Brazilian approach to the application of Responsibility to Protect in Libya 2011.

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Abstract. This study investigates Brazil's skeptical stance toward the application of the Responsibility to Protect (R2P) in the context of the 2011 military intervention in Libya, authorized by the United Nations Security Council through Resolution 1973. Although R2P gained relative consensus during the 2005 UN World Summit as a norm for preventing mass atrocities, it has continued to face criticism for its broad, and at times ambiguous, scope. The Libyan intervention was a decisive moment for R2P, representing the first case in which the doctrine was used to justify military intervention in a sovereign state under the premise of humanitarian protection. The intervention sparked considerable debate in international forums regarding the legitimacy, consistency, and geopolitical implications of R2P's implementation. The research adopts a historically grounded qualitative approach, with two main bases: Academic literature and primary sources such as UN resolutions, reports, and diplomatic speeches to examine how the intervention was framed and the Brazilian answer to it. The study seeks to contextualize Brazil's foreign policy regarding R2P and the intervention in Libya, and how its traditional emphasis on sovereignty, non-intervention, and multilateralism interact with the Libyan case.

Keywords. United Nations Security Council, Brazilian diplomacy, Responsibility to Protect, Humanitarian intervention, Arab Spring.

1. Introduction

On March 19, 2011, NATO member states launched a military intervention in Libya, authorized by the United Nations Security Council. The intervention was framed within the Responsibility to Protect (R2P) normative framework. This doctrine emerged in the early 2000s and gained relative consensus during the 2005 UN World Summit, despite facing sustained criticism for its expansive and sometimes vague scope.

The operation sparked significant debate within international forums, particularly regarding its normative legitimacy, its compatibility with state sovereignty, and its actual capacity to promote peace and stability in Libya and the broader regional context. The intervention occurred amid the Arab Spring, a period marked by intense sociopolitical transformations across the Maghreb and the wider Islamic world. Brazil took a prominent stance in the international debate on R2P. While endorsing the conceptual foundations of the doctrine, Brazil expressed caution and skepticism about its implementation in the Libyan context. This seemingly paradoxical posture was, in fact, consistent with a core tenet of Brazilian foreign policy: the normative defense of sovereignty and non-intervention, particularly concerning the use of force under humanitarian pretexts.

2. Research Methods

The research objective is to understand why Brazil was so skeptical about applying the Responsibility to Protect (R2P) in Libya. It employs a qualitative approach grounded in historical research, which first contextualizes the emergence of R2P, then its application by the Security Council in Libya in 2011, and finally the Brazilian reaction. This is achieved by reviewing the academic debate surrounding R2P and the intervention in Libya, contrasting it with key documents and speeches on the topic, particularly Resolution 1973. A comparative analysis of the academic debate and the drafting of primary texts serves as the core methodological

approach, utilized by some authors cited in the paper, including Nahlawi (2020)[1], Pecquilo and Rinaldi (2021)[2], and Antonopoulos (2012)[3]. This method allows for the identification of divergences not only between states but also within the academic community, thereby illuminating the political and normative tensions embedded in the application of R2P. It then contextualizes the Brazilian position with a broader explanation provided by Vigevani and Cepaluni (2007)[4] regarding Lula's foreign policy, also known as "Autonomy through Diversification."

This methodology is useful for understanding the key aspects of that historical text and the points of disagreement, whether between countries or among different scholars. Also facilities the identification of divergences not only among states but also within the academic community, thereby illuminating the political and normative tensions embedded in the application of R2P. This approach is particularly useful for interpreting the nuances of Brazil's position, as it situates diplomatic behavior within a historical case and a particular discursive framework. Something that can be useful in understanding the Brazilian approach regarding sovereignty, intervention, and multilateralism.

3. Contextualization: the appearance of Responsibility to Protect as a norm

3.1 What is Responsibility to Protect?

Responsibility to Protect was first conceptualized in 2001 by the International Commission on Intervention and State Sovereignty (ICISS)[5], which the Canadian Government established in December 2001, in the context of recent apathy from the international community regarding the Genocide in Ruanda in 1994, and the Western intervention in the Bosnian conflict in 1995. The Commission was created in response to the question of when the international community should intervene for humanitarian reasons. Primarily arguing that sovereignty not only grants states the right to govern their affairs but also imposes a primary responsibility to protect its citizens. If a state fails to fulfill this duty—whether due to inability or unwillingness—the responsibility then shifts to the broader international community.

