syria, it pointed to "drawing lessons" from Libya to the unfolding Syrian crisis. In October 2011, Russian Ambassador Vitaly Churkin stated that

> the situation in Syria cannot be considered in the Council separately from the Libyan experience…It is easy to see that today's 'Unified Protector' model could happen in Syria (Tocci, 2015: 20).

Brazil argued that "excessively broad interpretations of the protection of civilians" had to be avoided, because they "link it to the exacerbation of conflict, compromise the impartiality of the United Nations or create the perception that it is being used as a smokescreen for intervention or regime change" (Bellamy, 2011:20). Also, it affirmed the "need to protect civilians and respect for their rights" (Tocci, 2015:15). In November 2011, Brazil stated that

> there is a growing perception that the concept of the responsibility to protect might be misused for purposes other than protecting civilians, such as regime change (Stuenkel, 2014:13).

India "expressed great concern over the welfare of the population of Libya" during the military intervention (Tocci, 2015:15; Stuenkel, 2014:11). Also, the Indian Ambassador to the UN Hardeep Singh Puri declared that "Libya has given R2P a bad name" (Tocci, 2015: 18). During the deliberations revolving around a resolution on Syria, India also drew some "lessons" from the Libyan case by stating: "the international community should facilitate dialogue and not threaten sanctions or regime change" (Tocci, 2015:18).

South Africa expressed concern over the fact that military action exceeded the "letter and spirit" of the resolutions. It also warned that constructive assistance should be provided without "advancing political agendas that go beyond the protection of civilian mandates, including regime change" (Bellamy, 2011: 20). South Africa's Ambassador to the UN, Baso Sangqu, also drew conclusions, by saying that with regard to Syria the "trajectory, the templates for the solution were very clear; it was along similar lines to Libya" (Stuenkel, 2014:15). By the autumn of 2011, South Africa's tone had become more virulent:

> abusing the authorization granted by the Council to advance a political regime-change agenda does not bode well for the future action of the Council in

advancing the protection of civilians agenda (Tocci, 2015:19; Odeyemi, 2016:11).

According to some sources, various South African diplomats were even surprised that NATO had taken over the implementation of the no-fly zone measure and Pretoria stated that "the primary intention of resolutions 1970 and 1973 was to find a political solution to the Libyan crisis and not to enforce regime change" (Odeyemi, 2016:11).

Given all these statements and critique, what exactly is the point of dissent between the two groups, the Western states, especially USA, UK and France, on the one hand, and BRICS, on the other hand? Did they disagree over principles or means of implementation? What does the case of Libya reveal about these different views?

According to most analysts the bulk of opposing views rests on the second part of the military intervention and on the means employed for carrying out a humanitarian mission. Nathalie Tocci argued that the case of Libya revealed the "major concerns of BRICS regarding RtoP: state sovereignty, aversion to the use of force, and politicization and misuse" (Tocci, 2015:18). Others indicated the "NATO-ization of RtoP" (Rieff quoted in Brockmeier, Stuenkel, Tourinho, 2015:2). Given the above mentioned "lessons learned" from the Libyan intervention by BRICS countries, one could easily conclude that the removal of Gaddafi (and the idea that a humanitarian intervention ends in regime change) had a huge impact on BRICS countries' attitudes to the situation in Syria (alongside other considerations such as Russia's support for Assad and lack of international support for Gaddafi).

4.CONCLUSIONS & ACKNOWLEDGMENT

One conclusion could be the observation that all BRICS countries agree with the need to save innocent civilians and stop an imminent humanitarian tragedy, even when the perpetrator is the government itself, but they disagree with the forceful removal of the respective government. As explained by Nathalie Tocci, the BRICS countries did agree with the initial military response aimed at destroying the Libyan air force infrastructure and the Libyan army's heavy weapons in order to protect civilians in Benghazi, because "all these measures were viewed as compatible with the UNSC's no-fly zone and protection mandates" (Tocci: 2015:18-19). But, Tocci adds,

Had the NATO operation come to a halt when the Libyan forces ended attacks against civilian populated areas, withdrew to bases, and permitted unhindered humanitarian access, the BRICS would have likely been comfortable with the implementation of UNSC Resolution 1973 (Tocci: 2015:19).

Another aspect which exposes dissent between the Western group and BRICS is related to the provisions of Pillar 3 of the report *Implementing the Responsibility to Protect*, because it creates the opportunity for Western states to misinterpret and exceed the norm. As such, Pillar III, and not agreement on the need to protect civilians, even by using military force, constitutes the "gap between NATO and the BRICS" (Stuenkel, 2014:17).

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