Daniel Peters | Dan Krause [eds.]

Southern Democracies and the *Responsibility to Protect*

Perspectives from India, Brazil and South Africa

Nomos

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Foreword

In 2001, the International Commission on Intervention and State Sovereignty (ICISS) presented its report of a "*Responsibility to Protect*" (R2P). Out of the Commission's broad proposals, only a minimalist consensus – by some referred to as "*R2P-lite*" – remained, when in September of 2005 Heads of State and Government agreed on paragraphs 138–140 of the World Summit Outcome Document (WSOD) about the "*Responsibility to Protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity*". The consensus was neither binding under international law nor did it go beyond existing provisions and obligations. Nevertheless, it constituted an important political statement by the then largest Assembly of Heads of State and Government on this issue, and formed the starting point for all further discussions about the conceptual progression and practical implementation of R2P within the United Nations (UN) framework. 2005 is to be seen as the beginning, and not the end, of a long-lasting consensus-building and debate on R2P.

The chances for a deepening and widening of this consensus depend on the readiness of all states to enter into a serious dialogue, in which concerns and criticisms are also taken seriously. Particularly in the countries of the Global South apprehensions are high that R2P could be nothing but a new pretext to legitimate selective interventions of strong and potent Western states in weak, vulnerable, and prone-to-violence Southern states for the pursuit of selfish interests. Moreover, due to painful historical experiences (colonialism, apartheid, Western intervention history), and to different levels of political and social development and integration, there are fundamental differences in the perceptions and notions regarding those norms and principles that constitute the essence of the concept of R2P: sovereignty; the prohibition on the use of force and intervention; questions of the legitimacy and legality of interventions; the prevention of mass atrocities and the protection of human rights; the preservation of peace, international responsibility and accountability as well as questions about a fair share of power in the international system.

A fruitful dialogue on similarities and differences in the understanding of these norms and principles would be of paramount importance not only for R2P, but also for a better and more peaceful future of international

relations as well as for an urgently-needed global cooperation. Such a dialogue should preserve the substance of the R2P-concept, strengthen its preventive dimension and peace-preservation-orientation, broaden and deepen consensus, and try to resolve or reconcile the existing contradictions in the UN Charter and within the fundamental norms and principles of R2P.

These and other considerations led the Institute for Theology and Peace (ithf) and the Chair of International Relations at the Helmut Schmidt University of the German Armed Forces in Hamburg (HSU), under Professor Michael Staack, to conduct an international workshop on the R2P-positions of important democracies of the Global South. Since 2009, both cooperation partners have been working together on an overarching interdisciplinary research project on R2P, which aims to address both ethical questions and topics of international relations. Publications on the intervention in Libya and ensuing debates on R2P as well as on normative and ethical issues of the concept emerged out of this collaboration. In addition, two PhD-projects have been developed one on the preventive dimension of R2P, and the other on the perspectives of Southern democracies on R2P and both have engaged in manifold activities through publications, colloquiums, lectures, research stays and thematic workshops.

The international workshop "*Southern perspectives on the 'Responsibility to Protect': R2P and the foreign policy identities of India, Brazil, and South Africa*" took place at the ithf, in Hamburg, at the end of 2015, connecting 16 experts from four continents for two intensive days of fruitful discussions. Its success, the all-round stressed potential, and a shared feeling of the necessity of this dialogue made the idea of a joint publication obvious.

The present volume, created under the editorship of Daniel Peters (ithf) and Dan Krause (HSU), is the insightful result of that idea. The two scholars, who have already been responsible for the workshop, have succeeded in presenting a book that will help promote a better and more comprehensive understanding of the perceptions and perspectives of the Global South, not only on R2P. To this end, they have assembled an excellent mixture of practitioners and researchers, international lawyers, peace ethicists and diplomats with a bright variety of methodological and theoretical approaches – internal and external perspectives that combine a huge interdisciplinary expertise. Thereby, it was possible to sharpen and extend the view on the three states, their constitution, their perspectives and challenges as well as their worldviews. The book could therefore be a small plank in the bridge of understanding between North and South. Also, it might be

a resourceful starting point for further debates and research for academics, practitioners, diplomats, government representatives, activists and interested readers. We wish this volume, its editors and authors the success they deserve, and warmly recommend it to all those who are interested in the concept of R2P and its future as well as in the role of the Global South in international politics.

