

NOREF Policy Brief

The protection of civilians in armed conflict and Brazil's "responsibility while protecting"

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Executive summary

Brazil wishes to contribute to one of the most challenging contemporary international peace and security debates: how to effectively protect civilians affected by armed conflict or, in worse cases, populations who are deliberately targeted by armed groups.

This policy brief sheds light on the Brazil's positions on the protection of civilians (PoC) and the "responsibility to protect" (R2P), indicating that the country has defined a comprehensive approach in which international law plays a key role in limiting and guiding collective action. Recent debates, including in the United Nations Security Council, have suggested an existing

relationship between PoC and R2P, but the depth and extent of this relationship still need to be further analysed.

"Responsibility while protecting" (RwP) – the new approach proposed by Brazil in late 2011 – and its follow-up debate may constitute an innovative and legitimate bridge between the two doctrines. RwP recovers the existing principles, rules and parameters of international humanitarian law – valid for PoC – and presents them as the starting point of a more responsible role for the international community when using force to protect populations.

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Introduction

Brazil wishes to contribute to one of the most challenging contemporary international peace and security debates: how to effectively protect civilians who are affected by armed conflict or, in worse cases, deliberately targeted by armed groups. This policy brief sheds light on Brazil's positions on the protection of civilians (PoC) and the "responsibility to protect" (R2P), and suggests that the new approach proposed by Brazil – "responsibility while protecting" – and its follow-up debate may represent an innovative and legitimate bridge between PoC and R2P.

Brazil's interest in international humanitarian law

Brazilian foreign policy is shaped by a strong belief in international law, diplomacy, multilateralism and peaceful means of conflict resolution, which has been effectively translated into the country's positions on international peace and security, including issues related to PoC and R2P.

Legally, Brazil's engagement with the protection of non-combatants goes back to at least the mid-1940s, reflected in its signing and ratifying of the 1949 Geneva Conventions, both 1977 Additional Protocols and Additional Protocol III of 2005. Brazil is also a party to other treaties relevant to protecting civilians, such as the Genocide Convention (1948) and the Rome Statute (1998) (ICRC, 2012). Legally, thus, Brazil clearly stands for the basic rules, norms and principles of international humanitarian law (IHL), such as those of doing no harm, proportionality, taking appropriate precautions and opposing impunity.

Politically, Brazil has followed with great interest the discussions at the United Nations (UN) Security Council on PoC. Since Security Council Resolution 1265 of 1999, the UN body has organised open debates on PoC, and the statements of Brazil – frequently a non-permanent member of the Security Council – provide a valuable source of information and were analysed in preparation for the writing of this policy brief.

PoC from the Brazilian standpoint

The Brazilian perspective on PoC has two main features. Firstly, most of its statements, especially recent ones, adopt a comprehensive perspective when dealing with the maintenance of international peace and security, including PoC. Brazil (2009; 2011a) tends to defend the protection of non-combatants more broadly, not just civilians. Moreover, Brazil argues that PoC is a multidimensional task and, as a consequence, the Security Council should use measures under both Chapters VI and VII of the UN Charter when dealing with PoC, while other UN bodies apart from the Security Council should also be involved (Brazil 1999; 2004; 2010a; 2010b).

Parallel to this, Brazil aligns itself with those who recognise that in modern warfare there are two "protection dimensions": (1) civilians who are directly or indirectly affected by conflict; and (2) civilians who become the target of armed groups. In the first situation, it is mandatory in terms of IHL not only to protect civilians caught up in warfare, but also to protect aid workers and guarantee access to humanitarian relief. The second situation – i.e. the deliberate targeting of civilians not taking part in hostilities – is seen as one of the most serious challenges today, but it is difficult to build consensus due to the political implications of some types of collective action, such as the use of force.

A large contribution to the debate was made by UN Security Council Resolution 1296 of 2000, which states that a gross violation of IHL may constitute a breach of international peace and security. Thus, the Security Council could act on behalf of the international community to stop atrocities and to ensure the accountability of those who committed them, a position shared by Brazil. Another recent – albeit controversial – contribution was made by the 2005 UN World Summit outcome document (2005 WSOD) (UN, 2005), when a fragile political consensus introduced the concept of the "responsibility to protect" (R2P), detailed below.

R2P and the Brazilian perspective

According to the R2P doctrine, populations have the right to be protected from four crimes: genocide, war crimes, crimes against humanity and ethnic cleansing. This responsibility is divided into three pillars: Pillar One proclaims that the primary responsibility for PoC lies in the state, while Pillar Two states that the international community has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means to protect populations. According to Pillar Three, when peaceful means have proven inadequate and national authorities have manifestly failed, the international community can take collective action in a timely and decisive manner through the Security Council in accordance with the UN Charter and on a case-by-case basis in terms of parameters established by the 2005 WSOD.

