**5 The ethics of “responsibility while protecting”**

**Brazil, the Responsibility to Protect, and the restrictive approach to humanitarian intervention**

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In the aftermath of the intervention led by the North Atlantic Treaty Organization (NATO) in Libya, the Responsibility to Protect (R2P) doctrine has received considerable blowback. Various states, most notably some of the BRICS states (Brazil, Russia, India, China, and South Africa), claimed that NATO exceeded the mandate given to it by the United Nations (UN) Security Council (UNSC) Resolution 1973.[[1]](#footnote-1) It was also suggested that the UK, the USA, and France—the so-called P-3—acted bombastically and arrogantly in the UNSC, ignoring reasonable concerns.[[2]](#footnote-2) Regardless of the actual merits of these claims (the author does not take a position on this issue here), these allegations have since framed some of the recent discussions about R2P, and there has been a worry that future action on R2P will be foreclosed as these concerns about the use of force under R2P remain.

In this context, in November 2011 Brazil presented the “responsibility while protecting” (RwP) initiative. RwP is designed to address several of the worries about R2P after Libya. According to its Brazilian drafters, RwP offers “an additional conceptual step” and “a new perspective” on R2P and the protection of civilians more generally.[[3]](#footnote-3) In short, RwP has three main claims. First, those considering undertaking humanitarian intervention need to consider alternative measures first. Second, interveners need to take extra care when using military force to protect civilians. Third, interveners should report continually to the UNSC. In making these claims, RwP also defends the need for guidelines for humanitarian intervention by the UNSC.

Subsequently, RwP has been cited in various discussions on R2P. For instance, it was subject to a section of the UN Secretary-General (SG)’s recent report on Pillar Three of R2P, *Responsibility to Protect: Timely and Decisive Response*.[[4]](#footnote-4) In addition, there was an “Informal Discussion” on RwP at the UN in February 2012. RwP was also frequently mentioned in the General Assembly (GA) debate on the report on Pillar Three of R2P in September 2012.

RwP has been subject to varying reactions. On the one hand, it has been seen as a vital addition to R2P, strengthening it at a time when it was facing a difficult period. Some states have claimed that RwP is central to R2P. For instance, India has stated that it sees RwP as key for R2P: if R2P “is to regain the respect of the international community, it has to be anchored in the concept of RwP.”[[5]](#footnote-5) Perhaps most notably, in the Interactive Dialogue in September 2013, China noted that it “supports discussions at the United Nations to discuss RwP by Brazil.”[[6]](#footnote-6) RwP is heavily referred to in the notion of “Responsible Protection,” which was proposed by Chinese scholar Ruan Zongze, and which some see as representing somewhat the Chinese position on R2P.[[7]](#footnote-7)

The RwP initiative was also referred to as “a welcome contribution” in the recommendation on the R2P by the EU Parliament (adopted by a clear majority) to the EU Council in March 2013.[[8]](#footnote-8) To that extent, Brazil’s RwP initiative might be seen as an important step with regard to Brazil embracing R2P and the related notion of humanitarian intervention, and moving away from its previous sovereigntist view discussed by others in this volume (Chapters 1 and 2).[[9]](#footnote-9) It might also be seen as an important example of a rising power appreciating that it needs to engage in norm entrepreneurship (or at least norm development) and, more generally, that it needs to act morally responsibly with regard to those suffering in other states. Thus, rather than contesting R2P and related norms to do with the tackling and prevention of mass atrocities, it might indicate that the BRICS will develop them further.

On the other hand, some have argued that RwP is morally problematic and “suggests additions or interpretations that conflict with the existing consensus [on R2P] and may turn into obstacles to timely and decisive protection.”[[10]](#footnote-10) For instance, the “chronological sequencing” proposed by RwP in the original concept note (detailed below) has been widely criticized as being too restrictive and potentially leading to non-intervention. To that extent, Brazil might be seen, conversely, as affirming the absolute sanctity of traditional, non-interventionist accounts of state sovereignty and therefore harking back to its non-interventionist roots (again, discussed by others in this volume). Several Western states have also appeared to be opposed to the initiative, particularly when first proposed (although their position has softened).[[11]](#footnote-11)

It has also been argued that RwP’s call for a “template for decision-making in such situations” is not desirable “as each situation is different,”[[12]](#footnote-12) that, contra RwP, R2P should not be subject to stricter requirements than other uses of force,[[13]](#footnote-13) and that, more generally, RwP adds “nothing new.”[[14]](#footnote-14) Hence, on this more skeptical view, Brazil’s RwP initiative is morally problematic, fails to advance R2P, and, on the contrary, potentially contests and undermines it. It is seen as a morally dubious attempt to block intervention and to reassert state sovereignty traditionally conceived, which ultimately undermines R2P. To that extent, it is also very far from an encouraging example of a rising power appreciating that it needs to engage in norm development and that it should act responsibly.

Accordingly, much depends on the normative worth of the Brazilian initiative. First and foremost, it is central to understanding whether Brazil adopts a more morally defensible position on the issue of the use of force abroad for humanitarian reasons (and, related, its position on R2P and state sovereignty) than simply rejecting humanitarian intervention outright. For instance, does RwP indicate that it now accepts that there can be morally justifiable humanitarian intervention, subject to certain limitations? Or is it proposing a morally problematic account of intervention that will block future potential interventions and clash with some of the central elements of R2P? And how do its views on humanitarian intervention differ morally from the current, more permissive practices of intervention by the West?

RwP is, second and related, potentially important for debates about the roles that the BRICS will play with regard to global norm entrepreneurship and development, including R2P and the tackling of mass atrocities. Is RwP morally valuable and therefore a promising indicator of the roles that rising powers will play in the future, for example to advance R2P? Or, does it face several moral problems and involve norm contestation of R2P that signify major worries about the roles that rising powers such as Brazil will play in the promotion of R2P and other similar norms? Looking at the ethical case for what it proposed can help to assess this, in addition to interviews and other means of assessing whether Brazil was seeking to be constructive.

Third, we need to know the ethical case *for the sake of RwP* and R2P, beyond the questions of the impact of the rising powers. Recently, Brazil has not pushed the notion further forward, missing major opportunities to do so—its main lifespan was 2011–12. Should RwP be picked up and taken forward in light of this so-called “enigmatic retreat?”[[15]](#footnote-15) For instance, should other states and global civil society take up the mantle of RwP?

Consequently, the primary aim of this chapter is to assess the normative worth of RwP, which I will do by relating it to debates in Just War Theory. I will first outline the details of RwP and its development. I will then suggest that RwP adopts what I will call a “Restrictive Approach” to Just War Theory and, specifically, the ethics of humanitarian intervention. I will argue that such an approach is morally desirable. In the subsequent section, I will consider some of the political implications of RwP. Here my argument will be more tentative, but also generally optimistic. I will conclude by highlighting two major theoretical implications of RwP for debates about (i) R2P and intervention, and (ii) Just War Theory.

