



**Queensland University of Technology**  
Brisbane Australia

This may be the author's version of a work that was submitted/accepted for publication in the following source:

[Garwood-Gowers, Andrew](#)  
(2016)

China's 'responsible protection' concept: Reinterpreting the Responsibility to Protect (R2P) and military intervention for humanitarian purposes.  
*Asian Journal of International Law*, 6(1), pp. 89-118.

This file was downloaded from: <https://eprints.qut.edu.au/75548/>

© Copyright 2014 Cambridge University Press

This article has been accepted for publication and will appear in a revised form, subsequent to peer review and/or editorial input by Cambridge University Press, in *Asian Journal of International Law*, published by Cambridge University Press.

**Notice:** *Please note that this document may not be the Version of Record (i.e. published version) of the work. Author manuscript versions (as Submitted for peer review or as Accepted for publication after peer review) can be identified by an absence of publisher branding and/or typeset appearance. If there is any doubt, please refer to the published source.*

<https://doi.org/10.1017/S2044251314000368>

## *China's "Responsible Protection" Concept: Re-interpreting the Responsibility to Protect (R2P) and Military Intervention for Humanitarian Purposes*

Andrew GARWOOD-GOWERS\*

Queensland University of Technology, Australia

*a.garwood-gowers@qut.edu.au*

### **Abstract**

This article assesses the extent to which the recently formulated Chinese concept of "Responsible Protection" (RP) offers a valuable contribution to the normative debate over R2P's third pillar following the controversy over military intervention in Libya. While RP draws heavily on previous proposals such as the original 2001 ICISS report and Brazil's "Responsibility while Protecting" (RwP), by amalgamating and re-packaging these earlier ideas in a more restrictive form the initiative represents a new and distinctive interpretation of R2P. However, some aspects of RP are framed too narrowly to provide workable guidelines for determining the permissibility of military intervention for civilian protection purposes, and should therefore be clarified and refined. Nevertheless, the Chinese proposal remains significant because it offers important insights into Beijing's current stance on R2P. More broadly, China's RP and Brazil's RwP initiatives illustrate the growing willingness of rising, non-Western powers to assert their own normative preferences on sovereignty, intervention and global governance.

The recent intra-state humanitarian crises in Libya and Syria have drawn attention to China's evolving stance on the "responsibility to protect" (R2P) concept, and also provided important insights into Beijing's broader attitudes towards international law and global governance. While China officially endorsed R2P in the 2005 World Summit Outcome Document (WSOD) its traditional emphasis on a strict interpretation of state sovereignty and non-intervention meant that Beijing remained cautious about international efforts to implement the concept. Given this ongoing resistance to R2P's operationalization, China's acquiescence to the passage of UNSC resolution 1973 authorising military action in Libya in March 2011 suggested the possibility of a shift towards greater Chinese acceptance of R2P and UNSC-authorized military intervention for civilian protection purposes.<sup>1</sup> However, the way in which NATO interpreted its mandate for the use of force in Libya – coupled with the removal of the Gaddafi government - appeared to reignite Beijing's longstanding concerns that R2P may be misused in order to pursue other strategic objectives such as regime change.<sup>2</sup> China, along with Russia, subsequently vetoed four UNSC draft resolutions which sought to impose non-forcible measures on the Syrian government. While brief moments of consensus within the

---

\* Lecturer, Faculty of Law, Queensland University of Technology, Australia. I am grateful for valuable comments from Sarah Teitt, Luke Glanville, Ramesh Thakur, Adrian Gallagher, Kingsley Edney and Jason Ralph, and from the anonymous referees. Part of the research for this article was completed during a period as a Visiting Scholar at the College of Law at the Australian National University. This article was completed on 27 August 2014.

<sup>1</sup> SC Res. 1973 (2011), UN Doc. S/RES/1973 (2011).

<sup>2</sup> On the scope of the mandate in Resolution 1973, see Geir ULFSTEIN and Hege Fønsund CHRISTIANSEN, "The Legality of the NATO Bombing in Libya" (2013) 62 *International and Comparative Law Quarterly* 159; Mehrdad PAYANDEH, "The United Nations, Military Intervention, and Regime Change in Libya" (2012) 52 *Virginia Journal of International Law* 355; Sienho YEE, "Editorial Comments: The Dynamic Interplay between the Interpreters of Security Council Resolutions" (2012) 11 *Chinese Journal of International Law* 613.

UNSC have allowed the passage of several relatively weak (and largely ineffective) resolutions on Syria, deep divisions between the P3, on the one hand, and Russia and China, on the other, have prevented the Council from agreeing on more robust measures to address the humanitarian situation.<sup>3</sup>

In response to Western criticism of the Russian and Chinese stances on Syria, Beijing has gone to significant lengths to explain and justify its position.<sup>4</sup> China's aim has been to demonstrate that its behaviour during the Syrian crisis has been constructive and responsible, rather than obstructionist.<sup>5</sup> Beijing has defended its opposition to proposed international measures against Syria by reference to both international legal principles and pragmatic considerations. China has consistently stressed its preference for dialogue and other peaceful means of resolving the Syrian conflict.<sup>6</sup>

In addition to defending its stance on Syria, China has played an active role in broader normative discussions over the future development of the R2P concept in the post-Libya period. Controversy over the Libyan intervention has led to renewed debate among states and scholars over R2P's third pillar – the international community's role in responding to situations in which a state is manifestly failing to protect its populations against mass atrocity crimes.<sup>7</sup> In late 2011 Brazil formally proposed the notion of "Responsibility while Protecting" (RwP) as a means of complementing and tightening this dimension of R2P.<sup>8</sup> This

---

<sup>3</sup> I have analysed the UNSC deadlock over Syria in previous works including Andrew GARWOOD-GOWERS, "The Responsibility to Protect and the Arab Spring: Libya as the Exception, Syria as the Norm?" (2013) 36 *University of New South Wales Law Journal* 594; Andrew GARWOOD-GOWERS, "The BRICS and the Responsibility to Protect in Libya and Syria" in Rowena MAGUIRE, Bridget LEWIS and Charles SAMPFORD, eds, *Shifting Global Powers and International Law: Challenges and Opportunities* (Oxford: Routledge, 2013), 81. See also Spencer ZIFCAK, "The Responsibility to Protect after Libya and Syria" (2012) 13 *Melbourne Journal of International Law* 59; Jess GIFKINS, "The UN Security Council Divided: Syria in Crisis" (2012) 4 *Global Responsibility to Protect* 377; Peter FERDINAND, "The Positions of Russia and China at the UN Security Council in the Light of Recent Crises" *European Parliament Briefing Paper* (2013).

<sup>4</sup> See e.g. "A Leading Official of the Foreign Ministry Makes Remarks to Further Elaborate on China's Position On the Political Resolution of the Syrian Issue" (4 March 2012), online: China Embassy <[www.chinaembassy.bg/eng/dtxw/t910765.htm](http://www.chinaembassy.bg/eng/dtxw/t910765.htm)>.

<sup>5</sup> On China's broader approach to managing its image and reputation in international affairs see Pichamon YEOPHANTONG, "Governing the World: China's Evolving Conceptions of Responsibility" (2013) 6 *Chinese Journal of International Politics* 329; Roda MUSHKAT, "State Reputation and Compliance with International Law: Looking through a Chinese Lens" (2011) 10 *Chinese Journal of International Law* 703.

<sup>6</sup> See e.g. UN Doc. S/PV.6627 (2011), at 5.

<sup>7</sup> See e.g. *Report of the Secretary General on the Responsibility to Protect: Timely and Decisive Response*, UN Docs. A/66/874 and S/2012/578 (25 July 2012) [*Timely and Decisive Response*]. For an overview of the annual informal interactive dialogue on R2P on 5 September 2012 see International Coalition for the Responsibility to Protect, "UN General Assembly Dialogue on the Responsibility to Protect: Timely and Decisive Response" (5 September 2012), online: International Coalition for the Responsibility to Protect <[www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcsttopics/4331-un-general-assembly-dialogue-on-the-report-of-the-secretary-general-on-the-responsibility-to-protect-timely-and-decisive-response](http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcsttopics/4331-un-general-assembly-dialogue-on-the-report-of-the-secretary-general-on-the-responsibility-to-protect-timely-and-decisive-response)>. For scholarly debate see e.g. Ramesh THAKUR, "R2P after Libya and Syria: Engaging Emerging Powers" (2013) 36(2) *Washington Quarterly* 61; Alex J. BELLAMY, "From Tripoli to Damascus? Lesson Learning and the Implementation of the Responsibility to Protect" (2014) 51 *International Politics* 23; Edward NEWMAN, "R2P: Implications for World Order" (2013) 5 *Global Responsibility to Protect* 235; Jennifer WELSH, "Norm Contestation and the Responsibility to Protect" (2013) 5 *Global Responsibility to Protect* 365.

<sup>8</sup> *Letter Dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations Addressed to the Secretary-General - Responsibility While Protecting: Elements for the Development and Promotion of a Concept*, UN Doc. A/66/551-S/2011/701 (2011) [*RwP Concept Note*].

was followed more recently by the creation of a semi-official Chinese version of R2P known as “Responsible Protection” (RP).<sup>9</sup>

The RP concept originally appeared in a March 2012 newspaper opinion piece by Ruan Zongze, the vice-president of the China Institute for International Studies (CIIS), which is the official think-tank of China’s Ministry of Foreign Affairs.<sup>10</sup> An expanded account of the idea – explicitly framed as an example of China contributing “its public goods to the international community” - was published in June 2012.<sup>11</sup> RP is concerned primarily, but not exclusively, with the most controversial dimension of R2P, namely non-consensual military intervention for civilian protection purposes. Drawing on both Brazil’s R<sub>w</sub>P proposal and the original 2001 International Commission on Intervention and State Sovereignty (ICISS) conception of R2P,<sup>12</sup> RP puts forward six elements which offer a re-interpretation of R2P’s third pillar. The Chinese initiative is intended to first, provide criteria or guidelines for UNSC decision-making on the appropriateness of military intervention, and second, ensure that any such authorised action is monitored and supervised adequately so as to reduce the risk of R2P being used as a smokescreen for other strategic objectives such as regime change.