Prevention is the key principle. This is true not only for Pillars One and Two, but it is especially so for Pillar Three. In terms of Pillar One, the national authority in question is the main player and the international community must respect state sovereignty. In Pillar Two, the international community can become involved by supporting or strengthening local institutions to prevent R2P crimes – through technical co-operation, for example. So in terms of Pillars One and Two, the international community *preventively* responds to situations that could eventually escalate into

one of the R2P crimes. Pillar Three is much broader than merely the use of force: when seen through a “preventive lens”, this pillar also entails collective actions that range from non-coercive to coercive measures, following the basic principle of resorting to the use force only as a last resort.

Brazil and other developing countries recognise the importance of Pillars One and Two, but view Pillar Three with suspicion. They fear hidden agendas and attempts at regime change in the guise of R2P, and wish to minimise these risks. For example, although the 2009 UN secretary-general’s report on implementing R2P (UN, 2009) explicitly states that there is no fixed sequence in operationalising the pillars, Brazil sees “a political subordination and a chronological sequence” in this process (Brazil, 2010a; 2011a). This is natural for a country that believes in the use of peaceful means of conflict resolution, but it also represents a move to minimise the risk of a biased military intervention under the R2P flag.

The sequencing argument also works within Pillar Three. The Brazilian government did not elaborate on this notion – it refers to sequencing *among* the pillars – but it is possible to conclude that it would agree with it. In fact, when looking at Pillar Three using the lenses of the 2005 WSOD, the 2009 secretary-general’s report, the UN Charter, and other international norms and principles, one can identify increasing levels of collective action under this pillar, with several tools at the disposal of the international community (see Table 1).

Table 1: Collective action under Pillar Three of R2P

Levels	Provisions of the UN Charter	Tools (examples)
Non-coercive measures	Chapters VI & VIII (art. 52)	<i>Political</i> : good offices, mediation, fact finding <i>Military</i> : unarmed observers, military advisers
Less coercive measures	Chapter VII (art. 41)	<i>Political</i> : severance of diplomatic relations <i>Economic</i> : sanctions, embargoes <i>Military</i> : preventive deployment, robust peacekeeping
Coercive measures	Chapters VII (art. 42) & VIII (art. 53)	<i>Military</i> : use of force limited by the 2005 WSOD and international law

Therefore, R2P is much broader than just the use of force, and even Pillar Three has a series of collective actions that can be adopted before a robust R2P military operation. Should force be necessary, it is conditioned by the limits defined by the 2005 WSOD and must also follow the rules, parameters and principles of IHL, not just in terms of war and related issues, as Brazil claimed in late 2011 when presenting its contribution to the discussion, which will be detailed below.

PoC and R2P: two parallel roads and an intersection

The relationship between PoC and R2P is controversial, and there are similarities and differences at the conceptual and operational levels (see GCR2P, 2012). The differences are more problematic when referring to the use of force to protect those who are vulnerable. However, some Security Council resolutions on PoC have explicitly mentioned R2P (e.g. Resolutions 1674 and 1706 of 2006), which indicates both a formal acceptance of R2P by the Security Council and the recognition of an existing relationship between R2P and PoC.

In late 2011 Brazil seemed to demonstrate that these parallel roads eventually meet or may even intersect in terms of what it called "responsibility while protecting" (RwP) (Brazil, 2011b). The intersection argument was not clear, but interpretations of recent statements validate this idea. Firstly, it was during a discussion on PoC at the Security Council that Brazil introduced the new concept, despite the dangers of political contamination or because it felt that it was critical to face such dangers. Secondly, there are coinciding aspects between PoC and RwP. For example, Brazil argues that RwP is complementary to R2P, focusing on the use of

force to protect populations from the four crimes mentioned above. In this aspect, it may coincide with a context of vulnerability in which civilians need to be protected. Moreover, according to Brazil, R2P military operations must follow a set of principles, rules and parameters that are not currently evident in R2P. In light of this, the Brazilian suggestions for such principles were: do no harm, proportionality, precaution, monitoring and accountability (Brazil, 2011b). In this aspect, too, RwP coincides with the basic premises of PoC. Therefore, despite the differences between R2P and PoC, it is possible to argue that RwP provides a legitimate connection between them. This clearly needs further discussion, not only by the Brazilian government and civil society, but also by the international community as a whole.

Final remarks

The maintenance of international peace and security in the 21st century faces complex and difficult challenges, such as dealing with the increasing number of civilians who are affected by armed conflicts or, worse, deliberately targeted by armed groups. Recent contributions to the debate have helped the understanding that there is a relationship between concepts such as PoC and R2P, but its depth and extent still need to be fully explored.

The Brazilian contribution of RwP indicates that the existing principles, rules and parameters of IHL – the ones that are valid for PoC – could become a legitimate point of departure to discuss a more responsible use of force in terms of the R2P doctrine. In fact, R2P operations under RwP guidance represent a call for a higher level of responsibility on the part of the international community to protect vulnerable civilians in situations of conflict.

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