Prof. Dr. Michael Staack (HSU) and
Dr. Bernhard Koch (Deputy Director ithf)

Hamburg, November 2017

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Introduction:
The Distinctive Nature of the IBSA Countries and Their Stance towards R2P

Dan Krause and Daniel Peters

At the World Summit in 2005 the Heads of state and government of the United Nations (UN) members reached an agreement on a minimalist consensus on the Responsibility to Protect (R2P) concept. Since then, and irrespective of the Syrian case, the basic obligation of a state to protect its citizens from mass atrocity crimes is nearly unanimously accepted, which is a huge achievement. But beyond the "*R2P-lite*" agreement from 2005 there is neither a global common understanding nor consensus on the underlying norms and principles of the concept and its implementation. Nevertheless, states also expressed in 2005 their willingness to further discuss, develop, and implement the R2P in the UN framework. The long-drawn-out, but since 2009 annually fueled, debate and the corresponding consensus-building process are an important step forward as well. Since then, R2P is work in progress, and it has been undergoing a long and sometimes controversial consensus-building process.

The endurance of this process results to a large extent from the fact that, by discussing R2P, fundamental issues of international relations and world order as well as their underlying norms and principles are touched. Some of the controversies within this debate are therefore also an expression of a dissatisfaction of (mainly) rising non-Western powers. They question the existing rules of the international relations' game and are deeply unhappy with their participation and representation in international politics, with existing power structures and their respective institutions, especially the UN Security Council (UNSC).

Among the rising non-Western powers, an investigation of the positions of the three influential Southern democracies of India, Brazil, and South Africa (IBSA) on R2P and its underlying norms and principles seems to be extremely rewarding. Albeit members of BRICS (Brazil, Russia, India, China, South Africa), the IBSA countries differ in various respects from China and Russia. Thus, on the one hand, the IBSA states challenge the existing Western order and its institutions, demand their transformation

and an adequate representation, and are increasingly questioning the interpretative and discursive sovereignty of the West. On the other hand, their democratic constitutions and institutions, their lively pluralism, their adherence to the rule of law and the separation of power, their basic human rights attitude, vibrant civil societies and market economies clearly make them appear much closer to the Western democracies.

The importance of these three states for the international relations arises mainly from three factors: geography, status, and constitution. Within the South, they represent three large and important regions on three different continents. Thus they represent not only the whole geographical range of the "*Global South*", but also important sub-regions, regional organizations, and are themselves outstanding regional powers. Combined, they represent 1.5 billion people, are rising powers with regional or even global aspirations to play an important role, and call for a greater voice in shaping global affairs. Despite their accurate characterization as "*rising powers*", the IBSA states are in many respects "*arrived and established powers*", without whose participation international policies are difficult to shape, influence, or implement, and sustainable solutions for urgent global issues are hard or not at all to achieve.

For a long time, they have been developing countries. Despite their enormous growth and development, their societies still face the constant challenges of many countries in the South that have to cope with poverty, hunger, education and environmental problems, violence and conflict, and more. This has obvious consequences for their world view and their attitude towards norms, values, and principles that are not only important for R2P, but for many aspects of the international order and global governance. This leads to a complex relationship not only with the West and with their more established and better represented BRICS-partners Russia and China, but also with the South, which they have slowly and partly come to outgrow. Nevertheless, their voting records at the UN in many respects, and not only while running for a non-permanent seat at the UN Security Council (UNSC), seems to demonstrate their good global reputation, what suggests them to be able to develop their bridge-building potential in the international arena and in the debate around R2P.