After initially receiving little attention, RP has recently attained greater prominence. Although it has not yet been formally adopted by the Chinese government, RP was the subject of a CIIS-hosted international conference in Beijing in October 2013 which involved delegates from a number of states. Since that event, RP has been discussed in opinion pieces by two leading R2P figures, former ICISS members Gareth Evans<sup>13</sup> and Ramesh Thakur.<sup>14</sup> Evans, in particular, sees the Chinese concept as a positive normative contribution, suggesting that “it should not be viewed as a rearguard action designed to undermine the R2P norm, but rather an effort to assume co-ownership of it”.<sup>15</sup> Apart from these brief commentaries, however, there has been no detailed academic analysis of the RP concept.

This article examines the Chinese RP initiative and assesses the extent to which it offers a valuable contribution to the normative debate over R2P’s third pillar following the controversy over the Libyan intervention. It also briefly considers RP’s broader significance as an illustration of China’s growing willingness to assert its own normative preferences in defining and shaping international law and global governance. The article is structured in

---

<sup>9</sup> The term “semi-official” is used because China has not yet formally adopted the RP concept. However, as explained in Section II.A there are indications that RP has received some degree of official endorsement and can, therefore, be considered to accurately represent the current Chinese position on R2P.

<sup>10</sup> RUAN Zongze, “Responsible protection” *China Daily News* (15 March 2012), online: China Daily News <[www.usa.chinadaily.com.cn/opinion/2012-03/15/content\\_14838556.htm](http://www.usa.chinadaily.com.cn/opinion/2012-03/15/content_14838556.htm)>.

<sup>11</sup> RUAN Zongze, “Responsible Protection: Building a Safer World” *China Institute of International Studies* (15 June 2012), online: China Institute of International Studies <[www.ciis.org.cn/english/2012-06/15/content\\_5090912.htm](http://www.ciis.org.cn/english/2012-06/15/content_5090912.htm)>.

<sup>12</sup> International Commission on Intervention and State Sovereignty (ICISS), “The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty” (December 2001), online: ICISS <<http://responsibilitytoprotect.org/ICISS%20Report.pdf>>. [ICISS].

<sup>13</sup> Gareth EVANS, “From the responsibility to protect to responsible civilian protection” *Daily Star* (28 October 2013), online: Daily Star <[www.dailystar.com.lb/Opinion/Commentary/2013/Oct-28/235969-from-the-responsibility-to-protect-to-responsible-civilian-protectionoteashx#axzz2wYxDMKEz](http://www.dailystar.com.lb/Opinion/Commentary/2013/Oct-28/235969-from-the-responsibility-to-protect-to-responsible-civilian-protectionoteashx#axzz2wYxDMKEz)>.

<sup>14</sup> Ramesh THAKUR, “A Chinese version of ‘responsible protection’” *Japan Times* (1 November 2013), online: Japan Times <[www.japantimes.co.jp/opinion/2013/11/01/commentary/a-chinese-version-of-responsible-protection/](http://www.japantimes.co.jp/opinion/2013/11/01/commentary/a-chinese-version-of-responsible-protection/)>.

<sup>15</sup> Evans, *supra* note 13.

three parts. Section I outlines the current concept of R2P and traces the main phases in China's evolving relationship with it. Given that the central focus of this article is the recent RP idea, this section provides only a relatively short summary of Beijing's earlier interactions with R2P since its emergence in 2001. Section II then analyses the six elements of RP, comparing it to Brazil's RWP and the original ICISS version of R2P. Finally, Section III assesses RP's overall significance, both as a normative contribution to the ongoing debate over R2P's third pillar, and in the broader context of China's position as an emerging great power that increasingly sees itself as a norm-shaper and norm-maker within the international system.

This article argues that although each of the elements of RP has its origins in previous R2P proposals, by amalgamating and re-packaging these earlier ideas in a stricter form the concept as a whole represents a new and distinctive interpretation of R2P. While some aspects of RP are potentially problematic or in need of refinement, overall the proposal should be viewed as an important normative initiative aimed at facilitating further discussion of R2P's third pillar following the controversies over Libya and Syria. RP is also significant because it offers deeper insights into China's current attitude towards R2P and global governance than can be gleaned from Beijing's formal legal discourse within UN organs. First, RP indicates that China *does* recognise the need for non-consensual military intervention under R2P's third pillar, albeit under a more restrictive set of conditions than Western powers tend to follow. Second, several RP elements resemble UNSC decision-making guidelines on military intervention, suggesting that Beijing's position may have shifted from opposing R2P criteria towards recognising their utility. In this respect, RP continues RWP's push towards "fleshing out" the normative content of what is currently a largely indeterminate third pillar. Third, in positioning itself as an "endeavour made by China... in building a just and reasonable new international political order", RP represents a notable non-Western contribution to the evolving normative architecture on sovereignty and intervention.<sup>16</sup>

## I. R2P AND CHINA'S RELATIONSHIP WITH THE CONCEPT

### A. R2P and its evolution since 2001

The concept of R2P developed in the aftermath of mass atrocity crimes in Rwanda, Kosovo and elsewhere in the 1990s. R2P represents a re-conceptualisation of the relationship between state sovereignty and human rights, in which sovereignty is viewed "not as an absolute term of authority but as a kind of responsibility."<sup>17</sup> The original 2001 ICISS Report sought to shift the emphasis in debates over international responses to humanitarian crises from the controversial notion of a "right to intervene" to the more palatable idea of a "responsibility to

---

<sup>16</sup> Ruan, *supra* note 11 at 13.

<sup>17</sup> Ramesh THAKUR, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect* (Cambridge: Cambridge University Press, 2006) at 251. For a historical account of sovereignty see Luke GLANVILLE, *Sovereignty and the Responsibility to Protect: A New History* (Chicago: The University of Chicago Press, 2014).

protect”.<sup>18</sup> It developed a concept of R2P consisting of three elements: the responsibility to prevent a population from suffering serious harm, the responsibility to react if such harm occurs, and the responsibility to rebuild after an intervention.<sup>19</sup> While the primary responsibility to protect lay with the host state, if that state perpetrated “serious harm” to a population, or was “unwilling or unable” to stop such violence, the international community assumed a responsibility to protect.<sup>20</sup> “Serious harm” was defined as actual or imminent “large scale loss of life” or “large scale ethnic cleansing”.<sup>21</sup> Military intervention for humanitarian purposes was envisaged as an exceptional measure within the framework of the responsibility to react. Importantly, the ICISS Report drew on the just war tradition in outlining a list of six criteria for assessing the appropriateness of military action: just cause, right intention, last resort, right authority, proportional means, and reasonable prospects of success.<sup>22</sup> On the crucial criterion of right authority, although the ICISS Report designated the UNSC as the most appropriate body for authorising military action for civilian protection purposes, it suggested that the UN General Assembly (UNGA) and regional or subregional organisations might provide alternative mechanisms for authorising force if the UNSC was deadlocked.<sup>23</sup>

Unsurprisingly, it was the military force dimension of the ICISS concept of R2P that generated the most controversy. From the outset, it was viewed with suspicion by China, Russia and a number of other non-Western states that have traditionally emphasised a strict interpretation of state sovereignty and non-intervention in domestic affairs. These states were concerned that R2P’s military component might be used by powerful Western states as a cloak for the pursuit of other strategic objectives.<sup>24</sup> Conscious of the need to assuage such fears and build support for R2P, UN officials adopted a diplomatic strategy of emphasising the less controversial elements of the concept, namely prevention and state assistance. This approach, coupled with ongoing resistance from R2P sceptic states, led to several significant modifications to the original ICISS conception of R2P. First, the military force dimension was placed exclusively under UNSC control within the existing collective security framework, closing off the ICISS’s suggestion that alternative authorisation mechanisms might be utilised if the UNSC was deadlocked. Second, the ICISS’s criteria for determining the appropriateness of military intervention for humanitarian purposes were removed. Third, the types of violence covered by R2P were limited to four mass atrocity crimes (genocide, war crimes, crimes against humanity and ethnic cleansing), rather than the previous less precise category of “large scale loss of life”.<sup>25</sup> Finally, the threshold triggering the

---

<sup>18</sup> *ICISS*, *supra* note 12 at 11 [2.4].

<sup>19</sup> *Ibid.*, at xi.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*, at xii.

<sup>22</sup> *Ibid.*, at 32 [4.16].

<sup>23</sup> *Ibid.*, at xii–xiii.

<sup>24</sup> See International Commission on Intervention and State Sovereignty (ICISS), “The Responsibility to Protect: Research, Bibliography, Background - Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty” (December 2001), online: International Development Research Centre /<http://web.idrc.ca/openbooks/963-1/S>, at 392 [*ICISS Supplement*]. In ICISS Roundtable discussions in June 2001, China asserted that “[i]t is clear that certain Western powers have played with noble principles to serve their own hegemonic interests”: *ICISS Supplement*, at 392.

<sup>25</sup> On the legal definitions of the four mass atrocity crimes, see David SCHEFFER, “Atrocity Crimes Framing

international community's responsibility was changed from a host state being "unwilling or unable" to halt violence, to the standard of "manifestly failing" to protect.<sup>26</sup>

The combined effect of these changes was that the conception of R2P unanimously adopted by UN member states at the 2005 World Summit was a softer, weaker version of the idea initially formulated by the ICISS.<sup>27</sup> This modified form of R2P – derived from paragraphs 138 and 139 of the 2005 WSOD, and subsequently outlined in the UN Secretary-General's 2009 report, *Implementing the Responsibility to Protect* – consists of three mutually-reinforcing pillars.<sup>28</sup> The first is that each state has a responsibility to protect its populations from mass atrocity crimes. The second pillar stipulates that the international community should assist states in fulfilling their pillar one obligations. The third pillar provides that if "national authorities are manifestly failing to protect their populations" the international community is "prepared to take collective action, in a timely and decisive manner, in accordance with the Charter, including Chapter VII, on a case-by-case basis".<sup>29</sup> International action can encompass non-coercive means such as diplomacy and humanitarian assistance, as well as coercive measures, including the use of force, if authorised in accordance with the UNSC's collective security mechanism.