According to Nahlawi (2020)[6], R2P emerged as a product of ongoing trends in international law, like the development of Human Rights law, and bigger international integration after the Cold War, with the nineties being known as the "decade of the conferences". A vibrant international debate also emerged in the eighties and nineties about some traditional principles of International Relations, questioning the Westfalian principle of sovereignty, and its emphasis on the rule of a state over its population and territory. Emerging a new approach that advocates for the protection of individual rights as the center, not the state.

The UN Secretary-General's 2009 "Implementing the Responsibility to Protect"[7] created a definition of R2P mainly based on three key pillars: The first pillar is the duty of the international community to intervene in cases of genocide, war crimes, ethnic cleansing, and crimes against humanity. The second pillar emphasizes the international community's commitment to addressing these crimes. The third pillar concerns the swift action of international institutions when the first signs of the aforementioned crimes appear.

3.2 The 2005 United Nations Summit and the debate about the R2P

The Summit was crucial for establishing R2P as an international norm aimed at protecting civilian populations globally. It represented the first UN document to reference R2P and regarded it as a valid rationale for international intervention. According to Hehir (2013)[8], this did not entail universal acceptance or consensus on when the norm should be applied. Although states have consistently expressed their support for the Responsibility to Protect (R2P), it primarily reinforces existing legal principles; thus, its effectiveness significantly depends on the ability to effect meaningful changes in state attitudes. This becomes challenging in contexts where a clear conflict of interest exists among key actors, a lack of political will, or varying interpretations regarding the applicability of R2P in specific scenarios.

This aspect poses particular difficulties because international law, in general, and the brief UN document regarding R2P in particular, are rather ambiguous about the procedures and definitions for lawful intervention. Hehir (2013)[9] noted that despite its widespread acceptance by the UN in 2005, R2P is characterized by a lack of clear procedures for enforcing international law. This issue arises from the absence of a precise definition for the crimes outlined in its first pillar. Among the four identified crimes, only genocide has a clear definition under international law. According to the author, this lack of clear criteria complicates the determination of when an intervention should be initiated.

Critics emerged not only in academia; Russia and China, two permanent members of the Security Council, have consistently been skeptical of R2P, despite not expressing resistance to the 2005 initiative. As noted by Nahlawi (2020)[10], both countries have reservations about relinquishing the Westphalian system and legitimizing an interventionist approach within the UN. Their stance also aligns with other actors, such as Brazil and India, which, according to Keating (2013)[11],

are supportive of human rights in principle but are far more hesitant to endorse military intervention or external interference as a means of safeguarding those rights. For the author, the practices and policy statements of these nations reveal a nuanced perspective on humanitarian intervention and the Responsibility to Protect (R2P). They advocate for caution in advancing interventionist norms, maintaining a strong commitment to state sovereignty while acknowledging, in some cases, a concern for humanitarian protection.

On the other hand, defensors of the norm like Evans, Thakur, and Pape (2013)[12] say that the 2005 World Summit Outcome Document and its subsequent translation into shared understandings in intergovernmental circles are an important gain for its development. With the definition presented by the 2005 Summit already being an evolution of the ICISS "population suffering serious harm,"[13] narrowing the focus to the four crimes: genocide, war crimes, ethnic cleansing, and crimes against humanity. The concept of R2P evolved further with the UN Secretary-General's 2009[14] report to the General Assembly, which helpfully outlined its responsibilities through the "three pillars" framework. Which was widely accepted in successive General Assembly debates in 2009, 2010, 2011, and 2012, despite concerns over R2P's application in the Libyan operation.