The positions of India, Brazil, and South Africa are also interesting from another perspective. In particular, the US, France, the UK as well as certain human rights lobby groups and other non-governmental organizations (NGOs) have repeatedly argued that there is a clear difference in the handling of human rights issues and the attitude towards human

rights protection between democratic and authoritarian states and societies. Therefore – so goes the assumption – as demonstrated in the past, it might be necessary to (violently) intervene time and time again for the preservation of human rights, even without a UNSC mandate. The international community must not allow authoritarian regimes such as Russia and China to decide (by veto or non-veto) on whether or not to protect human rights or whether or not to avoid serious human rights violations. This argument is not only dangerous, but also ignores the fact that there are considerable differences in theory and practice between the democratic states of the West and Southern democracies such as India, Brazil, and South Africa. Dealing with the positions of the IBSA countries and the context of their genesis seems to be both rewarding and necessary to correct biased, if not false, perceptions and representations in Western discourses.

Finally, some scholars tend to differentiate R2P sceptical or critical countries into two groups: a first group (rejectionists) that rejects fundamental aspects of the concept and questions the whole notion itself; and a second group (cautious supporters) that generally accepts the concept, including the necessity to use force in rare and extraordinary cases, but has apprehensions and concerns regarding its implementation, legitimation, and operational control, keyword "*regime change*". The three IBSA countries are mostly categorized as members of the group of cautious supporters. However, they surely represent the whole range of this group: first, South Africa is the most pro-R2P country of the three, even though it favours "*African solutions for African problems*"; next, Brazil has engaged in norm contestation by putting forward the "*Responsibility while Protecting*" (RwP) proposal, but is still very cautious and reluctant as regards its implementation; finally, for India R2P is a side issue at best, and sovereignty as well as integrity are almost sacrosanct for this R2P-sceptical country. This volume tries to take a critical look at this classification and its underlying misconceptions.

Overview of the book

In her highly comprehensive, informative, and fact-rich study, *Folashadé Soulé-Kohndou* analyses the norm entrepreneurship of India, Brazil, and South Africa (IBSA) regarding R2P. She mainly focuses on the IBSA-states' performance during their coincidental common tenure as non-permanent members of the UN Security Council (UNSC) in 2011.

According to her study, IBSA used their term at the Security Council to propose reinterpretations of existing norms in the field of international peace and security, especially in regard to R2P and via the Brazilian "R*esponsibility while Protecting*" proposal. Also, they relaunched important debates around the interdependence between security and development. Through non-interventionist claims, diplomatic language, similar rhetoric, and common initiatives IBSA managed to put forward a pragmatic opposition vis-à-vis the five permanent members (P5) of the UNSC, especially the P3 (Great Britain, France, USA). The reservations against the P3 stem from Western entanglements in apartheid laws in South Africa, different military and autocratic regimes in Brazil, and India's colonization, as well as from Western intervention policy during the 1990s and early 2000s. US-led Western interventions are the main cause for IBSA states to oppose traditional methods of regime change through armed intervention, sometimes, even worse, carried out unilaterally. Instead, they favour peaceful mediation processes and prevention, which naturally take more time. Nevertheless, due to their lively democratic political system IBSA-states are no natural allies of Russia and China, and thus try to present themselves as a pragmatic alternative, autonomous of all permanent members of the UNSC. Not only do IBSA states refuse clientalisation by the P5, but they are also determined to present their own vision of international responsibility, which differs from that of the established powers. To be internationally responsible, according to the emerging powers, includes the participation in peacekeeping operations and political mediation initiatives, favouring negotiations, delegating the use of force as the last resort, and engaging in international organizations. For IBSA it is decisive to position themselves individually in the international arena and demand a greater say and a more appropriate representation, while preserving distinct identities and their autonomy of decision.