It is important to note that R2P does not constitute a new legal principle according to the sources of international law.<sup>30</sup> It is not part of any international treaty and has not attained the status of customary international law. The WSOD provisions on R2P were only included in a UNGA resolution, and therefore, are not a formal source of law. Instead, R2P is best viewed as a multi-faceted political concept that is based on *existing* principles of international law.<sup>31</sup> As Welsh explains, "it is crucial to recognise that many states agreed to endorse the [R2P] principle precisely because it was not seen as transformational".<sup>32</sup> In this respect, it is worth emphasising that R2P's third pillar does not alter the international legal framework governing the use of force, which permits military action only in self-defence or when authorised by the UNSC. Furthermore, R2P does not create any additional *legal* duties for states or international bodies. In situations where a state is manifestly failing to protect, there is no legal obligation on either the UNSC, or on the international community more broadly,

---

the Responsibility to Protect" (2009) 40 Case Western Reserve Journal of International Law 111.

<sup>26</sup> It is not entirely clear whether "manifestly failing" was intended to be a more onerous threshold than "unwilling or unable", although on its face it appears to be a higher standard. To date, the only scholarly account to consider this issue in detail is Adrian GALLAGHER, "Syria and the indicators of a 'manifest failing'" (2014) 18 International Journal of Human Rights 1.

<sup>27</sup> *2005 World Summit Outcome Document*, GA Res. 60/1, UN Doc. A/RES/60/1 (2005), at paras. 138 and 139 [*World Summit Outcome Document*]. For discussion of R2P's evolution, see Jochen PRANTL and Ryoko NAKANO, "Global Norm Diffusion in East Asia: How China and Japan Implement the Responsibility to Protect" (2011) 25 International Relations 204 at 209.

<sup>28</sup> *World Summit Outcome Document*, *supra* note 27 at paras. 138–9; *Implementing the Responsibility to Protect*, Report of the Secretary-General, UN Doc. A/63/677 (12 January 2009) [*Implementing the R2P*].

<sup>29</sup> *World Summit Outcome Document*, *supra* note 27 at para. 139.

<sup>30</sup> See *Statute of the International Court of Justice* art 38(1).

<sup>31</sup> On R2P's legal status see e.g. Alex J. BELLAMY and Ruben REIKE, "The Responsibility to Protect and International Law" (2010) 2 Global Responsibility to Protect 267; Carsten STAHN, "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?" (2007) 101 American Journal of International Law 99; Mehrdad PAYANDEH, "With Great Power Comes Great Responsibility? The Concept of the Responsibility to Protect within the Process of International Lawmaking" (2010) 35 Yale Journal of International Law 469.

<sup>32</sup> Welsh, *supra* note 7 at 373.

to take any action – forcible or non-forcible – to protect populations from mass atrocity violence. At most, the international dimension can be seen as a political commitment to *consider* possible courses of action that are available through existing institutional mechanisms.<sup>33</sup>

The version of R2P endorsed by states in the WSOD was a disappointment for some R2P supporters. Thomas Weiss famously called it “R2P-lite”.<sup>34</sup> Simon Chesterman concluded that R2P’s “normative content had been emasculated to the point where it essentially provided that the Security Council could authorise, on a case-by-case basis, things that it had been authorizing for more than a decade.”<sup>35</sup> While the emergence of R2P succeeded in shifting the language of the debate from a “right to intervene” to a “responsibility to protect”, the concept endorsed in 2005 failed to address crucial questions relating to when and how the UNSC should decide on the appropriateness of military action for humanitarian purposes.

From 2005 onwards, discussion of R2P within the UN system continued to centre on the less controversial aspects of preventive action and state capacity building. Despite lingering resistance to R2P from some states, including Russia and China, this cautious approach eventually led to consensus within the UNSC on resolution 1674, which “reaffirmed” the World Summit’s commitments on R2P.<sup>36</sup> The first mention of R2P in relation to a specific crisis occurred subsequently in 2006 with UNSC resolution 1706 on the situation in Darfur.<sup>37</sup> In 2008, the preventive component of the concept played a significant role in framing the international community’s response to post-election violence in Kenya.<sup>38</sup> A further UNSC resolution in 2009 provided additional endorsement of R2P in general terms.<sup>39</sup> However, throughout this period, the ongoing resistance of some states to implementing R2P meant that specific references to the principle were not included in further UNSC resolutions on other crises. Instead, attention shifted from the UNSC to the UNGA, where broader discussion of R2P could be undertaken by all UN member states. This culminated in the 2009 UNGA debate, in which states overwhelmingly supported Secretary-General Ban Ki-moon’s report outlining the three pillars of R2P.<sup>40</sup> Although this outcome appeared to vindicate the Secretary-General’s diplomatic approach, his strategy of emphasising the preventive aspects of R2P meant that contentious issues surrounding the use of military force remained unresolved.<sup>41</sup> This indeterminacy in pillar three enabled virtually all states, including China, to continue to express support for R2P at a rhetorical level, but it

---

<sup>33</sup> *Ibid.*, at 387.

<sup>34</sup> Thomas G. WEISS, “R2P after 9/11 and the World Summit” (2006) 24 *Wisconsin International Law Journal* 741 at 750.

<sup>35</sup> Simon CHESTERMAN, “‘Leading from Behind’: The Responsibility to Protect, the Obama Doctrine, and Human Intervention after Libya” (2011) 25 *Ethics and International Affairs* 279 at 280.

<sup>36</sup> SC Res. 1674, UN Doc. S/RES/1674 (2006) [*SC Res. 1674*].

<sup>37</sup> SC Res. 1706, UN Doc. S/RES/1706 (2006) [*SC Res. 1706*].

<sup>38</sup> On the Kenyan situation, see Global Centre for the Responsibility to Protect, “The Responsibility to Protect and Kenya: Past Successes and Current Challenges” (13 August 2010), online: Global Centre for the Responsibility to Protect <[www.globalr2p.org/publications/52](http://www.globalr2p.org/publications/52)>.

<sup>39</sup> SC Res. 1894, UN Doc. S/RES/1894 (2009).

<sup>40</sup> *Implementing the R2P*, *supra* note 28.

<sup>41</sup> For criticism of the Secretary-General’s diplomatic strategy, see Jennifer WELSH, “Civilian Protection in Libya: Putting Coercion and Controversy Back into RtoP” (2011) 25 *Ethics and International Affairs* 255 at 261.



also papered over significant differences between Western and non-Western states' interpretations of when and how R2P's third pillar should be operationalized.<sup>42</sup>

The extent of those differences over R2P's third pillar became apparent during the Libyan and Syrian crises which began in early 2011.<sup>43</sup> While the passage of resolution 1973 authorising military force against the Gaddafi regime was initially seen as a triumph for R2P, under the surface there were deep divisions within the UNSC. NATO's support for the Libyan rebels and the eventual removal of Gaddafi prompted renewed concerns among the BRICS and other non-Western states over the potential for R2P to be used as a pretext for regime change. This led to extensive "blow-back" against R2P, which was evident in the UNSC's inability to agree on any effective civilian protection measures on Syria. While India, Brazil and South Africa (IBSA) gradually adopted more flexible stances towards Western-supported proposals on Syria, Moscow and Beijing remained steadfast in their opposition to any international attempts to pressure the Assad regime.<sup>44</sup>

Controversy over Libya and Syria has led to renewed debate over R2P's third pillar, with Brazil proposing its own complementary principle of RwP in late 2011.<sup>45</sup> Despite an initially hostile response from Western powers and a lukewarm reaction from the other BRICS, RwP's ideas for additional guidelines and accountability mechanisms to tighten the military force dimension of R2P appeared to offer a possible way of bridging the gap between Western powers and some non-Western states. However, Brazil's early enthusiasm for RwP waned and it now seems unwilling to push the concept any further.<sup>46</sup> This has created an opportunity for other states to take on the role of leading further discussion on R2P's third pillar. In the September 2013 UNGA informal interactive dialogue on R2P China indicated that it "supports discussions at the United Nations to discuss RwP by Brazil".<sup>47</sup> The formulation of China's own RP idea, plus its promotion through the international conference in Beijing in October 2013, points to China exploring opportunities to assume a more

---

<sup>42</sup> On R2P's indeterminacy see Stahn, *supra* note 31; Theresa REINHOLD, "The Responsibility to Protect – Much Ado About Nothing?" (2010) 36 *Review of International Studies* 55; Carlo FOCARELLI, "The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine" (2008) 13 *Journal of Conflict & Security Law* 191.

<sup>43</sup> For a range of perspectives on the Libyan intervention see for example Garwood-Gowers, *supra* note 3; Alex J. BELLAMY and Paul D. WILLIAMS, "The New Politics of Protection? Cote d'Ivoire, Libya and the Responsibility to Protect" (2011) 87 *International Affairs* 825; Ramesh THAKUR, "Libya and the Responsibility to Protect: Between Opportunistic Humanitarianism and Value-Free Pragmatism" (2011) 7(4) *Security Challenges* 13; Aidan HEHIR, "The Permanence of Inconsistency: Libya, the Security Council and the Responsibility to Protect" (2013) 38(1) *International Security* 137.

<sup>44</sup> On the fragmentation of the BRICS bloc over Syria see Garwood-Gowers, *supra* note 3.

<sup>45</sup> See *RwP Concept Note*, *supra* note 8. For discussion of RwP see Thorsten BENNER, "Brazil as a norm entrepreneur: the 'Responsibility While Protecting' initiative", GPPi working paper, March 2013; Kai Michael KENKEL, "Brazil and R2P: Does Taking Responsibility Mean Using Force?" (2012) 4 *Global Responsibility to Protect* 5; James PATTISON, "The Ethics of 'Responsibility While Protecting': Brazil, The Responsibility To Protect, And Guidelines For Humanitarian Intervention", Human Rights and Welfare Working Paper 71 (2013), online: <[www.du.edu/korbel/hrhw/workingpapers/2013/71-pattison-2013.pdf](http://www.du.edu/korbel/hrhw/workingpapers/2013/71-pattison-2013.pdf)>; Paula WOJCIKIEWICZ ALMEIDA, "Brazilian View Of Responsibility To Protect: From 'Non-Indifference' To 'Responsibility While Protecting'" (2014) 6 *Global Responsibility to Protect* 29.