Before beginning, it is worth emphasizing that, although not explicitly stated, RwP is focused particularly on humanitarian intervention. It is an account of the principles that should govern the use of military force under Pillar Three of R2P. Hence, it is essentially an add-on to R2P, rather than a challenge to it *per se*. In other words, RwP is not an *alternative* to R2P, but an *addition* or *clarification* of it for the issue of humanitarian intervention.

# The RwP initiative

Brazil developed RwP in most detail in its “concept note” submitted to the United Nations in November 2011.[[16]](#footnote-16) There are three central claims. The first concerns the sequencing of responses. It is suggested that the three pillars of R2P must be followed in “a strict line of political subordination and chronological sequencing.”[[17]](#footnote-17) So, when responding to mass atrocities, it must be clear that the protection responsibilities of the state are not being met (Pillar One) and international assistance and capacity-building must be tried and have failed (Pillar Two), and only then can there be a timely and decisive response (Pillar Three). Yet even then differentiation should be made between military and nonmilitary coercion, avoiding the “precipitous use of force.”[[18]](#footnote-18)

The second concerns accountability and the authorization of force. The use of force must be “judicious, proportionate and limited to the objectives established by the Security Council.”[[19]](#footnote-19) As noted above, it was perceived by some that NATO went beyond the mandate given to it in Resolution 1973. In response to this worry, Brazil affirms that humanitarian intervention must follow the “letter and spirit” of its UNSC mandate.[[20]](#footnote-20) It also argues that the UNSC must ensure the accountability of the interveners. To that end, it calls for “[e]nhanced Security Council procedures” to monitor the interpretation of resolutions.[[21]](#footnote-21)

The third claim concerns the means used when engaged in humanitarian intervention and, related, the proportionality of the use of force. It argues that “[t]he use of force must produce *as little violence and instability as possible* and under no circumstance can it generate more harm than it was authorized to prevent.”[[22]](#footnote-22) Brazil’s statement to the UNSC “Open Debate” on the protection of civilians (PoC) in armed conflict, at which the concept note was presented, reinforced this point about means and proportionality: “Our collective point of departure should resemble the Hippocratic principle of *primum non nocere*—first, do no harm—with which doctors are so well acquainted. That must be the motto of those who are mandated to protect civilians.”[[23]](#footnote-23)

In its statement in the informal debate on RwP in February 2012 and its comments on the SG’s report on Pillar Three in September 2012, Brazil further clarified its RwP proposal.[[24]](#footnote-24) Most notably, it stepped back from the chronological sequencing proposed in the concept note, but still generally endorsed the last resort principle in its account of “prudential sequencing.” It argued that “[s]equencing between the three pillars of R2P should be logical, based on political prudence. It does not mean the establishment of arbitrary check-lists.”

# Assessing RwP: the RwP principles and Just War Theory

Brazil’s RwP initiative is an example of what can be called the “Restrictive Approach” to Just War Theory and, in particular, to the ethics of humanitarian intervention. On this approach, the rules governing the permissibility and conduct of intervention should be (i) very limiting on the occasions when humanitarian intervention is permissible and on how intervention should be carried out (e.g. incidental collateral harms are largely prohibited). Advocates of this approach also sometimes hold that the rules governing the permissibility and conduct of humanitarian intervention should be (ii) more restrictive than those for other wars.[[25]](#footnote-25) For example, George Lucas contends that there are greater restrictions on humanitarian intervention than those found in traditional accounts of *jus in bello* as humanitarian intervention is much closer to law-enforcement and peacekeeping.[[26]](#footnote-26)

By contrast, the “Permissive Approach” to Just War Theory and, in particular, the ethics of humanitarian intervention holds that the rules governing the permissibility and conduct of humanitarian intervention should be (i) not very limiting.[[27]](#footnote-27) Advocates of this approach also sometimes deny that the rules governing the permissibility and conduct of humanitarian intervention should be (ii) more restrictive than for other wars. They hold that the rules governing the permissibility and conduct of humanitarian intervention are essentially the *same* as those governing other wars (and that these rules are not very limiting). They are simply the rules of *jus ad bellum* and *jus in bello* applied to the case of humanitarian intervention. In fact, some advocates of the Permissive Approach claim that the rules governing humanitarian intervention are more *permissive* than for other wars.[[28]](#footnote-28)

In what follows, I will argue generally in favor of the Restrictive Approach by claiming that the particular, restrictive guidelines endorsed by Brazil’s RwP initiative are morally desirable. I defend the underlying claims of the Restrictive Approach to Just War Theory and, in particular, the ethics of humanitarian intervention, in detail elsewhere.[[29]](#footnote-29) In particular, I defend the “Moderate Instrumentalist Approach.” This liberal cosmopolitan account gives primary and substantial weight to consequentialist concerns when considering the ethics of humanitarian intervention, but also holds that certain non-instrumental concerns, such as the difference between doing and allowing, are important (if not always necessary) for an intervener to act justifiably. Space precludes fleshing out and defending this approach in detail in this chapter. Instead, I will focus on the case for each particular principle of the Restrictive Approach.

## RwP on sequencing and Just War Theory

Brazil’s more recent move away from chronological sequencing is clearly morally appropriate. This view has similarities to the literal understanding of the Just War Theory principle of last resort in that every option short of the use of force must be attempted first, regardless of its merit. The obvious and frequently noted problems with such an account are that, first, mass atrocities can continue to rage while all other options are pursued regardless of their feasibility and potential effectiveness and, second, the other options, such as economic sanctions, can cause more harm than intervention. The notion of prudential sequencing seems to acknowledge some of these worries. A plausible interpretation of it is that there should be the sequencing of responses so that, before military intervention is used, the measures under Pillars One and Two are pursued first, then the non-military options under Pillar Three, unless political prudence dictates that such sequencing would unduly delay or prevent the use of force. To that extent, it is similar to the accounts of last resort in Just War Theory that take last resort not to be literal, but rather to require the pursuit of feasible and potentially effective alternatives first.

However, recently there has been a tendency to downplay the import of last resort in discussions about the ethics of humanitarian intervention and Just War Theory.[[30]](#footnote-30) First, it is sometimes overlooked in various accounts of the conditions that should govern the resort to force, at least as a separate principle. Second, and related, its value is reduced to that of necessity or proportionality, understood as comparing whether the use of force will do more harm than good than the other options.[[31]](#footnote-31) As generally conceived, the principles of necessity and proportionality involve the consequentialist weighing of the costs and benefits of military action.