Nahlawi (2020)[15] points out that an important argument used to defend the R2P is the lack of speed that a more institutionalized approach requires, with the escalation of a potential conflict that requires such intervention many times very quickly. This may be potentialized by a state-centric worldview which interprets the state as the sole representative entity responsible for the members of a country, serving as the foundation for the laws and premises of the international community. According to the author, this creates a tendency to prioritize national interests over collective and humanitarian concerns. This resonates with the argument expressed by Secretary-General Kofi Annan, and presented in the ICISS 2001, "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?". [16]

4. Intervention in Libya

On March 19, 2011, NATO countries began a military intervention in Libya with the approval of the United Nations Security Council. The operation was justified by the concept of the Responsibility to Protect, under the pretext of protecting the civilian population from retaliation by Gaddafi following the start of a rebellion stemming from protests that began on February 15, 2011. That year, the Islamic world was experiencing the Arab Spring, a period of instability caused by the reverberation of the 2008 financial crisis and the wear and tear of political regimes, some of which, like Gaddafi's, had been in power for over 40 years.

The Security Council explicitly invoked the concept of Responsibility to Protect (R2P) in the context of enforcement action, rather than relying on the Chapter VII provisions that allow the use of force in "robust" peacekeeping missions. This marked the second instance, after Kosovo in 1999, where the world witnessed how a military operation aimed at protecting civilians was conducted. The NATO-led Operation "Unified Protector" was executed alongside a rebel armed struggle to overthrow the Libyan government, a goal ultimately achieved. However, as stated by Kuperman (2013)[17], it is open to question whether the uprising would have succeeded without military intervention by NATO, authorized by the UN.

According to Kuperman (2013)[18], the movements derived from the Arab Spring were interpreted in the United States and Europe as spontaneous popular uprisings by the civilian population seeking to establish democracies—a position reflected in the statement by the United Kingdom's representative to the UN, Mark Grant, during his speech before the Security Council on March 17, 2011:

"The Libyan population wants the same rights and freedoms that people across the Middle East and North Africa are demanding and that are enshrined in the values of the United Nations Charter."[19]

For Kuperman (2013)[20], the local dimension of the rebellion held more significance than a desire for democratic transition. As Pargeter (2012)[21] observes, Libya is a product of the division of Africa by European powers in the latter half of the 19th century. It was an Italian colony from 1912 to 1943 and had previously been an Ottoman province. Consequently, the region now known as Libya is home to various clans and tribes of different origins, leading to strong regionalism. Pargeter (2012)[22] notes that Gaddafi managed to maintain power for 40 years despite ongoing tensions among distinct groups, where loyalty to the central government was closely tied to the leader's charisma and positive relations with local authorities. This illustrates the complex nature of the situation in Libya, which raised skepticism regarding the legitimacy and necessity of military intervention. Waal (2013)[23] emphasizes the destabilizing impact of the operation, both internally and regionally. This position was reflected in Germany's stance at the 6498th meeting of the Security Council in March. 17, 2011:

"Decisions on the use of military force are always extremely difficult to take. We have very carefully considered the option of using military force—its implications as well as its limitations. We see great

risks. The likelihood of large-scale loss of life should not be underestimated. If the steps proposed turn out to be ineffective, we see the danger of being drawn into a protracted military conflict that would affect the wider region."[24]

Similarly, Brazilian ambassador Maria Viotti expressed concerns in the same session:

"We are also concerned that such measures may have the unintended effect of exacerbating tensions on the ground and causing more harm than good to the very same civilians we are committed to protecting."[25]

The regional reaction to the events in Libya was very significant, particularly through the two organizations that Libya was part of: the Arab League and the African Union. The decision to support an intervention played a crucial role in the debate within the Security Council. The positions of these two organizations were mentioned by the representatives of Lebanon, France, the United Kingdom, China, Nigeria, and South Africa during the UN Security Council meeting on March 17, 2011, which approved Resolution 1973, establishing a no-fly zone over Libya.

According to Waal (2013)[26], the Arab League's position largely aligned with the Western interpretation that the conflict in Libya was a continuation of the events in Tunisia—a tumultuous version of a democratic rebellion. With the emergence of the Arab Spring, the Middle East was thrown into chaos. The rapid downfall of Ben Ali in Tunisia and Mubarak in Egypt was poorly received in Riyadh, where Saudi elites witnessed two of their main regional allies fall in quick succession. However, as protests erupted in Libya and later in Syria, the Gulf monarchies emerged as the only actors capable of leading the Arab League.