<sup>46</sup> Brazil's failure to continue to promote RwP has been criticised. See for example, Benner, *supra* note 45 at 8-9.

<sup>47</sup> Global Responsibility to Protect, "Statement from the People's Republic of China - Unofficial Transcript from Webcast" (11 September 2013), online: [Global Responsibility to Protect <www.globalr2p.org/resources/471>](http://www.globalr2p.org/resources/471).

prominent role in the next stage of R2P's normative development.

### B. *China's evolving stance on R2P*

The complexity of China's policy making apparatus means that it is not always easy to discern a consistent or unambiguous Chinese position on R2P. Shogo Suzuki has observed that a lack of transparency makes it "extremely difficult to know which faction [within the Chinese political elite] is 'winning' at a particular point in time, and how this reflects in policy output" on R2P.<sup>48</sup> This opaqueness has led to various classifications of Beijing's overall attitude towards the concept. For example, Jonas Claes labels China a "rejectionist" state, although he notes that Beijing "generally refrains from openly rejecting R2P".<sup>49</sup> Patrick Quinton-Brown, on the other hand, adopts a more nuanced categorisation, dividing R2P "dissenter states" into "cautious supporters" and "rejectionists".<sup>50</sup> In his view, China falls within the "cautious supporter" sub-group because Beijing has "agreed with the concept in principle, but will remain sceptical of its implementation in practice until it is modified to some extent."<sup>51</sup> As the rest of this section will illustrate, by the time RP was conceived in 2012 China's stance on R2P was best described as dichotomous: it accepted and was generally comfortable with R2P's first and second pillars but remained deeply concerned by the potential implications of non-consensual pillar three action.

China's relationship with R2P from the concept's inception in 2001 leading through to the Libyan and Syrian crises can be divided into three main phases.<sup>52</sup> These stages are briefly discussed here to provide background and context to Beijing's formulation of its own RP idea in 2012. The first phase – from 2001 until 2005 – featured strong Chinese resistance to the original ICISS conception of R2P. The new idea represented a serious challenge to China's traditional foreign policy emphasis on a strict interpretation of the twin principles of non-intervention and non-use of force as outlined in its Five Principles of Peaceful Coexistence.<sup>53</sup>

---

<sup>48</sup> Shogo SUZUKI, "Asian Perspectives on Humanitarian Interventions: The case of China" (Paper presented at University of Konstanz, Germany, June 2012) at 3.

<sup>49</sup> Jonas CLAES, "Protecting Civilians from Mass Atrocities: Meeting the Challenge of R2P Rejectionism" (2012) 4 *Global Responsibility to Protect* 67 at 71.

<sup>50</sup> Patrick QUINTON-BROWN, "Mapping Dissent: The Responsibility to Protect and Its State Critics" (2013) 5 *Global Responsibility to Protect* 260 at 264.

<sup>51</sup> *Ibid.*

<sup>52</sup> For more detailed consideration of China's earlier relationship with R2P see Andrew GARWOOD-GOWERS, "China and the Responsibility to Protect: The Implications of the Libyan Intervention" (2012) 2 *Asian Journal of International Law* 375; Jonathan E. DAVIS, "From Ideology to Pragmatism: China's Position on Humanitarian Intervention in the Post-Cold War Era" (2011) 44 *Vanderbilt Journal of Transnational Law* 217; LIU Tiewa, "China and Responsibility to Protect: Maintenance and Change of Its Policy for Intervention" (2012) 25 *The Pacific Review* 153; Sarah TEITT, "The Responsibility to Protect and China's Peacekeeping Policy" (2011) 18 *International Peacekeeping* 298; Rosemary FOOT, "The Responsibility to Protect and Its Evolution: Beijing's Influence on Norm Creation in Humanitarian Areas" (2011) 6 *St Antony's International Review* 47. For a recent analysis of the domestic debate in China over R2P see LIU Tiewa and ZHANG Haibin, "Debates in China about the responsibility to protect as a developing international norm: a general assessment", *Conflict, Security and Development*, DOI: 10.1080/14678802.2014.930590, Published online: 11 July 2014.

<sup>53</sup> The Five Principles of Peaceful Coexistence are enshrined in the preamble to the Chinese Constitution. See *Constitution of the People's Republic of China*, 4 December 1982, adopted by the National People's Congress, online: The National People's Congress of the People's Republic of China <[http://www.npc.gov.cn/englishnpc/Constitution/node\\_2825.htm](http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm)>. For a historical account of sovereignty

Beijing was concerned about R2P's potential for abuse by Western powers, and was vehemently opposed to the ICISS's suggestion that military intervention for humanitarian purposes could be authorised by bodies other than the UNSC.<sup>54</sup> As discussed above, significant modifications to the original ICISS concept were made, thereby enabling China to formally endorse the softer version of R2P that formed part of the 2005 WSOD. However, Beijing retained misgivings over the possibility of non-consensual coercive measures, including the use of force.

The second phase of China's relationship with R2P – from 2005 till 2011 – featured cautious endorsement of a conservative interpretation of the concept, tempered by resistance to implementing the new doctrine in specific cases. This apparent softening of China's traditional strict interpretation of state sovereignty and non-intervention should not, however, be over-stated. Beijing was careful to emphasise the primacy of prevention and state assistance under pillars one and two, while downplaying the potential for non-consensual third pillar intervention involving sanctions or military force. Cautious rhetorical backing for R2P as a general concept did not always translate into Chinese support for international action in specific cases of mass atrocity crimes. First, China abstained on UNSC resolution 1706 (2006) on Darfur, in which R2P was mentioned for the first time in a country-specific resolution.<sup>55</sup> Second, China (and Russia) vetoed draft resolutions imposing international sanctions on Myanmar (2007) and Zimbabwe (2008).<sup>56</sup> Beijing's overall position during this second phase was described by Sarah Teitt as “preserv[ing] the vestiges of its once firm stance on non-interference – the requirement for host state consent for collective military deployment – without appearing to completely turn a blind eye to mass atrocities”.<sup>57</sup>

The third main phase in China's relationship with R2P covers the Libyan and Syrian crises during 2011 and 2012. At first glance, Beijing's role in supporting resolution 1970 and acquiescing to the passage of resolution 1973 authorising military action in Libya appeared to signal a shift towards greater Chinese acceptance of R2P's third pillar. However, a closer examination of Chinese statements within the UNSC reveals that Beijing was deeply uncomfortable with the content of resolution 1973. China stated that “is always against the use of force”, and had “serious difficulty with parts of the resolution”.<sup>58</sup> Beijing's decision to abstain from voting was shaped by an unusual set of circumstances, including the presence of regional support for international military intervention, the urgent need for international action in the face of Gaddafi's explicit threats against civilians in Benghazi, and the rapid fragmentation of the Libyan government.<sup>59</sup> Acquiescing to the passage of resolution 1973 did

---

in ancient China see Luke GLANVILLE, “Retaining the Mandate of Heaven: Sovereign Accountability in Ancient China” (2010) 39 *Millennium – Journal of International Studies* 323.

<sup>54</sup> Ministry of Foreign Affairs of the People's Republic of China, “Position Paper of the People's Republic of China on the United Nations Reforms” (7 June 2005), online: Ministry of Foreign Affairs <[www.fmprc.gov.cn/eng/zxxx/t199318.htm](http://www.fmprc.gov.cn/eng/zxxx/t199318.htm)>.

<sup>55</sup> *SC Res. 1706*, *supra* note 37.

<sup>56</sup> On Myanmar see UN Doc. S/PV.5619 (2007). On Zimbabwe see UN Doc. S/PV.5933 (2008).

<sup>57</sup> Teitt, *supra* note 52 at 309.

<sup>58</sup> UN Doc. S/PV.6498 (2011), at 10 [*UN Doc. 6498*].

<sup>59</sup> In explaining its reasons for abstaining China stressed that it “attaches great importance to the relevant position by the 22-member Arab League... [and] to the position of African countries and the African Union”: *Ibid.*, at 10. I have explored China's reasons for abstaining on resolution 1973 in greater detail in Garwood-Gowers, *supra* note 52. On the importance of regional support see Luke GLANVILLE,

not represent a sudden normative shift in favour of R2P's third pillar. In fact, the way in which NATO subsequently conducted its military campaign in Libya appeared to confirm Beijing's longstanding suspicions that R2P's military dimension could be used as a pretext for pursuing other strategic objectives. In the UNSC's May 2011 thematic debate on the protection of civilians in armed conflict China warned that "[t]here must be no attempt at regime change ... under the guise of protecting civilians".<sup>60</sup>

The Libyan experience with R2P seemed to trigger renewed Chinese determination to resist efforts to impose non-consensual civilian protection measures under R2P's third pillar. To date, Beijing has exercised its veto on four occasions, backing Moscow in blocking UNSC draft resolutions that proposed a range of non-forcible measures against the Syrian regime, including possible sanctions and referral to the International Criminal Court.<sup>61</sup> It has also voted against UNGA resolutions on Syria.<sup>62</sup> China has defended its behaviour on Syria by reference to both international law and pragmatic considerations. In respect of the former, Beijing has employed its traditional legal discourse on state sovereignty and non-intervention, consistently arguing that any international action on Syria must conform to "the Charter of the United Nations and the principle of non-interference in the internal affairs of States".<sup>63</sup> Pragmatic justifications for opposing tougher international action include China's assertion that "sanctions or the threat thereof does [sic] not help to resolve the question of Syria and instead, may further complicate the situation".<sup>64</sup>

At the same time, it should be noted that Beijing *has* been willing to support several UNSC resolutions on Syria, including those mandating the UN Observer Mission, the destruction of Syria's chemical weapons, and most recently a humanitarian aid access plan.<sup>65</sup> However, aside from the two relatively weak aid access resolutions, each of the UNSC

---

"Intervention in Libya: From Sovereign Consent to Regional Consent" (2013) 14 *International Studies Perspectives* 325.