To be sure, such consequentialist calculations are *an* important part of why last resort is morally important—it is obviously morally important to do more good than harm and to pursue the option that will do the most good and least harm. Last resort also seems to matter for epistemic reasons, which are often implied in discussions of the principle. That is, the likely effects of war and intervention are often very uncertain and the alternative options are sometimes more predictable.

There is an additional, non-consequentialist import to last resort, which stems from the difference between “doing” and “allowing” in moral philosophy and which is often overlooked in accounts of last resort. That is, it is sometimes important that one avoids *doing* harm, even if this will *allow* for an even greater harm. The worry with military intervention is that, in almost all feasible cases, it will lead to the intervener *doing* harm himself (often unintended harm) to those who are morally innocent, such as certain civilians.

It is important to note here that this does not mean that the difference between doing and allowing is of *absolute* moral significance (if one were to hold this, intervention would be likely to be impermissible because it typically involves *doing* harm). Rather, it is *sometimes* acceptable to do harm to promote a *much greater good*, such as when using military force is likely to lead to the foreseeable harm by the intervener of a small number of civilians, but would prevent the deaths of thousands. Instead, the non-instrumental difference between doing and allowing matters *to a certain degree*: in less extreme and more marginal cases, one should avoid doing harm, even if this will allow for a greater harm.

RwP’s account of prudential sequencing allows scope for this consideration. In effect, it is an account of the last resort principle that, on the one hand, avoids the problems of the literal account of last resort by accepting that force is sometimes required early on and that the alternatives are sometimes worse. On the other hand, it offers more than simply consequentialist or epistemic reasons to be cautious in the use of force. It also seems to be based on a non-instrumentalist call for caution and care, in a similar vein to the difference between doing and allowing in moral philosophy.[[32]](#footnote-32)

## RwP on accountability and Just War Theory

Let us now consider RwP’s accountability requirements. These concern, more clearly, (1) following the mandates of the UNSC closely, perhaps with periodic re-evaluation, and, less clearly, (2) “Enhanced Security Council procedures.” It is unclear whether this is simply a matter of changing *emphasis* without any real reform, a matter of *improving* current UNSC practices (as indicated in the open debate on the working methods of the UNSC),[[33]](#footnote-33) or a matter of developing a *new* institution (as indicated in Brazil’s statement to the debate on PoC). For instance, the UNSC can already provide a specific mandate to an intervener and require additional periodic reporting by it in its authorizing resolution (e.g. every six months)—these points could simply be re-emphasized.[[34]](#footnote-34) Or, there could be more open decision making in the UNSC, more engagement with the General Assembly, and more restraint in the use of the veto, along the lines suggested by France in its “code of conduct” for the veto.[[35]](#footnote-35) Alternatively, there could be a new institution to ensure that interveners follow their mandates by periodic reassessments.

Let us consider the first, more straightforward part of the proposal—that interveners follow their mandates very closely. On the one hand, there *seem* to be several potential reasons why this suggestion should be rejected. First, the moral legitimacy of the UNSC could be doubted. This is because of the often-stated arguments about its unrepresentative make-up (e.g. with no permanent members from the Global South) and morally problematic decision making procedures (e.g. with a veto for the P5). Second, the mandates given by the UNSC have been inflexible, poorly conceived, and based on a poor appreciation of the situation on the ground (for instance, the UNSC does not make efficient use of the Military Staff Committee). Requiring that interveners stick to these mandates, therefore, seems to reduce their ability to tackle mass atrocities. Third, and related, when on the ground there might be such humanitarian necessity that force commanders need to not simply adopt a *generous interpretation* of their mandate, but to go *beyond it* to achieve the overarching goals of the tackling of mass atrocities.

Although valid, these concerns do not seem to repudiate the general case for interveners following their mandates closely. To start with, despite the occasional case for interveners abandoning their UNSC mandates, compliance with the UNSC in general and its mandates in particular seem likely to increase international stability and will tackle humanitarian crises. This is because maintaining the UNSC as the central body with the power to authorize force reduces the number of possible actors in the international system that can authorize force (apart from certain exceptions). A system wherein there are more actors that can authorize force and intervention potentially would be less stable.[[36]](#footnote-36) This seems more likely if states are often willing to depart from their mandates.

In addition, although the UNSC has arguably often previously failed to authorize interventions that it should have authorized, it is not as bad as sometimes depicted. It has authorized numerous operations under Chapter VII and, more recently, has often been engaged in the tackling of mass atrocities, rather than ignoring them altogether (although, of course, there are some notable exceptions). It has become more realistic in what it can achieve, become more deeply engaged in responding to conflicts, there has been less confrontation in its discussions, and the UNSC has been much more willing to authorize peace operations to protect threatened populations, reducing the need for action outside of the UNSC.[[37]](#footnote-37) The quality of its mandates has also improved from those given in the 1990s with the “coercive protection” of civilians often being required (although, again, there is still obvious scope for improvement).[[38]](#footnote-38) Thus, despite some very high-profile failures, the UNSC *does* often address humanitarian crises and endorse appropriate action for the case.

To that extent, it seems that interveners have a *pro tanto* duty to follow closely their mandate from the UNSC. To be sure, there may be occasional potential cases of humanitarian need to depart from mandates, such as in cases of overwhelming humanitarian need where it is clear that the mandate is unduly restrictive. In such cases, there is still a reason to follow the mandates of the UNSC (that is, for international stability); the import of this reason is simply outweighed by the greater import of the reason to depart from the mandate.

But why is there a need for constant re-evaluation of missions (as may be required by RwP’s call for periodic assessments of missions)? After all, in traditional accounts of Just War Theory, a sharp distinction is made between *jus ad bellum* and *jus in bello*. In such accounts, once an intervener meets the requisite conditions for *jus ad bellum*, which require legitimate authority (e.g. a UNSC mandate), resort to force is permissible. The “during war” period, which would be the subject of such re-evaluations, is covered only by the principles of *jus in bello*, such as discrimination and proportionality, which concern the means used.

However, it seems mistaken to separate too strongly *jus ad bellum* from *jus in bello*. There should be constant re-evaluation of wars as they proceed. That is, the principles of *jus ad bellum* should be continuously applied throughout the war to ensure that the war continues to be morally permissible. Otherwise, an intervention that was originally morally permissible could be subject to changing circumstances (e.g. the intervention is no longer likely to be successful). Or, the intervener could change his behavior or goals (e.g. become more interested in securing material interests than achieving humanitarian aims). In such cases, the intervention would no longer be morally permissible and, potentially, should cease (if doing so would be more morally justifiable than continuing to fight).