The African Union, as analyzed by Waal (2013)[27], presented three different approaches to the Libyan situation. The first was to align with the Western countries and the Arab League, as seen with South Africa, Nigeria, and Sudan. The second group consisted of countries sympathetic to Gaddafi, which had benefited from Libya's internationalist Jamahiriya policy, such as Uganda and Zimbabwe. The third group supported a transition of power in Libya but feared the regional consequences of such a shift. The best example of this group is Chad, a country that had been at war with Libya from 1978 to 1987.

4.1 Resolution 1973

In response to the popular uprising in Libya and the government's attempts to suppress it, the Security Council adopted Resolution 1970 [28] on February 26, 2011. This resolution enforced a series of non-military measures. It also invoked the Responsibility to Protect (R2P) principle: "Recalling the Libyan authority's responsibility to protect its population."[29] As the government initiated a counteroffensive to reclaim Benghazi, the rebel stronghold, the Security Council passed Resolution 1973 [30] on March 17, 2011. This resolution authorized the use of force ("all necessary measures") to safeguard civilians, established a no-fly zone, and enforced it with military action. It imposed an arms embargo on the high seas, a flight ban, and extended asset freezes on corporations and banks associated with Gaddafi and his family. Two days later, air and naval forces from France, Italy, the UK, and the United States commenced the first strikes. NATO assumed overall command of the military operation, named Operation Unified Protector, from March 19 to October 31, 2011, when the mission officially concluded.

The Resolution 1973 authorizes the use of force, employing the standard phrase "all necessary measures," outlined in operative paragraphs 4 and 8.

"4. Authorizes Member States that have notified the Secretary-General, acting nationally or through regional organizations or arrangements, and acting in cooperation with the Secretary-General, to take all necessary measures, notwithstanding paragraph 9 of resolution 1970 (2011), 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, and requests the Member States concerned to inform the Secretary-General immediately of the measures they take pursuant to the authorization conferred by this paragraph which shall immediately reported to the Security Council;

8. Authorizes Member States that have notified the Secretary-General and the Secretary of the League of Arab States, acting nationally or through regional organizations or arrangements, to take all necessary measures to enforce compliance with the ban on flights imposed by paragraph 6 above, as necessary,"[31]

Furthermore, the resolution's preamble explicitly referenced the Responsibility to Protect (R2P), reaffirming "the responsibility of the Libyan authorities to protect the Libyan population." According to Antonopoulos (2012)[32], the key parameters of the mandate to use force under this resolution include: The protection of civilians and civilian-populated areas under threat of attack, the prohibition of any form of foreign military occupation on Libyan territory, the enforcement of the no-fly zone, request (rather than an obligation) to immediately inform the Secretary-General of any measures taken, who would then report them to the Security Council.

Antonopoulos (2012)[33] elucidates the mandate delineated in operative paragraph 4 of Security

Council Resolution 1973, which mandates the "protection of civilians and civilian-populated areas under threat of attack (short of deploying an occupation ground force)." This directive contrasts with the mandate ascribed to UNOCI under Resolution 1528[34] concerning the Ivory Coast in 2004, which articulates the "protection of civilians under imminent threat of physical violence." According to Antonopoulos (2012)[35], this distinction implies that the NATO-led coalition possessed considerable discretion in executing operations in Libya.

Furthermore, the Security Council's authorization transpired within the context of an internal conflict between the Libyan government and the National Transitional Council (NTC). The cumulative impact of Resolutions 1970[36] and 1973[37] suggests that the protection of civilians and civilian-populated areas would be enforced only against Gaddafi's army. This situation prompts some questions: How was this objective to be realized? By extending assistance to rebel forces? By conducting strikes against Libyan armed forces broadly, or only those directly assaulting or preparing to assail civilians?

Gaub (2013)[38] says that the UN mandate for civilian protection was ambiguous, lacking both a defined military objective and an identified adversary. This vagueness complicated the formulation of a coherent strategy, thereby allowing for broad interpretation. The leadership in Naples embraced three foundational principles in their interpretation: all attacks on civilians and civilian zones must be halted, all military forces must withdraw from forcibly occupied territories, and all humanitarian aid must be permitted to proceed under any circumstances.