<sup>60</sup> UN Doc. S/PV.6531 (2011), at 20.

<sup>61</sup> For the four draft resolutions, see *Draft Resolution – France, Germany, Portugal and United Kingdom of Great Britain and Northern Ireland*, UN Doc. S/2011/612 (4 October 2011); *Draft Resolution – Bahrain, Colombia, Egypt, France, Germany, Jordan, Kuwait, Libya, Morocco, Oman, Portugal, Qatar, Saudi Arabia, Togo, Tunisia, Turkey, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland and United States of America*, UN Doc. S/2012/77 (4 February 2012); *Draft Resolution – France, Germany, Portugal, United Kingdom of Great Britain and Northern Ireland and United States of America*, UN Doc. S/2012/538 (19 July 2012); *Draft Resolution - Albania, Andorra, Australia, Austria, Belgium, Botswana, Bulgaria, Canada, Central African Republic, Chile, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Jordan, Latvia, Libya, Liechtenstein, Lithuania, Luxembourg, Malta, Marshall Islands, Mexico, Monaco, Montenegro, Netherlands, New Zealand, Norway, Panama, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Slovakia, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland and United States of America*, UN Doc. S/2014/348 (22 May 2014).

<sup>62</sup> See GA Res. 66/253, UN Doc. A/RES/66/253 (21 February 2012, adopted 16 February 2012); GA Res. 66/253B, UN Doc. A/RES/66/253 B (3 August 2012).

<sup>63</sup> UN Doc. S/PV.6627 (2011), at 5.

<sup>64</sup> *Ibid.*

<sup>65</sup> On the UN Observer Mission see SC Res. 2042, UN Doc. S/RES/2042 (2012); SC Res. 2043, UN Doc. S/RES/2043 (2012); SC Res. 2059, UN Doc. S/RES/2059 (2012). On Syria's chemical weapons see SC Res. 2118, UN Doc. S/RES/2118 (2013). On humanitarian aid access see SC Res. 2139, UN Doc. S/RES/2139 (2014) and SC Res. 2165, UN Doc. S/RES/2165 (2014).

resolutions that China supported involved proposals to which the Syrian government had agreed. These instances of UNSC action based on host-state consent are, therefore, fundamentally different from the imposition of coercive, non-consensual measures under R2P's third pillar. While Beijing was often prepared to support the former, it remained uncomfortable with the latter. Prior to RP's formulation in 2012, China's position on non-consensual pillar three action was summarised as follows:

the prevention of such so-called abuses of power by other major countries that could threaten Chinese interests, along with the overall defense of the sovereignty principle, are regarded as far more important than efforts to end civilian killings in domestic conflicts, except, perhaps, in those rare cases when such actions clearly threaten international order or the international system. For Beijing, if there is any moral justification for external, coercive intervention against sovereign governments, it is primarily to prevent the disruption of international society through widespread (i.e., inter-state) violence and secondarily to prevent state-inflicted mass atrocities through strictly delimited and narrowly defined efforts.<sup>66</sup>

## II. CHINA'S "RESPONSIBLE PROTECTION" (RP) CONCEPT

### A. *Background and context*

As noted in the introduction, the RP concept was developed in 2012 by Ruan Zongze, a Chinese scholar. Although it has not yet been formally adopted as official Chinese policy, there are several reasons to believe that RP represents Beijing's current thinking on R2P, or at least a very close approximation of its position. First, Ruan is the current Vice-President of the CIIS, which is the official think-tank of the Chinese Ministry of Foreign Affairs. The CIIS employs a number of retired diplomats and in recent years has played an increasingly important role in the development of Chinese foreign policy.<sup>67</sup> Second, RP was promoted by the CIIS at a recent conference in Beijing in which representatives from other, predominantly BRICS states were invited to discuss the concept. This reflects the CIIS's growing role in conducting "public diplomacy" on behalf of the Chinese Ministry of Foreign Affairs.<sup>68</sup> Third, the term "responsible protection" has been used, albeit briefly, in speeches made by Chinese officials, suggesting that the RP concept has received a degree of official endorsement.<sup>69</sup>

Ruan's article has three distinct sections. The first is a lengthy and, at times, sharp critique of the West's position towards Libya and Syria. The second part offers several

---

<sup>66</sup> Michael SWAINE, "Chinese Views of the Syrian Conflict" (2012) 39 *China Leadership Monitor* 1 at 10.

<sup>67</sup> On the role of think-tanks in formulating official Chinese foreign policy see Silvia MENEGAZZI, "China Reinterprets the Liberal Peace", IAI Working Paper (December 2012); Pascal ABB, "China's foreign policy think tanks: Changing roles and structural conditions", German Institute of Global and Area Studies Working Paper 213 (2013); Cheng LI, "China's new think tanks: where officials, entrepreneurs and scholars interact" (2009) 29 *China Leadership Monitor* 1.

<sup>68</sup> Abb, *supra* note 67 at 15.

<sup>69</sup> See e.g. a speech given at CIIS by Le Yucheng, Assistant Foreign Minister on 10 April 2012, reported in: "China saying "no" on Syria issue is responsible move: FM Official" *Xinhua* (10 April 2012), online: Xinhuanet <[www.news.xinhuanet.com/english/china/2012-04/10/c\\_131518137.htm](http://www.news.xinhuanet.com/english/china/2012-04/10/c_131518137.htm)>. See also Institute of Strategic and International Studies (ISIS), "China's Strategic Vision and Regional Security in the Asia-Pacific - Remarks by H.E. Ambassador Tong Xiaoling at the 26th Asia-Pacific Roundtable, Kuala Lumpur" (28 May 2012), online: ISIS <[www.isis.org.my/files/2012/26APR/PS2\\_Tong\\_Xiaoling.pdf](http://www.isis.org.my/files/2012/26APR/PS2_Tong_Xiaoling.pdf), 7>.

“reflections” on what are perceived to be “serious flaws” within the current concept of R2P.<sup>70</sup> With a view to addressing those flaws and “contributing its ideas to the world” the third part outlines China’s own notion of “Responsible Protection” (RP).<sup>71</sup> Overall, the article can be seen as serving dual purposes: first, it is an attempt to demonstrate that Beijing’s position on Syria is “fair and responsible”, and second, it seeks to offer a distinctive Chinese contribution to the normative debate over R2P.<sup>72</sup>

Before examining the elements of RP it is useful to briefly highlight the key themes which appear in the first two parts of Ruan’s article. These offer important insights into Beijing’s perspective on Western responses to Libya and Syria, and also reveal China’s concerns over R2P’s conceptual weaknesses. Together these insights help to frame the context within which the Chinese idea of RP is proposed. The first major theme that emerges is deep concern over R2P’s potential to be misused. Ruan accuses the West of having exceeded its civilian protection mandate in a “strategic attempt at realizing ‘regime change’ in Libya”.<sup>73</sup> In its current form R2P is “liable to be abused”, and offers a “pretext” for the West’s “new interventionism”.<sup>74</sup> The selective use of R2P – exemplified by Western silence over the violent suppression of demonstrations in Bahrain – is also mentioned as a factor which undermines the concept’s legitimacy.<sup>75</sup> A second, closely-related theme is R2P’s status and relationship with international law. Ruan stresses that although R2P “remains so far a concept without being made a rule in international law”, it “could be abusively employed to change the state power of a country, which contradicts the purposes of the UN Charter and the principles of state sovereignty and non-interference in other’s internal affairs”.<sup>76</sup> The fact that R2P military intervention is only permitted with UNSC authorization does not assuage Ruan’s concerns. With the Libyan experience clearly in mind, he argues that “[e]ven if the UN Security Council passed a resolution, the Western powers could still make one-sided explanations and seek self-interests by abusing the resolution under the cover of ‘protecting the civilians’”.<sup>77</sup> A third major criticism of the West’s perspective on military intervention for humanitarian purposes draws on consequentialist reasoning. Ruan argues that NATO’s military campaign in Libya has done more harm than good, and that “R2P has brought unnecessary chaos to international relations.”<sup>78</sup> He criticizes what he sees as the West’s eagerness to use military force, questioning the assumption that “as long as the goal [of protecting civilians] is noble, it may be achieved with whatever means regardless [of] the consequences”.<sup>79</sup> Overall, these three themes in Ruan’s article convey similar concerns over R2P to those expressed by Chinese officials within UN organs. They provide the background and context to China’s decision to propose its own RP idea.

---

<sup>70</sup> Ruan, *supra* note 11 at 9.

<sup>71</sup> *Ibid.*, at 13.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*, at 6.

<sup>74</sup> *Ibid.*, at 7.

<sup>75</sup> *Ibid.*, at 10.

<sup>76</sup> *Ibid.*, at 7.

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*, at 10.

<sup>79</sup> *Ibid.*, at 9.

## B. The elements of RP

The six elements of China's RP concept are reproduced in full and analysed individually in this section. They are primarily concerned with tightening R2P's third pillar framework on non-consensual international measures so as to reduce the potential for this dimension to be abused. Although not explicitly framed in such terms, four of the six elements resemble decision-making criteria to guide the UNSC in determining the appropriateness of military action for civilian protection purposes. Element six concerns mechanisms to monitor and supervise any military intervention, while element five relates to post-intervention responsibilities to reconstruct the affected state.

As Table 1 illustrates, each of the six elements has its origins in earlier ideas found in Brazil's RWP and/or the 2001 ICISS report, which in turn draw on aspects of the just war tradition. There are, however, several subtle but significant differences in how these notions are framed and interpreted in RP. In comparison with RWP and the ICISS report, on the whole RP offers a stricter, narrower interpretation of the permissibility of employing non-consensual coercive measures under R2P's third pillar.