RwP’s requirement of following the mandates given by the UNSC ultimately concerns another central principle of *jus ad bellum*: right intention. The accountability requirement to follow mandates seems to be largely in response to the worry that interveners (e.g. NATO in the case of Libya) sometimes do not in fact have the protection of civilians as their main purpose, despite being authorized to intervene for this purpose, but rather will be concerned with regime change. This worry, then, is about the *purposes* or *intentions* of those authorized to undertake force—both before and during the intervention—and whether it is consistent with the intent of what has been authorized.

Why does it matter (albeit perhaps instrumentally) that there is right intention?[[39]](#footnote-39) First, intentions typically signify likely consequences. For instance, an intervener that intends to achieve the protection of civilians seems more likely to protect civilians than an intervener that intends regime change. Second, intentions are usually held to be important for defining actions in the philosophy of action (e.g. whether an intervention can be defined as “humanitarian intervention” depends on whether the intervener had a humanitarian intention). And, it seems that there is a good case for permitting certain sorts of war and intervention (e.g. defensive wars) and prohibiting others (e.g. wars of aggression), or for having stricter rules to govern certain sorts of war and intervention (e.g. preventative wars and regime change) than others (e.g. collective self-defense). This is because of the risks of mistakes and abuse that come with wars and interventions of prevention, regime change, and so on. The risks are often lower with other types of war and intervention, such as defensive wars. Thus, the intentions of the intervener matter because they help to signify the permissibility of their action and the rules that govern it by determining the sort of practice in which the intervener is engaged. In the case of humanitarian intervention, it signifies that the Restrictive Approach should apply.

Now, doing more to ensure that interveners follow closely their humanitarian mandates is a central way to ensure that they have the appropriate intention. For example, they need to show continually that they are aiming to achieve the protection of civilians in their target selection and operations, rather than achieving alternative objectives such as regime change. Increased reporting and monitoring (e.g. more than every six months) allows less scope for interveners to adopt other intentions, as potentially they would be subject to opprobrium and lose their mandate. Hence, non-compliance with the mandate would be penalized. A stronger system of monitoring and oversight could then ensure that interveners have humanitarian intentions (even if their underlying motives differ). To that extent, the condition of right intention can be taken to be implied in RwP’s accountability guidelines.

Consequently, there is a normative case for RwP’s requirements for following closely the mandates of the UNSC and constant re-evaluation, based on the authority of the UNSC, the need for wars and interventions to be continually reassessed, and the import of right intention being secured. However, there is a limit to the amount of re-evaluation required by the UNSC. Too much re-evaluation could interfere with the intervener’s ability to be flexible in response to the situations that they find and could lead to shifting mandates, with the result being a confused and ineffective mission. The UNSC could also become preoccupied with the intervention if the procedures require constant reassessment of the intervention, to the detriment of other potential humanitarian crises.

To overcome these worries and to allow for greater re-evaluation, the “[e]nhanced Security Council procedures” envisaged by RwP need to be ambitious, going beyond changing emphasis or UNSC practices. It would be preferable to delegate this re-evaluation to another body (depending on its characteristics), such as a reinvigorated Military Staff Committee, a more robust Department of Peacekeeping Operations, or a new subsidiary body of the UNSC. This could provide independent monitoring of the intervention to the UNSC, with a demanding reporting requirement on interveners, with any transgressions of the mandate being reported to the UNSC. Space precludes considering this proposal in detail here; my point is that such a body could potentially be a desirable implication of RwP’s call for interveners to stick to their mandates and enhanced Security Council procedures.

## RwP on means and Just War Theory

The account of the use of means presented in RwP goes beyond the requirements of the principle of proportionality in international humanitarian law (IHL). According to the International Committee of the Red Cross (ICRC), proportionality in IHL asserts that “[l]aunching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.”[[40]](#footnote-40) By contrast, RwP asserts (as noted above) that actions must produce as little violence and instability as possible and that the use of force be used judiciously to avoid as far as possible “collateral damage” and unintended destabilization.[[41]](#footnote-41) Hence, actions that lead to incidental civilian harm necessary to achieve the military objective (e.g. the protection of civilians) are sometimes permitted under IHL, but would not be likely to be under RwP. Actions that harm civilians, *even unintentionally*, in the pursuit of protecting civilians would be ruled out *if it is possible to avoid them*. Under RwP, interveners should “do no harm,” avoiding casualties as far as feasible.

What are the implications of RwP’s account of means? One potential implication could be that it would lead to contingent pacifism, if the Hippocratic principle were taken to be absolute. This is because it is likely that any foreseeable military intervention will involve interveners doing at least *some* incidental harm to civilians. However, it is clear that Brazil still wanted to endorse the actual permissibility of humanitarian interventions on occasion, so it seems that RwP does not take such a strong line (i.e. incidental harm is still permissible when it cannot be avoided). A more likely implication is for the issue of the distribution of costs between interveners and those whom they are trying to protect. That is, if interveners are to avoid harming civilians incidentally *as far as possible*, they are required to take on greater risks to do so, rather than maintaining very high levels of force protection.

Would such a shift in the distribution of the risks of humanitarian intervention be morally justifiable? There are strong non-instrumental and instrumental reasons for holding this to be the case.[[42]](#footnote-42) First, as argued above, there is a difference between doing and allowing that provides a potential basis for the prudential sequencing proposed by Brazil as an *ad bellum* matter (in regard to the principle of last resort). The difference between doing and allowing also matters in terms of *in bello*. During the use of force interveners should avoid *doing* harm to innocents, even if this *allows* for greater harm.

Second, interveners should take on greater risks when necessary to avoid harming civilians incidentally, because intervening soldiers have relevant role-based duties in this context. As part of their soldier-state contract when signing up, soldiers agree to fight in wars required of them and, in doing so, take on significant risks (perhaps in return for certain benefits, such as a generous postservice pension). If facing a situation where the choice is a use of force that risks harming (i) innocent civilians or (ii) intervening soldiers, that the soldiers have agreed to take on greater risks indicates that the second option should be chosen.[[43]](#footnote-43)

Third, it matters that interveners avoid doing harm themselves because of the need to maintain the norm of humanitarian intervention. If humanitarian interveners cause significant harm *themselves* (even though they prevent even greater harms), the humanitarian credentials of the intervention are likely to be questioned in some quarters (as happened with the interventions in Kosovo and Libya). This could reduce support for future humanitarian interventions, as there would be a concern that interveners will cause significant harm, and support for the doctrine of humanitarian intervention will be reduced internationally. Therefore, it is important that interveners are seen to be acting with significant restraint to maintain international support for humanitarian intervention (when it meets the requisite conditions, such as having UNSC approval). This is important in turn for improving the chances that those who in the future could be subject to mass atrocities will be protected by the international community.