The Security Council approved resolution 1973 with eleven votes in favor, including three permanent members—the United Kingdom, the United States, and France. Five countries abstained: Russia, China, Brazil, Germany, and India. Odeyami (2016)[39] observes a mixture of coherence and diversity in the positions adopted by BRICS countries regarding Resolution 1973. Notably, four of the five BRICS members (except South Africa) abstained. In light of the UNSC's decision-making norms, abstention—particularly by permanent members wielding veto power—is typically construed as a form of qualified support rather than outright opposition.

According to interviews conducted by Higashi (2012)[40] in December 2011 with IBSA diplomats and senior UN officials, discussions between China and Russia on one side and India, Brazil, and South Africa on the other indicated a coordinated BRICS approach towards abstaining from Resolution 1973, demonstrating a degree of unity among BRICS nations concerning the resolution. Odeyami (2016) [41] further asserts that despite South Africa's readiness to vote in favor, BRICS countries had cultivated a coordinated position distinct from that of the P3 (United Kingdom, United States, and France). The P3 perceived Resolution 1973 as a necessary reaction to the Arab League's call for a no-fly zone, particularly given that the measures in Resolution 1970 had proven inadequate in protecting civilians. Their collective stance underscored that sovereignty should not inhibit the implementation of the Responsibility to Protect (R2P) principle, even if such implementation necessitated military force in instances of mass atrocities. Conversely, BRICS nations emphasized the significance of adhering to the UN Charter's principles on sovereignty in Security Council decisions.

5. Brazilian reaction to the intervention in Libya

Brazil's reaction to the Libyan intervention reflected its broader diplomatic tradition of caution toward foreign military involvement and emphasis on sovereignty. In the context of the beginning of the conflict in Libya, Brazil was undergoing a leadership transition, with the departure of President Inácio Lula da Silva (2002–2010) and the arrival of Dilma Rousseff, Lula's political ally and successor, representing the continuity of the Workers' Party (PT) leadership in Brazil. Therefore, Dilma's foreign policy was a continuation of Lula's. Vigevani and Cepaluni (2007)[42] define Lula's international strategy as "Autonomy through Diversification," which partly reflects the traditional stance of the Workers' Party and continues Brazil's 20th-century foreign policy, particularly the government of Fernando Henrique Cardoso (1994–2002).

According to the authors, both administrations represent distinct Brazilian diplomatic traditions, differing in their actions, preferences, and beliefs while pursuing different foreign policy objectives. However, both sought to achieve a common goal: the country's economic development while maintaining a degree of political autonomy. In the case of Lula's "Autonomy through Diversification," the novelty lay in his emphasis on the country's adherence to international principles and norms through South-South alliances, including regional partnerships and agreements with non-traditional partners (China, the Asia-Pacific, Africa, Eastern Europe, the Middle East, etc.). This approach was based on the belief that such alliances could reduce asymmetries in external relations with more powerful countries, enhance Brazil's negotiating capacity, and reform international institutions to increase the participation of Global South countries.

Regarding Libya, Brazil aligned itself with other BRIC actors, due to the breach of sovereignty, something that, according to Ricupero (2017)[43], Brazil has traditionally viewed with skepticism, as was the case with Iraq in 2003. Furthermore,

aligning with other emerging countries (BRIC) was also a way to diversify Brazil's international relations and balance the power asymmetry within the Security Council.

Brazil's skepticism regarding the intervention can be observed in Ambassador Maria Viotti's statement during her vote on Resolution 1973:

"It is our view that the text of resolution 1973 (2011) contemplates measures that go far beyond that call. We are not convinced that the use of force as provided for in paragraph 4 of the resolution will lead to the realization of our common objective — the immediate end to violence and the protection of civilians."[44]

On the other hand, Brazil expressed concern with the situation, containing the threads made by Gaddafi, violation of international and humanitarian law, considering legitimate the calls for "all movements in the region expressing legitimate demands for better governance, more political participation, economic opportunities and social justice."[45]. Pecquilo and Rinaldi (2021)[46] argue that this stance was not a rejection of R2P but rather an acknowledgment that the norm was still evolving. To prevent misuse and safeguard sovereignty, it required further refinement.

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