Madhan Mohan Jaganathan questions the common explanations and findings of previous studies on India's stance on R2P. For him, India is not a unitary and rational actor. Instead, the essence of India lies in its diversity and multiplicity. It sees sovereignty as "*morality*" and privileges order over justice. This notion not only affects India's stance on R2P, but also its world view and thinking. Unless human rights violations and atrocities perpetrated by a sovereign state touch the level of genocide, India does not accept the necessity for external intervention. Thus the main argument is that sovereignty significantly influences India's perspective on the R2P concept. Personality-based individual level factors

also seem to have a significant influence, and decision-makers often exert a disproportionate leverage when it comes to concrete and key foreign policy decisions. In this study this is exemplified by the slight turnaround in India's stance on R2P that occurred when Hardeep Singh Puri replaced Nirupam Sen as the country's permanent representative at the United Nations. This change led to a more welcoming and more receptive attitude towards the concept at least for a while. Contrary to common belief, India's perspective on R2P has less to do with passivity emanating from the principle of non-violence: Mohan stresses that patterns of violence are deeply ingrained through the caste system, patriarchy, communal divide, and other forms of systematic discrimination in the Indian society. According to the author, it is the other way round: widespread tolerance of extreme violence explains the stipulation of a "*high threshold level*" in the context of the R2P debate.

In the first of two chapters dealing with the Brazilian position, *Paula Wojcikiewicz Almeida* focuses on the inherent tension between the official rhetoric and practice in Brazil's commitment to multilateralism and adherence to international law. Almeida highlights several instances that are paradigmatic for a lack of coherence between membership in International Organizations (IOs) and concrete action to implement the organization's purposes, e. g. the omission to sign a declaration recognizing the jurisdiction of the International Court of Justice as compulsory or the finding of only a partial compliance with judgments of the Inter-American Court of Human Rights by Brazilian authorities. Moreover, the inconsistent approach towards IOs, Almeida argues, is exemplified by the country's stance on R2P. In her view, the adaptation of the "*non-indifference*" principle by the Ministry of Foreign Affairs to legitimize Brazil's robust participation in the United Nations Stabilization Mission in Haiti, while simultaneously emphasizing the notion of non-intervention, appears to be an ambiguous and contradictory attempt to reconcile constitutional principles with the priorities of Lula's foreign policy. Building on an analysis of the "*Responsibility while Protecting*" (RwP) proposal, Almeida concludes that RwP did not deliver any substantial input to the further debate on R2P. She sees the reason for that in the lack of detail as to what RwP entails in practice and in the Brazilian withdrawal from championing the proposal. Therefore, the "*non-indifference*" principle and the RwP proposal serve as additional examples of the above-mentioned lack of coherence between Brazil's commitment to multilateralism and the failure to act in a logical and consistent way towards the requirements of IOs.

Adding to the discussion of the Brazilian perspective on R2P, *Eduardo Gresse, Fernando Mattos, and Daniel Peters* argue in their chapter that domestic development experiences and a related shift in the country's foreign policy have shaped Brazil's stance towards the concept under the administrations of Lula da Silva and Dilma Rousseff. Starting from a summary of the main facets of Brazilian foreign policy between 2003 and 2016, Gresse, Mattos, and Peters state that calls for a more inclusive world order by Brazilian representatives were coupled with the increased willingness to take responsibility for global challenges. Thereby, the country acted simultaneously as norm-maker, e. g. in the global fight against hunger, and a norm-taker in international fora. According to the three authors, this ambiguity is also discernible in Brazil's alternative understanding of R2P. Additionally, their study shows that domestic socioeconomic policies affected Brazil's foreign policy projects, as demonstrated by mainly interest-based South-South cooperation initiatives. Moreover, a detailed analysis of Brazil's domestic development experiences illustrates that the enactment of inclusive domestic policies under Lula da Silva was in line with ambitious commitments to the Millennium Development Goals and contributed to socioeconomic progress in Brazil during the 2000s. Although this progress has turned out to be insufficient and non-sustainable to tackle poverty, inequality, and violence, the authors assert that Brazil's domestic development experience has resonated with the country's stance on R2P. Drawing on statements of Brazilian diplomats during informal dialogues about the implementation of R2P at the UN General Assembly, Gresse, Mattos, and Peters highlight that the Brazilian notion of the concept is guided by a restrictive approach to the use of force and the prioritization of structural conflict prevention over mass atrocity prevention, posing a challenge to the fairly established "*narrow but deep approach*". Consequently, by analysing the central threads of Brazil's understanding of R2P, Gresse, Mattos, and Peters reveal that the ambition of the country's foreign policy elite was to mould the concept according to their own understanding of the instruments and scope of international responsibility thereby introducing the government's preferences into the contested field of international peace and security.