One potential response is that RwP’s more restrictive account of *jus in bello* for humanitarian intervention could lead to interveners being reluctant to intervene and so should be rejected.[[44]](#footnote-44) But, conversely, as I consider in the next section, it may also be that it is difficult to get UNSC approval for *specific* cases of humanitarian intervention in the future without something like RwP and the more Restrictive Approach being accepted. Moreover, even if an intervener does not follow the strict account outlined above, their intervention could still be permissible if it will achieve extremely beneficial consequences. It is possible that it is better for the intervener to do so than not to, as the import of fidelity to the principles of *jus in bello* is not the only relevant moral consideration—there are other, weightier instrumentalist ones. But one can accept this point and still hold that its intervention would be *more morally* justifiable if it follows the stricter principles.[[45]](#footnote-45)

This response also applies to the suggestion that RwP and the Restrictive Approach more generally will lead to too few instances of humanitarian intervention. Yet, the guidelines of the Restrictive Approach are not all absolute criteria and, in certain cases—namely, when an intervener will be extremely effective at tackling mass atrocities—they are not all necessary. On the Moderate Instrumentalist Approach that I defend, effectiveness is of great moral weight, given that it would involve effective tackling of the mass violation of basic human rights. This is not to deny the general moral case for the Restrictive Approach: interveners should live up to its requirements in *all cases* (the intervention will be *more* justifiable) and there are only a few instances in which it is permissible to intervene and not to meet all of these conditions (e.g. when the intervention will be likely to be extremely effective).[[46]](#footnote-46)

# The political implications of RwP

I have argued that Brazil’s RwP initiative—and in particular proposals on prudential sequencing, UNSC accountability, and means—is morally justifiable as a form of the Restrictive Approach to the ethics of humanitarian intervention. I will now consider the broader political implications of this analysis.

Brazil’s initiative has had a fairly mixed, although increasingly favorable, response. Although, as noted above, there was notable opposition to the proposal by certain Western states when it was first stated and by several actors to chronological sequencing, this softened once chronological sequencing was removed and once certain Western states began to see the value in the initiative, and there was support for RwP’s call for guidelines in the UN debates on RwP and in discussions in civil society.[[47]](#footnote-47)

What does this mean for R2P? Although to suggest that RwP will save R2P is far too strong (after all, RwP and the recent criticism of R2P really concern only humanitarian intervention—other aspects are largely unaffected by the blowback after Libya), RwP is nevertheless important for advancing R2P. This is not simply because of the need to ameliorate some states’ concerns about the *conduct* of humanitarian intervention in light of the campaign in Libya; the RwP has clear rhetorical import in this regard. The Brazilian initiative of RwP provides R2P with an additional author of (and stakeholder in) R2P—importantly, one that is from the Global South (thereby ameliorating some of the lingering worries that R2P is Western imperialism). RwP potentially shows that R2P is no longer reliant simply on certain Western states for its development; rising powers may be willing to take up the mantle.

What does this mean for Brazil and the rising powers? Brazil is perhaps realizing that influence on the international stage can be gained by being seen as a responsible international power and a good global citizen, as well as a norm entrepreneur, such as by advancing and defending the morally valuable RwP. RwP shows that Brazil still gives much import to its historical “key tenets” of diplomacy and negotiation (hence the emphasis on last resort) and multilateralism (hence the emphasis on accountability).[[48]](#footnote-48)

These, as I have suggested, are morally desirable and it seems to have moved away from the more morally problematic other key tenet of the complete repudiation of the use of force, even in the face of mass atrocities. RwP also potentially bodes well for what will develop with the rise of the BRICS. That is, if my optimistic view of RwP is correct and symptomatic of the likely type of norm engagement and development by the rising powers, there will be reason to be somewhat upbeat about the likely future shifts in global power for the prevention of mass atrocities and, perhaps more generally, global norm development. Notions such as the R2P, which many in the international community have worked hard to propagate to avoid future Rwandas, will not simply fall away but will be developed in morally desirable ways.

However, for various reasons, Brazil has ceased the strong advocacy and development of RwP, at least for now.[[49]](#footnote-49) It will be up to global civil society and other states, then, to carry forward RwP. As I have argued in this chapter, there is a strong moral case for doing so. Interestingly, in the September 2014 Informal Interactive Dialogue on the R2P in the GA, Patriota—now the Permanent Representative of Brazil to the UN—called for “full regard” to be given to RwP when it comes to the ten-year anniversary assessments of R2P in 2015.[[50]](#footnote-50)

But even if the initiative is not pursued directly, something similar may develop in the future accounts of R2P’s Pillar Three, be it in terms of RwP, a softer account of Responsible Protection, or an alternative notion. The underlying notions of more restrictive rules of *jus in bello* for interveners, greater limits on UNSC approval, and the emphasis on last resort, together with the case for criteria will continue to arise—if not necessarily in name of the RwP.[[51]](#footnote-51) These features are morally judicious and probably necessary if R2P is to be further crystallized, given the fairly widespread support for RwP and that RwP is a way of bridging the differences between the West and the BRICS on *how* humanitarian intervention should be undertaken as part of the R2P. To that extent, RwP—or something similar—seems likely to be the next step in the “narrow but deep approach” to R2P of the Secretary-General, which in effect delimits the R2P to establish greater consensus. RwP potentially offers much needed detail on one of the most seemingly controversial parts of the R2P—on how the use of force under Pillar Three should be undertaken.

# The theoretical implications of RwP

Even though RwP is short-lived, it does have possibly more enduring philosophical and theoretical import. Thus, to finish, it is worth highlighting two theoretical implications of the preceding analysis. The first is that it helps to transverse the solidarist/pluralist divide that is often viewed as central to debate surrounding humanitarian intervention.[[52]](#footnote-52) On the one hand, RwP may be seen by some as an attempt to assert pluralism. The Restrictive Approach that it adopts may be viewed as a form of norm contestation of the solidarism of R2P and an attempt to put forward a pluralist vision of the international system by reasserting the values of state sovereignty and non-interventionism. For instance, Andrew Garwood-Gowers, in his generally excellent discussion of the responsible protection notion, suggests that this effort, along with RwP, is evidence of the current trend towards a more complex, pluralistic normative order in which non-Western states articulate their own views on R2P.[[53]](#footnote-53) More broadly, R2P has been claimed to be subject to various avenues of normative contestation by the rising powers and other actors.[[54]](#footnote-54)

Yet, there is significant agreement around, most clearly, the first two pillars of R2P. There is little normative contestation of the notion that states have protection responsibilities and should, on occasion, help others to meet these. As Oliver Stuenkel notes, “BRICS’ support for Pillar I and Pillar II is absolute.”[[55]](#footnote-55) Indeed, in his detailed cataloguing of R2P dissenters, Patrick Quinton-Brown finds that there is virtually no public dissenting by states to the notion that the international community should tackle genocide, ethnic cleansing, war crimes, and crimes against humanity.[[56]](#footnote-56)