**Table 1 – A comparison of RP, RWP and the ICISS report**

<i>Principle/ guideline</i>	<b>ICISS 2001 R2P Report</b>	<b>Brazil's RWP</b>	<b>China's Responsible Protection (RP)</b>
Just cause	"unwilling or unable" prevent or halt large scale loss of life/ethnic cleansing	N/A (but assumes 2005 WSOD standard of "manifestly failing" with respect to 4 mass atrocity crimes)	N/A (but assumes 2005 WSOD standard of "manifestly failing" with respect to 4 mass atrocity crimes)
Right intention	"primary purpose must be... to halt or avert human suffering"	N/A (but implied by requirement that military action be "limited to the objectives established by the Security Council")	Element 1: "the objects of protection must be the innocent people" and "peace and stability of the region" Element 4: "the purpose of protection must be to mitigate humanitarian catastrophe"
Last resort	Force only after non-military measures have been "explored"	exhaust all peaceful means; logical sequencing of 3 pillars (later relaxed to require "prudential sequencing")	Element 3: "exhaustion of diplomatic and political means of solution"
Proportional means	scale of military action should be minimum necessary to achieve protection aims	use of force must produce "as little violence and instability as possible"	Element 3: "the means of protection must be strictly limited"
Reasonable prospects	"reasonable chance of success"; "consequences of action not likely to be worse than the consequences of inaction"	"under no circumstance can it [military force] generate more harm than it was authorized to prevent"	Element 1: must consider "peace and stability of the region" Element 3: avoid military force "aggravating humanitarian disasters" Element 4: "absolutely forbidden to create greater humanitarian disasters because of protection"

Right authority	authorization by UNSC or in exceptional circumstances by UNGA/regional organization	authorization by UNSC or UNGA (under Uniting for Peace resolution)	Element 2: "UN Security Council is the only legitimate actor to perform this duty"
Monitoring mechanism	N/A	"Enhanced Security Council procedures are needed to monitor and assess the manner in which resolutions are interpreted and implemented"	Element 6: "establish mechanisms of supervision, outcome evaluation and post factum accountability"
Post-intervention responsibility	"The responsibility to rebuild... provide full assistance with recovery, reconstruction and reconciliation"	N/A	Element 5: "the protectors should be responsible for the post-intervention and post-protection reconstruction"

Element 1 of RP provides that:

First, the object of RP must be made clear. Of course, it is the people of the target country and peace and stability of the relevant region. The objects of protection must be the innocent people, not specific political parties or armed forces. Only such kind of protection is rightful and well-intentioned and is protection in its true sense.<sup>80</sup>

This first element primarily draws on the just war tradition idea of "right intention", while also touching on the "reasonable prospects" criterion. It reflects China's longstanding concern that external intervention in intra-state humanitarian crises may be geared towards broader strategic objectives such as regime change, rather than being for genuine civilian protection purposes. Three aspects in particular stand out. The first concerns the motives and purposes of intervention. The original ICISS report drew a distinction between these two concepts by framing the criterion of right intention as follows: the "primary *purpose* of the intervention, whatever other *motives* intervening states may have, must be to halt or avert human suffering".<sup>81</sup> This formulation acknowledged the political reality that it is rare for states to intervene in an intra-state crisis on the basis of altruistic or humanitarian *motives* alone. By focusing on the civilian protection *purpose* of intervention action the ICISS crafted a notion of right intention that was not overly restrictive. The version of right intention found in element one of RP is less nuanced, leaving open the possibility that "pure" humanitarian motives might be required before an intervention is deemed appropriate.<sup>82</sup> If this interpretation is correct, this would impose an unduly restrictive condition on international action.

A second notable aspect of element one of RP is its emphasis on the impartiality of

<sup>80</sup> *Ibid.*, at 11.

<sup>81</sup> *ICISS*, *supra* note 12 at xii [emphasis added].

<sup>82</sup> Suzuki, *supra* note 48 at 13.



those intervening. The warning against supporting “specific political parties or armed forces” implicitly conveys Beijing’s disquiet over NATO’s direct support for rebel forces in Libya. An insistence on impartiality has also been a longstanding theme in China’s discourse on UN peacekeeping operations, with Beijing stressing that the UN must avoid becoming a party to a conflict. This raises the important question of whether civilian protection can be carried out effectively without the intervening states “taking sides”.<sup>83</sup> One commentator has argued that “[t]he demise of a regime responsible for the mass atrocities that trigger an R2P intervention is logically inevitable”.<sup>84</sup> Although further consideration of this fundamental issue is beyond the scope of this article, the key point is that China’s concerns over the motivations for, and ultimate outcomes of, intervention are reflected in what appears to be a stricter notion of “right intention” than that proposed by the original ICISS report in 2001.

A third significant aspect of RP’s first element is its reference to regional peace and stability. The importance of regional stability has been a consistent feature of Chinese discourse on R2P and reflects Beijing’s emphasis on maintaining balance and order within the international system. Its inclusion in the first element of RP is one of several mentions of this issue which relate to the “reasonable prospects” principle of the just war tradition. Explicit reference to regional peace and stability underlines Beijing’s preference for applying a holistic assessment of the feasibility of any international intervention. Under this interpretation considerations of potential success must be based not only on the immediate prospects of effectively protecting civilians within a targeted state, but also on the broader issue of the impact of international action on regional peace and security. Although the express inclusion of regional stability in RP distinguishes the Chinese concept from Brazil’s RWP, it should be noted that the original ICISS report also briefly mentioned the possibility of “larger regional conflagration” within its discussion of the “reasonable prospects” criterion.<sup>85</sup> On the whole, however, considerations of regional peace and stability receive greater emphasis and occupy a more central position within China’s RP than they do in previous interpretations of R2P, reflecting the importance that Beijing places on this issue.

The second element of RP reads:

Second, the legitimacy of the “protection” executors must be established. The government of a given state bears the primary responsibility of protecting its citizens. Besides that, the UN Security Council is the only legitimate actor to perform this duty while no countries have such a right, let alone the legal status to do so.<sup>86</sup>

---

<sup>83</sup> On the issues of regime change and assistance to rebels in Libya see Christian HENDERSON, “The Provision of Arms and ‘Non-lethal’ Assistance to Governmental and Opposition Forces” (2013) 36 *University of New South Wales Law Journal* 642; Hugh BREAKEY, “The Responsibility to Protect: Game Change and Regime Change” in Angus FRANCIS, Vesselin POPOVSKI and Charles SAMPFORD, eds, *Norms of Protection: Responsibility to Protect, Protection of Civilians and Their Interaction* (Tokyo: United Nations University Press, 2012), 11. On the legality of external assistance to parties to the Syrian conflict see Tom RUYSS, “Of Arms, Funding and ‘Non-lethal Assistance’ – Issues Surrounding Third-State Intervention in the Syrian Civil War” (2014) 13 *Chinese Journal of International Law* 13.

<sup>84</sup> Kevin BOREHAM, “Libya and the ‘Responsibility to Protect’ Doctrine” *Online Opinion* (26 August 2011), online: [Online Opinion <www.onlineopinion.com.au/view.asp?article=12522>](http://www.onlineopinion.com.au/view.asp?article=12522).

<sup>85</sup> ICISS, *supra* note 12 at 37.

<sup>86</sup> Ruan, *supra* note 11 at 11.

This element represents RP's version of the "right authority" criterion. It reaffirms China's longstanding position that only the UNSC has the legal authority to mandate non-consensual civilian protection measures, including military action. This is consistent with the 2005 WSOD provision on R2P but narrower than the ICISS version and RwP, both of which recognised the possibility of alternative mechanisms of authorisation - the UNGA or regional organisations - if the UNSC was deadlocked.<sup>87</sup> Beijing's rejection of the doctrine of unilateral humanitarian intervention is reiterated in its warning that "no countries have such a right, let alone the legal status to do so". Overall, this element of RP reflects China's desire to maintain control over the implementation of R2P by ensuring that the UNSC retains exclusive authority and, therefore, that Beijing has the option of vetoing any proposed international action.

Element three of RP is outlined as follows:

Third, the means of "protection" must be strictly limited. The prerequisite for invoking protection should be exhaustion of diplomatic and political means of solution. Non-military means like diplomatic efforts, though time-consuming, produce long-lasting results with lesser side effects. On the contrary, using military force at every turn would not only cause huge civilian casualties but also bring severe damage to infrastructure and downturn of national economy in the country or region to be "protected", eventually aggravating humanitarian disasters and plunging the object of "protection" into protracted and distressful post-crisis reconstruction.<sup>88</sup>

As illustrated in Table 1, element three contains themes which relate to several aspects of the just war tradition. The principal focus is the notion of military intervention as a "last resort". While the preference for utilising "non-military means" of civilian protection is consistent with China's broader policy on the non-use of military force, the language used here is potentially problematic. If the reference to "exhaustion" of diplomatic and non-forcible means of civilian protection is interpreted literally then this element would require a strict chronological sequencing of responses to a civilian protection situation. As James Pattison notes, "the obvious and frequently noted problems with such an account are that, first, mass atrocities can continue to rage whilst 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 [military] intervention."<sup>89</sup>

These difficulties with a requirement to "exhaust" all non-forcible measures arose in relation to Brazil's RwP concept note, which also implied a strict sequencing approach. Criticism from a number of Western states, UN officials and R2P scholars over this requirement prompted Brazil to shift towards a less restrictive notion of prudential sequencing that "should not be perceived as a means to prevent or unduly delay authorization

---

<sup>87</sup> See Table 1. Note, however, that Brazil appears to have retreated from recognising the Uniting for Peace resolution exception and is now wedded to the WSOD version of R2P which anchors coercive responses firmly within the exclusive control of UNSC. Therefore, there may now be no difference between the Brazilian and Chinese positions on this issue. See "Statement by H.E. Dilma Rousseff, President of Brazil, At the Opening of the General Debate of the 67<sup>th</sup> Session of the UN General Assembly, New York" (25 September 2012), online: United Nations <[www.unoteint/brazil/speech/12d-Pr-Dilma-Roussef-opening-of-the-67th-genernal-assembly.html](http://www.unoteint/brazil/speech/12d-Pr-Dilma-Roussef-opening-of-the-67th-genernal-assembly.html)>.

<sup>88</sup> Ruan, *supra* note 11 at 11-12.