In his chapter about South Africa's foreign policy and R2P *Jan Mutton* scrutinizes the potential of the country to give normative and operational guidance to the future development of the concept. He anchors the potential leadership-role of South Africa in its history of struggle and liberation, in the country's embeddedness in global institutions and those of the

Global South, and in the central role of the humane dimension in its foreign policy, with a strong focus on the African continent. Furthermore, Mutton highlights that normative principles of South Africa's foreign policy, such as the idea of sovereignty as responsibility, the diplomacy of "*Ubuntu*", and the thinking of an "*African Renaissance*", have heavily contributed to the integration of Article 4 (h) in the Constitutive Act of the AU as precursor of R2P and the associated shift of emphasis from non-interference to non-indifference. Nevertheless, South Africa and the AU have a clear preference for "*African solutions to African problems*" and therefore prioritize the AU as primary actor. From the author's viewpoint, the preference for regional organizations to handle regional conflicts, for quiet diplomacy and inclusive political processes, or the emphasis on conflict prevention and capacity building have contributed to the country's inconclusive stance towards the third pillar of R2P. Especially the interpretation and perceived misuse of resolution 1973 by NATO and the allied forces has turned South Africa from a supporter into an R2P-sceptic. As a result, he stresses the need for a better synergy between the UN and AU, which Mutton identifies as the most important issue for South Africa with respect to R2P. Besides, he outlines three additional recurring issues regarding Pretoria's position on R2P, namely the importance of conflict prevention, the nexus between conflict and development, and the consent-based inclusion of a protection mandate in UN peacekeeping missions. In sum, Mutton stresses that South Africa's critical stance towards R2P is not a challenge to the substance of the norm, but rather to the procedures of its implementation. Thus, South Africa remains a constructive partner for the further implementation of R2P and should not be confused with the irreconcilable positions of some of its partners in the Global South.

Dan Krause focuses on the Foreign Policy Culture (FPC) of South Africa as an important explanatory variable to analyse Pretoria's attitude towards the R2P concept. He concentrates on an elite-foreign-policy-culture-approach and identifies as main objects of investigation the role of the presidencies and of the former liberation movement and now ruling party ANC. These factors have dominated the formulation and implementation of South African foreign policy since the end of apartheid in 1994. Krause then carefully investigates the influence of the identified paradigms and guidelines of the FPC on South Africa's attitude towards the underlying fundamental norms and principles of the R2P concept. He states that this attitude has remained relatively constant over the presidencies of Mandela to Zuma. The finding of a relatively constant position contrasts with some

observations that, first, put South Africa too early on the side of a Western understanding of R2P and, then, after Libya and some harsh criticism from the Cape branded it as an opponent of the concept. The Libyan intervention debate was therefore revealing in regard to SA's position on global R2P, but no "*turning point*". Mandela's iconic presidency only overshadowed already existing divergences between SA and the West in the understanding of fundamental norms and principles of R2P and the international order. Also, some observers mistakenly confused South Africa's sponsorship of an African R2P regime with its attitude towards a global one. To the latter, Pretoria has always had apprehensions and has demanded clarification and a greater say. This demand might be mainly caused by the relative impotence of (South) Africa in the global power structures. Divergences are mainly due to the more dominant and determining FPC paradigms such as anti-imperialism, the identity of a (communist-socialist-ideology) liberation movement, and the solidarity with the Global South and befriended liberation movements. Democracy, multilateralism, sovereignty as responsibility, and human rights are likewise important tenets of South Africa's FPC. But whenever they are in conflict with the paradigms mentioned before, the latter take a back seat. The influence of the more assertive principles of the FPC on concrete foreign policy initiatives becomes clear when one applies these paradigms on other erratic and hardly explainable foreign policy decisions, especially of the Zuma government. Viewed through the lenses of the FPC they become much more rational, clear, and understandable.