What *seems* far more controversial is the international remedial responsibility to respond under Pillar Three and, in particular, military intervention. Yet, one of the most notable contributions of R2P has been the clear acceptance that humanitarian intervention may, on occasion, be morally permissible, at least *in principle*. This was, of course, agreed at the 2005 World Summit. Although some states still speak out against the *practice* of humanitarian intervention, not many (although, admittedly, still a few) would assert that, in principle, humanitarian intervention is *always impermissible*. Much of the critique of intervention concerns particular cases, the manner in which intervention is carried out, the seeming inconsistency, and the risk of unauthorized intervention.[[57]](#footnote-57) My point, then, is that there is general agreement on the basic elements of R2P, including military intervention. This was manifest in the September 2014 Informal Interactive Dialogue on the R2P in the GA, where the vast majority of states spoke in defense of R2P and there was less strident opposition from states previously skeptical of R2P.[[58]](#footnote-58)

The RwP, *at most*, appears to concern contestation about one particular aspect of R2P: *when* and *how* exactly humanitarian intervention should be undertaken—not *whether* or *if* it should be undertaken *in principle*.[[59]](#footnote-59) This is, at most, normative contestation at the periphery.

It is important to note here that this is (at most) *normative* contestation; it is not *norm* contestation. Proposals such as RwP and opposition to humanitarian intervention do not challenge R2P as a *norm*. This is because it does not challenge the elements of R2P that *are* a norm, which surround the protection responsibilities of states. Rather, the RwP is a clarification for military intervention under the international remedial responsibility to protect of Pillar Three, which is, at best, only an *emerging* norm. This is only an emerging norm as there is not sufficient compliance with the call for humanitarian intervention for this yet to be a norm.

To be sure, RwP might be seen by some as a reassertion of a pluralistic worldview. RwP reflects caution towards the use of force and highlights the need to pursue alternatives. Most notably, Brazil’s more restrictive, original version of RwP, which included chronological sequencing, might be viewed more plausibly as attempting to undermine the case for humanitarian intervention *tout court*, given that the strict last resort criterion could never be met. But, as we have seen, Brazil stepped back from this view. Its more moderate account is far less vehemently pluralist; it still *accepts* the occasional humanitarian intervention and so is much more congruent with a limited form of solidarism.

As already noted, there has been a softening of views towards RwP in the West and among R2P civil society, with it now widely viewed as a constructive suggestion for a specific issue of R2P. If RwP—or a similar notion—were more explicitly accepted by the North and the South, this would clearly transcend the claims that it is simply a pluralist exercise. Moreover, there are good, non-pluralist reasons for such an acceptance, as the preceding analysis makes clear. I have not defended RwP by highlighting pluralism in international society, questioning moral universals, and so on. Rather, I have defended it on the basis of the difference between doing and allowing and consequentialist concerns (on sequencing), the *pro tanto* duty to follow UNSC mandates (on accountability), and on role-based duties and instrumentalist concerns (on means). These claims stems from the liberal cosmopolitan, Moderate Instrumentalist Approach.

Indeed, more generally, the restrictive view of humanitarian intervention is often defended by liberal cosmopolitans, such as Mary Kaldor. Regardless of Brazil’s own reasons for presenting RwP (e.g. even if one thinks that it wanted to somewhat reaffirm a pluralist world order—which is perhaps questionable), liberal cosmopolitans—and so, obviously, solidarists—could also endorse RwP. Accordingly, the preceding analysis of RwP shows that the division between pluralism and solidarism on the issue of humanitarian intervention need not—and should not—be great. More moderate pluralists may naturally tend towards RwP, but solidarists should also support it, given the underlying, liberal cosmopolitan reasons I have presented. There is a clear case, then, for convergence on the issue of humanitarian intervention under R2P and, potentially, RwP, even if from different bases—moderate pluralism and liberal cosmopolitanism.

A second implication concerns Just War Theory. Much recent work in Just War Theory has been largely dominated by the “revisionist” approach. This holds that there is not a *qualitative* difference between the morality of war and political philosophy more generally (war is typically only *quantitatively* different, e.g. it involves *more* killing). This leads some revisionists to question the foundations of some of the shibboleths of Just War Theory, most notably the principles of the moral equality of soldiers and noncombatant immunity.[[60]](#footnote-60)

Although, if put into practice, the claims of the revisionists may seem to lead to a huge shift in the rules of war, most revisionists are typically conservative in their *practical* prescriptions about changes to the current laws of war. In this context, a distinction is often made between the “deep morality” and the “law of war.”[[61]](#footnote-61) The deep morality of war is as an account of first-order, *necessary* principles which should govern war that overlooks current contingencies. Once the contingencies are factored in, certain revisionists accept that there can be moral defenses of the current laws of war that reflect these considerations.[[62]](#footnote-62) Revisionists are therefore said to be engaged in a project surrounding the “deeper” moral principles, rather than offering immediate practical guidance.

However, the dichotomy between the deep morality and the law of war made by revisionists is misleading—and could (and does) lead to morally problematic claims and prescriptions. It has not been sufficiently noted that there should clearly also be an *applied* account of the morality of war, if Just War Theory is to be sufficiently action-guiding.[[63]](#footnote-63) The applied account of the ethics of war provides moral guidance on which can we can make general judgments about the relevant practice, such as humanitarian intervention. This applied account considers not only some of the underlying, *necessary* moral principles, but also those that arise from current likelihoods and contingencies—that is, the non-ideal features of the world.

Although, of course, an applied account is relevant for several other issues, RwP provides a particularly clear case for the need for this category. The principles of RwP are not simply “deeper” moral principles; they reflect several non-ideal, more practical considerations, which reflect the current contingencies of the contemporary international system. These include the need for accountability for interveners to the UNSC and the case for maintaining the future political will for intervention. Nor are they simply legal criteria. RwP does not simply reflect international law, but goes beyond it. It offers, for instance, an account of the use of means that is more restrictive than that found in IHL. RwP offers moral guidance about the general, current practice of humanitarian intervention. To that extent, RwP is important for Just War Theory. It is a notable, politically important contemporary manifestation of the Restrictive Approach to the ethics of humanitarian intervention. We cannot assess the case for the Restrictive Approach—and RwP—without noting that we need to move beyond the narrow “deep” morality/law of war dichotomy and accept that there should be an *applied* account of the ethics of war.

# Conclusion

In conclusion, as I have argued, Brazil (and others) should progress RwP, given the moral case for it. But even if they do not, it has theoretical significance, in addition to its ethical and political import.