<sup>89</sup> Pattison, *supra* note 45 at 14.

of military action in situations established in the 2005 Outcome Document”.<sup>90</sup> A similar clarification or refinement of RP’s interpretation of the last resort criterion is needed. In this respect, the original ICISS report offers a sensible, sufficiently flexible interpretation: military force “can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been *explored*, with reasonable grounds for believing lesser measures would not have succeeded”.<sup>91</sup>

In addition to its focus on military force as a “last resort”, element three also contains themes relating to “proportional means” and “reasonable prospects”. With respect to the former, insistence that “the means of protection must be strictly limited” implies that such measures must not go beyond the minimum necessary to achieve the civilian protection objective.<sup>92</sup> On the latter, the warning about military force “aggravating humanitarian disasters” reflects China’s scepticism over the effectiveness of military intervention as a civilian protection strategy.

The fourth element of RP provides that:

Fourth, the purpose of “protection” must be defined. Just as doctors should not kill patients by means of treatment, the purpose of protection must be to mitigate humanitarian catastrophe. It is absolutely forbidden to create greater humanitarian disasters because of protection, let alone to use protection as a means to overthrow the government of a given state.<sup>93</sup>

The major theme of this element is “right intention”. In this respect, there is some similarity between elements one and four. Both reflect deeply held Chinese concerns over R2P being used as pretext for the pursuit of other strategic objectives such as regime change. However, whereas element one addresses the “object” of protection (civilian populations versus specific political parties/armed forces), element four focuses on the “purpose” of external intervention. By applying a purpose-based assessment of right intention element four adopts a similar approach to the ICISS report. At the same time, however, the RP interpretation of this requirement is framed in stricter terms. The ICISS reference to “*primary* purpose” provided a degree of flexibility by recognising the political reality that there may be more than one purpose when intervening militarily.<sup>94</sup> RP, in contrast, uses more absolute language in demanding that “*the* purpose must be to mitigate humanitarian catastrophe”.<sup>95</sup> This provides another example of RP’s very strict, narrow interpretation of the requirements of just war theory.

A secondary aspect of element four is its assertion that it is “absolutely forbidden to

---

<sup>90</sup> Antonio de Aguiar Patriota, “Statement by Minister Antonio de Aguiar Patriota, Informal Discussion on ‘Responsibility While Protecting’” (21 February 2012), United Nations, New York. For discussion of the response to Brazil’s RwP concept see Benner, *supra* note 41.

<sup>91</sup> ICISS, *supra* note 12 at xii [emphasis added].

<sup>92</sup> Note that Bellamy argues that the notion of proportionality is “impossible to calculate with any degree of precision prior to the use of force (and difficult and subjective even afterwards when all the data is in).” See Alex J. BELLAMY, “Protecting responsibly: the UN Security Council and the use of force for human protection purposes”, Centre for International Governance and Justice, Canberra, Working paper No. 7.1 (2013), 17.

<sup>93</sup> Ruan, *supra* note 11 at 12.

<sup>94</sup> ICISS, *supra* note 12 at xii [emphasis added].

<sup>95</sup> Ruan, *supra* note 11 at 12 [emphasis added].

create greater humanitarian disasters because of protection”. This appears to be a further reference to the “reasonable prospects” criterion, which is also emphasised in elements one and three discussed above. In circumstances where external military intervention would be likely to exacerbate a humanitarian crisis it would not be considered an appropriate course of action.

The fifth element of RP reads:

Fifth, the “protectors” should be responsible for the post-“intervention” and post-“protection” reconstruction of the state concerned. They should absolutely not smash and go, leaving a terrible mess to the country and people subject to “protection”.<sup>96</sup>

This is an interesting element which extends the scope of the RP concept beyond its primary focus on R2P’s third pillar and the permissibility of military intervention. As Table 1 indicates, post-intervention reconstruction responsibilities did not form part of Brazil’s RWP initiative but the idea did feature prominently in the ICISS report as part of the “Responsibility to Rebuild” dimension of the original 2001 R2P concept. However, the notion of a “Responsibility to Rebuild” did not find its way into the WSOD in 2005 and, therefore, strictly speaking is not part of the current concept of R2P.<sup>97</sup> Given Beijing’s repeated insistence that further discussion of R2P within the UN system must be based upon the WSOD version of R2P, it is surprising to see this earlier ICISS idea appear in China’s RP concept. One interpretation of its inclusion is that China is seeking to resurrect or resuscitate the “Responsibility to Rebuild” dimension of the original ICISS R2P idea. This type of norm entrepreneurship would represent a significant, even radical, shift in Beijing’s approach towards R2P’s normative development and, therefore, seems unlikely.<sup>98</sup> An alternative interpretation is that RP’s reference to post-intervention reconstruction is intended primarily as an implicit criticism of the destabilising effects of previous Western-led military campaigns, such as those in Iraq and Afghanistan. This latter reading recognises that reconstruction and development themes form a central part of China’s broader perspective on peace-building but it does not assert that Beijing is specifically seeking to re-introduce the “Responsibility to Rebuild” dimension of R2P. The key point is that there is a need for clarification of precisely what is intended by element five.

The sixth and final element of RP is expressed as follows:

Sixth, the United Nations should establish mechanisms of supervision, outcome evaluation and post factum accountability to ensure the means, process, scope and results of “protection”.<sup>99</sup>

Element six calls for greater accountability and supervision of those carrying out UNSC

---

<sup>96</sup> Ruan, *supra* note 11 at 12.

<sup>97</sup> For an account of a *moral* (as opposed to legal) duty to rebuild see James PATTISON, “*Jus Post Bellum* and the Responsibility to Rebuild”, *British Journal of Political Science / FirstView Article / November 2013*, pp 1 – 27 DOI: 10.1017/S0007123413000331, Published online: 19 November 2013.

<sup>98</sup> The reconstruction aspect of RP was not discussed at any length at the CIIS conference in Beijing in October 2013, suggesting that there is greater emphasis on promoting the decision-making guidelines and accountability elements of RP.

<sup>99</sup> Ruan, *supra* note 11 at 12.

civilian protection mandates. This aspect of RP is not a new idea. Stricter oversight of international civilian protection measures has been a central theme in post-Libya debates on R2P, as a result of concerns among many non-Western states over the way that NATO interpreted and implemented UNSC resolution 1973.<sup>100</sup> RP's brief proposal makes a similar demand to Brazil's RWP, which suggested that "[e]nhanced Security Council procedures are needed to monitor and assess the manner in which resolutions are interpreted and implemented to ensure responsibility while protecting".<sup>101</sup> One point of difference – whether intentional or not – is that RP does not specify where any future supervision mechanisms should be located, referring simply to need for the "United Nations" to establish such mechanisms. Brazil's proposal, on the other hand, is more precise, explicitly calling for the creation of "*Security Council* procedures".<sup>102</sup>

The idea of establishing better monitoring procedures raises a number of complex issues which, for reasons of space, can only be discussed briefly here.<sup>103</sup> First of all, as alluded to above, there is the question of what form such mechanisms would take. Both the Chinese and Brazilian initiatives appear to suggest that additional procedures or perhaps even new supervisory bodies should be created to provide greater scrutiny of UNSC-authorized military action. However, there is no detail about how such mechanisms should be set up or what impact they would have on the wide discretion currently granted to the UNSC on matters of international peace and security. Second, it is unclear whether any new accountability mechanisms would apply to all types of UNSC-authorized Chapter VII military action, or only to third pillar R2P military intervention. As the former Special Adviser to the United Nations Secretary-General on the Responsibility to Protect Edward Luck has argued, it would be undesirable to impose "more restrictive ones [standards] for using force in Responsibility to Protect situations than in other situations".<sup>104</sup> A third major issue relates to the impact that enhanced monitoring and supervision might have on the effectiveness of UNSC-authorized military action. The concern here is that stricter accountability mechanisms could lead to the UNSC – or a new independent body - micro-managing military operations to such a degree that the implementing states are deprived of the flexibility needed to achieve the civilian protection objectives mandated by the UNSC.<sup>105</sup>

Given the potential difficulties associated with establishing new monitoring procedures or supervisory bodies, Alex Bellamy argues that it is preferable to concentrate instead on inserting more detailed safeguards and accountability provisions into individual UNSC resolutions.<sup>106</sup> He points to a range of existing measures including "sunset clauses", "specific reporting requirements" and "specific limitations", which can be used to ensure that

---

<sup>100</sup> See Yee, *supra* note 2.

<sup>101</sup> *RwP Concept Note*, *supra* note 8 at 4.

<sup>102</sup> *Ibid.*, [emphasis added].

<sup>103</sup> For more detailed recent consideration of these issues in the context of Brazil's RWP proposal, see Bellamy, *supra* note 92 at 20-23; Pattison, *supra* note 45 at 17-24.

<sup>104</sup> "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' Initiative Organized by the Permanent Mission of Brazil" (21 February 2012), online: United Nations <[www.un.org/en/preventgenocide/adviser/pdf/EL's%2021%20February%20statement%20%20English.pdf](http://www.un.org/en/preventgenocide/adviser/pdf/EL's%2021%20February%20statement%20%20English.pdf)>.

<sup>105</sup> Bellamy, *supra* note 92 at 21-22.

<sup>106</sup> *Ibid.*, at 22.

intervening states are not given *carte blanche* over the interpretation and implementation of civilian protection mandates.<sup>107</sup> While there is considerable merit in Bellamy's suggestion, the potential downside of this alternative approach to strengthening accountability is that it may lead to more complicated negotiations between UNSC members over the content of R2P resolutions. The greater the degree of detail and specificity in a proposed UNSC resolution, the longer it is likely to take and the harder it may be to reach consensus on the precise wording.<sup>108</sup> The risk is that prolonged negotiations over the language of UNSC mandates could undermine the ability of the Council to mount timely and decisive responses to grave humanitarian crises.

As this short discussion indicates, there are no easy solutions to the issue of how to achieve an appropriate balance between the dual desires of facilitating effective, appropriately flexible UNSC-authorized civilian protection action, on the one hand, and of ensuring sufficient accountability mechanisms, on the other. RP's proposal for better monitoring procedures clearly conveys Beijing's deep concern over R2P's potential for abuse but, in its current, very brief form, it does little to advance the discussion of exactly how new supervision mechanisms should be established.