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Dan Krause and Daniel Peters

Hamburg, November 2017

Rising Powers and Norm Entrepreneurship: IBSA and the Responsibility to Protect

Folashadé Soulé-Kohndou

Introduction

As with the General Assembly, the United Nations Security Council confers prestige, legitimacy and potential influence to its permanent and non-permanent members.[1] The importance attached by the countries originates from their collective belief in the Council's symbolic role as a source of influence in the world. Ian Hurd outlines three ways in which non-member states mobilise their role in the Security Council: (i) by tabling issues relevant to an individual country's interests; (ii) by seeking appointment as a non-permanent member for a two-year period; and finally (iii) through an investment in UN peacekeeping missions.[2]

Through their respective diplomatic channels and permanent UN delegates, India, Brazil and South Africa have used these methods of influence to varying degrees in their capacities as non-permanent members of the Security Council.

As shown in Table 1, in 2011, Brazil, India and South Africa were simultaneously present at the Security Council as non-permanent members.[3] This coincidental presence, considered as historic by the heads of IBSA delegations at the UN, allowed these countries to seize a political opportunity and collectively draw attention to the principles and objectives of the Global South. In particular, they urged the Security Council to assimilate priorities highlighted in the IBSA declaration, issued in 2003 in Brasília.[4]

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1 Ian Hurd, "Legitimacy, Power and the Symbolic Life of the UN Security Council", *Global Governance* 8 (2002), No. 1: 36–51.

2 Ibid.

3 Brazil had a seat during 2010–2011 while India and South Africa occupied a seat during 2011–2012.

4 "Press Statement of the India–Brazil–South Africa (IBSA) Forum on the Election of India, Brazil and South Africa as Non-permanent Members of the United Nations Security Council", New York, October 12, 2010, accessed May 24, 2017, http://www.dirco.gov.za/docs/2010/ibsa1014.html.

Table 1 – Election of IBSA member states as non-permanent members of the UNSC until 2012

	INDIA (7)	BRAZIL (10)	SOUTH AFRICA (2)
YEARS	1950–1951; 1967–1968; 1972–1973; 1977–1978; 1984–1985; 1991–1992; 2011–2012	1946–1947; 1951–1952; 1954–1955; 1963–1964; 1967–1968; 1988–1989; 1993–1994; 1998–1999; 2004–2005; 2010–2011	2007–2008; 2011–2012

Own figure based on data from: http://www.un.org/en/sc/members/elected.shtml

An election to the Security Council gives non-permanent members elevated international visibility, despite their limited margin for manoeuvre in decision-making and the inequality between them and the P5. A term as non-permanent member at the Security Council has offered emerging powers a political power-play, albeit temporary, to increase their diplomatic profile and international prestige. Moreover, the appointment as a non-permanent member allows countries to enjoy a temporary "*authority-by-association*" and a form of legitimacy. Therefore, the ambition to become a non-permanent member is largely driven by the symbolic power conveyed by the associative and temporary proximity to the P5.[5]

Emerging powers tend to mobilise massive diplomatic and material resources to be elected as non-permanent members. Thus, quite unsurprisingly, the election of India, Brazil, and South Africa as non-permanent members to the Security Council resulted in a remarkable mobilisation of diplomats at the core of certain delegations of IBSA at the UN headquarters in New York. The Brazilian delegation mobilised between 15 and 25 diplomats in 2010 and 2011, and the South African delegation is said to have increased the number of diplomats in a similar manner.

To analyse the multilateral IBSA moves at the Security Council, it is imperative to comprehend "*the constraints to the context and the resources and opportunities of the actors before addressing the issue of their action and its consequences*".[6] IBSA's entry into the Security Council coincides with the wave of civil protests across the Arab world. The Security Council

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5   Hurd, "Legitimacy, Power and the Symbolic Life of the UN Security Council", 44.
6   Michel Crozier and Erhard Friedberg, *Actors and Systems. The Politics of Collective Action* (Chicago: University of Chicago Press, 1980), 43.