1. These claims are also found in Julian Lehmann, “All Necessary Means to Protect Civilians: What the Intervention in Libya Says about the Relationship between the *Jus in Bello* and the *Jus ad Bellum*,” *Journal of Conflict & Security Law* 17, no. 1 (2012): 117–146. [↑](#footnote-ref-1)
2. Gareth Evans, “R2P and RwP After Libya and Syria,” Keynote Address to GCR2P/FGV/Stanley Foundation Workshop, Responsibility While Protecting: What’s Next?, Rio de Janeiro, 23 August 2012. [↑](#footnote-ref-2)
3. Statement by Brazil, “Statement in Open Debate on Protection of Civilians in Armed Conflict,” (UN Security Council document S/PV.6650), 9 November 2011. [↑](#footnote-ref-3)
4. *Responsibility to Protect: Timely and Decisive Response* (UN document A/66/874), 25 July 2012, 13–15. [↑](#footnote-ref-4)
5. Statement by India, “Statement by H. E. Ambassador H. S. Puri, Permanent Representative of India to the UN,” General Assembly Interactional Dialogue on “Responsibility to Protect: State Responsibility and Prevention,” 11 September 2013. [↑](#footnote-ref-5)
6. Statement by China, “Statement from the People’s Republic of China,” Unofficial Transcript from webcast, 11 September 2013, http://www.globalr2p.org/resources/471. [↑](#footnote-ref-6)
7. Ruan Zongze, “Responsible Protection: Building a Safer World,” *China International Studies* 34 (May/June 2012). It is unclear the degree to which the views of Zongze reflect that of the Chinese government. [↑](#footnote-ref-7)
8. EU Parliament, Report, with a Proposal for a European Parliament Recommendation to the Council on the UN principle of the “Responsibility to Protect” (“R2P”), 2012/2143(INI), 4 April 2013. [↑](#footnote-ref-8)
9. See also Kai Michael Kenkel, “Brazil and R2P: Does Taking Responsibility Mean Using Force?” *Global Responsibility to Protect* 4, no. 1 (2012): 5–32. [↑](#footnote-ref-9)
10. Andreas Kolb, “The Responsibility to Protect (R2P) and the Responsibility While Protecting (RwP): Friends or Foes?,” Global Governance Institute, GGI Analysis Paper, 6/2012, September 2012. It should be noted that Kolb’s paper was written before Brazil presented its comments on the report on Pillar Three (which addresses some of his concerns). [↑](#footnote-ref-10)
11. Thorsten Benner, “Brazil as a Norm Entrepreneur: The ‘Responsibility while Protecting’ Initiative,” Global Public Policy Institute Working Paper, March 2013. [↑](#footnote-ref-11)
12. *Timely and Decisive Response*, 15. [↑](#footnote-ref-12)
13. Edward Luck, “Opening Statement of Dr Edward C Luck, Special Adviser to the United Nations Secretary-General on the Responsibility to Protect,” Informal Discussion on the “Responsibility While Protecting,” United Nations, 21 February 2012. [↑](#footnote-ref-13)
14. See, for instance, Eduarda Passarelli Hamann, “Brazil and R2P,” in *The Responsibility to Protect—From Evasive to Reluctant Action? The Role of Global Middle Powers*, ed. Malte Brosig (Johannesburg/Tshwane: Hanns Seidel Foundation/Konrad-Adenauer-Stiftung/Institute for Security Studies/South African Institute of International Affairs, 2012), 71–89. [↑](#footnote-ref-14)
15. Oliver Stuenkel and Marcos Tourinho, “Regulating Intervention: Brazil and the Responsibility to Protect,” *Conflict, Security & Development* 14, no. 4 (2014): 379–402. [↑](#footnote-ref-15)
16. Brazil, “Responsibility while Protecting: Elements for the Development and Promotion of a Concept,” 11 November 2011, A/66/551–S/2011/701. [↑](#footnote-ref-16)
17. Permanent Mission of the Federative Republic of Brazil to the United Nations, “Responsibility while protecting: elements for the development and promotion of a concept,” UN Document A/66/551-S/2011/701, 9 November 2011, 3. [↑](#footnote-ref-17)
18. Ibid., 2. [↑](#footnote-ref-18)
19. Ibid., 3. [↑](#footnote-ref-19)
20. Ibid., 3. [↑](#footnote-ref-20)
21. Ibid., 4. [↑](#footnote-ref-21)
22. Ibid., 4. [↑](#footnote-ref-22)
23. Brazil, “Statement in Open Debate.” [↑](#footnote-ref-23)
24. Statement by Brazil, “Statement by H.E. Ambassador Maria Luiza Ribeiro Viotti, Permanent Representative of Brazil to the United Nations [‘Interactive Dialogue’] General Assembly Interactive Dialogue on ‘Responsibility to Protect’: Timely and Decisive Response,” 5 September 2012. [↑](#footnote-ref-24)
25. For example, see Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era*, 1st edn. (Cambridge: Polity Press, 1999), 113–33. The International Commission on Intervention and State Sovereignty (ICISS), in its 2001 Report on R2P, also takes this approach. [↑](#footnote-ref-25)
26. George R. Lucas Jr., “From Jus ad Bellum to Jus ad Pacem: Re-Thinking Just-War Criteria for the Use of Military Force for Humanitarian Ends,” in *Ethics and Foreign Intervention*, eds. Deen K. Chatterjee and Don E. Scheid (Cambridge: Cambridge University Press, 2003), 72–96. [↑](#footnote-ref-26)
27. Examples include Andrew Altman and Christopher Heath Wellman, “From Humanitarian Intervention to Assassination: Human Rights and Political Violence,” *Ethics* 118, no. 2 (2008): 228–57; Fernando Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality*, 3rd edn. (New York: Transnational Publishers, 2005). [↑](#footnote-ref-27)
28. Jeff McMahan, “The Just Distribution of Harm Between Combatants and Noncombatants,” *Philosophy & Public Affairs* 38, no. 4 (2010): 342–79; Gerhard Øverland, “High-Fliers: Who Should Bear the Risk of Humanitarian Intervention?” in *New Wars and New Soldiers: Ethical Challenges in the Modern Military*, eds. Paolo Tripodi and Jessica Wolfendale (Farnham: Ashgate, 2011), 69–86. It should be noted that McMahan does accept that there are some countervailing considerations. [↑](#footnote-ref-28)
29. James Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* (Oxford: Oxford University Press, 2010). [↑](#footnote-ref-29)
30. A notable exception is John W. Lango, *The Ethics of Armed Conflict: A Cosmopolitan Just War Theory* (Edinburgh: Edinburgh University Press, 2014). [↑](#footnote-ref-30)
31. See, for example, David Fisher, *Morality and War: Can War be Just in the Twenty-first Century?* (Oxford: Oxford University Press, 2011), 73. [↑](#footnote-ref-31)
32. See further, James Pattison, “The Ethics of Diplomatic Criticism: The Responsibility to Protect, Just War Theory, and Presumptive Last Resort,” *European Journal of International Relations*, forthcoming, where I defend an account of what I call “presumptive last resort.” [↑](#footnote-ref-32)
33. Statement by Brazil, “Statement,” in Security Council debate on “Implementation of the Note by the President of the Security Council Working Methods,” UN Security Council Document S/PV.6870, 26 November 2012. [↑](#footnote-ref-33)
34. Similarly, Alex Bellamy notes that the UNSC can (and does) already include sunset clauses, specific reporting requirements, forbid certain actions, and send fact-finding missions, “R2P—Dead or Alive?” in Brosig ed., 11–27, at 24–5. [↑](#footnote-ref-34)
35. Statement by François Hollande, “Opening of the 68th Session of the United Nations General Assembly,” France at the United Nations, 24 September 2013, http://www.franceonu.org/24-September-2013-Opening-of-the. [↑](#footnote-ref-35)
36. I defend this claim in much more detail in James Pattison, *The Morality of Private War: The Challenge of Private Military and Security Companies* (Oxford: Oxford University Press, 2014). [↑](#footnote-ref-36)
37. Alex J. Bellamy, *Global Politics and the Responsibility to Protect* (London: Routledge, 2011), 170–1. [↑](#footnote-ref-37)
38. See Bellamy, *Global Politics*, 190–1. [↑](#footnote-ref-38)
39. I do not claim here that intentions have non-instrumental import. Note that intentions differ from motives. Motives concern underlying reasons and have more obvious potential non-instrumental import (even if not of major weight), stemming from the Kantian notion that one ought to act for duty’s sake. [↑](#footnote-ref-39)
40. International Committee of the Red Cross, Customary IHL Database, http://www.icrc.org/customary-ihl /eng/docs/home. [↑](#footnote-ref-40)
41. Brazil, “Concept Note,” 3; Statement by Brazil, “Interactive Dialogue.” [↑](#footnote-ref-41)
42. These are considered in more detail in James Pattison, “Bombing the Beneficiaries: The Distribution of the Costs of the Responsibility to Protect and Humanitarian Intervention,” in *The Ethics of* *Armed Humanitarian Intervention*, ed. Don Scheid (Cambridge: Cambridge University Press), 113–30. Here I consider in more detail whether interveners should bear greater costs. I also consider this issue in James Pattison, “Humanitarian Intervention, the Responsibility to Protect, and *Jus in Bello*,” *Global Responsibility to Protect* 1, no. 3: 346–91. [↑](#footnote-ref-42)
43. This argument does not apply when intervening soldiers, such as certain conscripts, have not agreed to take on greater risks. [↑](#footnote-ref-43)
44. McMahan, “The Just Distribution”; Øverland, “High-Fliers.” [↑](#footnote-ref-44)
45. This is one of the central claims of the “Moderate Instrumentalist Approach,” which I defend in detail in Pattison, *Humanitarian Intervention and the Responsibility to Protect*. [↑](#footnote-ref-45)
46. See, further, Pattison, *Humanitarian Intervention and the Responsibility to Protect*. [↑](#footnote-ref-46)
47. Benner, “Brazil as a Norm Entrepreneur”; Kolb, “Friends or Foes?,” 20. [↑](#footnote-ref-47)
48. These are discussed in Kenkel, “Brazil and R2P,” 6. [↑](#footnote-ref-48)
49. Stuenkel and Tourinho, “Regulating Intervention,” 395–6. They consider reasons such as Patriota’s departure as Foreign Minister (he was significant in RwP’s development); the lack of institutional capacity in the Ministry of External Relations; risk aversion; and events in Syria. [↑](#footnote-ref-49)
50. “Statement by H.E. Antonio de Aguiar Patriota, Permanent Representative of Brazil to the United Nations,” Informal Interactive Dialogue on the Report of the Secretary-General on the Responsibility to Protect, 8 September 2014, http://www.globalr2p.org/media/files/brazil-as-delivered.pdf. [↑](#footnote-ref-50)
51. Stuenkel and Tourinho, “Regulating Intervention,” make a similar point, 398. [↑](#footnote-ref-51)
52. Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000). [↑](#footnote-ref-52)
53. Andrew Garwood-Gowers, “China’s ‘Responsible Protection’ Concept: Reinterpreting the Responsibility to Protect (R2P) and Military Intervention for Humanitarian Purposes,” *Asian Journal of International Law*, forthcoming. [↑](#footnote-ref-53)
54. Edward Newman, “R2P: Implications for World Order,” *Global Responsibility to Protect* 5, no. 3 (2013): 235–259. [↑](#footnote-ref-54)
55. Oliver Stuenkel, “The BRICS and the Future of R2P: Was Syria and Libya the Exception?,” *Global Responsibility to Protect* 6, no. 1 (2014): 12. [↑](#footnote-ref-55)
56. Patrick Quinton-Brown, “Mapping Dissent: The Responsibility to Protect and Its State Critics,” *Global Responsibility to Protect* 5, no. 3 (2013): 274–5. [↑](#footnote-ref-56)
57. See, further, Quinton-Brown, “Mapping Dissent.” [↑](#footnote-ref-57)
58. See http://www.globalr2p.org/resources/643 for transcripts of the various statements by states. Global Centre for the Responsibility to Protect, Summary of the Sixth Informal Interactive Dialogue of the UN General Assembly on the Responsibility to Protect, http://www.globalr2p.org/media/files/summary-of-the-r2p-dialogue-2014.pdf. [↑](#footnote-ref-58)
59. A similar claim is made by Paula Wojcikiewicz Almeida, “Brazilian View of Responsibility to Protect: From Non-indifference to ‘Responsibility While Protecting,’” *Global Responsibility to Protect* 6, no. 1 (2014): 63. [↑](#footnote-ref-59)
60. See, most notably, Jeff McMahan, *Killing in War* (Oxford: Clarendon Press, 2009). [↑](#footnote-ref-60)
61. Jeff McMahan, “The Ethics of Killing in War,” *Ethics* 114, no. 4 (2004): 730. See, further, Jeff McMahan, “The Morality of War and the Law of War,” in *Just and Unjust Warriors: The Legal and Moral Status of Soldiers*, eds. David Rodin and Henry Shue (Oxford: Clarendon Press), 19–43. McMahan does not use the terminology “deep morality” in this piece, but rather “basic, first-order principles of the morality of war.” [↑](#footnote-ref-61)
62. See, for instance, McMahan, “The Morality of War and the Law of War.” [↑](#footnote-ref-62)
63. Seth Lazar, “The Morality and Law of War,” in *The Routledge Companion to Philosophy of Law*, ed. Andrei Marmor (New York: Routledge, 2012), 370 is, to the author’s knowledge, the only other recent discussion of the distinction to acknowledge this. [↑](#footnote-ref-63)