After outlining the six elements, the overall merits of the RP concept are summarised as follows:

In short, the idea of RP better embodies the purposes and principles of the UN Charter as well as the basic norms governing international relations, better conforms to the trends of peace and development of the present-day world, and is more conducive to building a just and reasonable new international order. Moreover, this idea is broadly based internationally.<sup>109</sup>

At first glance this language might suggest that RP is being offered as a direct alternative to the current WSOD version of R2P. However, as illustrated in this section, RP is a narrower initiative which focuses on R2P's third pillar, and in particular, the controversial question of non-consensual military intervention. It does not engage with, or seek to discard, pillars one and two of the existing R2P concept. Therefore, like Brazil's RWP, the Chinese idea of RP is best viewed as a contribution which re-interprets and tightens the normative content of R2P's third pillar, rather than as an attempt to replace the current version of R2P.

### III. THE SIGNIFICANCE OF CHINA'S "RESPONSIBLE PROTECTION" CONCEPT

China's RP initiative remains something of an enigma. As noted, it is yet to be formally adopted as an official Chinese position on R2P. In addition, the lack of detail in its six elements, coupled with the fact that several of them appear to overlap, leads to RP raising almost as many questions as it provides answers. A major unresolved issue is how those RP elements that resemble decision-making criteria are intended to operate in practice. There are

---

<sup>107</sup> *Ibid.*, at 22-23.

<sup>108</sup> A recent illustration of the complexity of UNSC negotiations is the significant length of time it took to reach consensus on the relatively uncontroversial issue of humanitarian aid access in Syria in February 2014. See SC Res. 2139, UN Doc. S/RES/2139 (2014).

<sup>109</sup> Ruan, *supra* note 11 at 12.

a number of questions here. First of all, are the RP elements proposed as criteria that would be formally adopted and codified in a new UNSC or UNGA resolution on R2P? Or are they viewed instead as providing informal guidelines to be used in UNSC debates? Given the limited prospects of reaching agreement on criteria in a UNSC or UNGA resolution, the latter option seems more likely, although further clarification is needed. A second important question is whether *each and every* RP criterion needs to be satisfied before military force can be considered appropriate, or whether action can proceed if there are strong indicators in favour of *most* of the criteria but not all can be strictly satisfied. Third, there is the broader question of the practical benefits and political utility of having criteria in the first place. By resurrecting the idea of decision-making guidelines – which featured prominently in the 2001 ICISS report, the 2004 UN report *A More Secure World*,<sup>110</sup> and the 2005 UN report *In Larger Freedom*<sup>111</sup> – China’s RP and Brazil’s RWP concepts have prompted a renewed debate within R2P circles over this issue.

It is not possible here to engage in a detailed discussion of all the arguments for and against decision-making criteria. However, a brief outline of the basic positions in the academic debate can be sketched. On one side, Alex Bellamy maintains his longstanding sceptical view, arguing that:

there is little evidence that, in practice, criteria would serve the goals of accountability by ensuring a shared understanding of situations and mandates and that the implementation of mandates would be consistent with those understandings. In the hands of skilled diplomats, criteria would likely merely become the language used to justify pre-determined positions.<sup>112</sup>

On the other side, James Pattison has recently offered a detailed defence of the use of informal criteria.<sup>113</sup> Contrary to the claims of some critics, he contends that appropriately flexible guidelines would lead neither to too much military intervention, nor to too little. Instead, according to Pattison, the use of informal criteria could help to improve the transparency of decision-making on the use of military force, and also encourage interveners to “live up to the requirements of the guidelines, which is likely to lead to intervention that is more morally justifiable”.<sup>114</sup> In a similar vein, Wheeler argues that criteria would be of considerable value to R2P decision-making because they provide a “common reference within which argumentation can take place”.<sup>115</sup>

On balance, the case in favour of informal decision-making criteria seems to be

---

<sup>110</sup> *A More Secure World: Our Shared Responsibility*, Report of the Secretary-General’s High Level Panel on Threats, Challenges and Change, UN Doc. A/59/565 (2004) at 56-57.

<sup>111</sup> Kofi Annan, *In Larger Freedom: Towards Development, Security and Human Rights for All*, UN Doc. A/59/2005 (2005) at 33.

<sup>112</sup> Bellamy, *supra* note 92 at 16-17. For earlier arguments against decision-making criteria see Alex J. BELLAMY, “The Responsibility to Protect and the Problem of Military Intervention” (2008) 84 *International Affairs* 615 at 625-630.

<sup>113</sup> See Pattison, *supra* note 45 at 28-36. For similar arguments in favour of criteria or guidelines see Gareth EVANS, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington, D.C.: Brookings Institution Press, 2008) at 141-142.

<sup>114</sup> Pattison, *supra* note 45 at 38. Pattison goes on to argue that, contrary to the prevailing interpretation of R2P, criteria are *already* an informal part of the current R2P concept.

<sup>115</sup> Nicholas WHEELER, *Saving Strangers Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000) at 33.

stronger. While using guidelines will not be a panacea, it does offer some hope of promoting greater openness in debate over the use of force, and will also help to provide greater precision to R2P's third pillar. Given that both Brazil's RwP and China's RP have made guidelines a central part of their proposals for developing R2P's third pillar, the issue of criteria must be taken seriously by Western powers. It is likely to continue to feature heavily in future discussions over the content and implementation of pillar three.

This brings us to the question of whether or not RP's guidelines and the concept's overall interpretation of the permissibility of military intervention for civilian protection purposes are ethically appropriate. The risk in seeking to develop safeguards against R2P's abuse is that it results in an excessively strict set of guidelines which ultimately pose an obstacle to timely and decisive international responses to humanitarian crises. RP certainly outlines a narrower interpretation of military intervention for civilian protection purposes than those found in Brazil's RwP and the ICISS concept of R2P. As discussed in section II.B, some aspects of RP do appear to be framed too restrictively. One might ask whether there are *any* conceivable R2P situations in which military intervention would be permissible under RP's strict requirements. In this respect, it may be tempting to characterise RP as a "mere spoiling operation with a more sophisticated face", rather than as a genuine Chinese effort to engage constructively with R2P.<sup>116</sup> According to this interpretation, RP is part of a subtle strategy of contesting and containing R2P's development and implementation while avoiding the impression that China is outwardly rejectionist or obstructionist.

Determining exactly where RP lies in terms of contestation versus engagement with R2P is difficult. Like China's overall relationship with R2P, the RP initiative contains ambiguity and inconsistency. However, despite RP's current shortcomings it would be premature to dismiss or reject the concept outright at this stage. There are at least three important reasons to remain open-minded about the Chinese initiative. First of all, the formulation of RP is a notable development in itself because it demonstrates the extent to which China is enmeshed in the ongoing debate over R2P.<sup>117</sup> Simply rejecting R2P or remaining silent in the wake of the Libyan controversy appear not to have been viable options for a major power like China. Second, some of the apparently problematic aspects of RP may simply be due to translation difficulties or imperfect use of language. Beijing's actual interpretation of the conditions under which military intervention is permissible may, in fact, be more flexible than RP's wording suggests. A third reason for remaining positive about RP is that there is likely to be refinement and modification of the initial concept. Brazil's experience with RwP is instructive here. The original Brazilian concept note attracted significant criticism from both states and UN officials, most notably in relation to the apparent call for a rigid, chronological sequencing of responses.<sup>118</sup> However, once Brazil had clarified its position and moved towards a more flexible interpretation of sequencing, other states began to engage more constructively with RwP. This eventually resulted in RwP gaining a prominent position in the UN Secretary-General's 2012 report on R2P's third

---

<sup>116</sup> Evans, *supra* note 13. Note that Evans raises but then rejects this possible characterization of RP.

<sup>117</sup> I am grateful to Sarah Teitt for highlighting this point.

<sup>118</sup> See discussion in Benner, *supra* note 45 at 4-5.



pillar.<sup>119</sup> A similar process of conceptual clarification, refinement and further discussion may occur with the Chinese initiative. The recent RP conference in Beijing is a positive first step in this direction which suggests that China *is* genuinely interested in engaging constructively in the debate over R2P's third pillar.

In spite of the potential concerns and unresolved issues surrounding RP at present, it is possible to draw several preliminary conclusions about the significance of the initiative. The first is that RP is important because it offers deeper insights into current Chinese thinking on R2P than those provided by the often generic official statements made within UN organs. One crucial message from RP is that Beijing does recognise the permissibility of non-consensual military intervention under R2P's third pillar. Although China has never explicitly rejected such a possibility it has consistently emphasised that the international community's response to major humanitarian crises should be based on *assisting* states, thereby implying that host state consent to external action is a prerequisite.<sup>120</sup> Beijing's preference for obtaining the consent of a functioning host state remains, but RP now acknowledges that in some circumstances - albeit very narrow ones - international military intervention for humanitarian purposes may be permissible even without such consent. This represents a notable shift in China's position on R2P's most contentious dimension. Another important message from RP is that Beijing has reassessed its stance on decision-making guidelines or criteria. Prior to the 2005 World Summit China (and Russia) opposed R2P guidelines on the basis that their inclusion could increase the potential for unilateral international intervention outside the UNSC framework on the use of force.<sup>121</sup> The concern was that criteria could operate as a check-list which might be used to legitimise military intervention without UNSC authorisation.<sup>122</sup> However, once the WSOD firmly anchored R2P military intervention within the UNSC's exclusive control, closing off the possibility of alternative authorisation mechanisms or unilateral action, Chinese and Russian concerns were largely assuaged. Now, with the RP proposal, Beijing appears to have embraced decision-making guidelines as an additional means of reducing the potential for abuse of R2P.

As well as providing specific insights into Beijing's current interpretation of R2P, RP is also significant because it offers a window into how China views itself and its role as an emerging power.<sup>123</sup> Shogo Suzuki describes China having "dual identities" as "both an aspirational 'great power' which plays a key role alongside the West in global governance, and a member of the post-colonial state which views Western hegemony with a critical eye and sees the need to champion the causes of the developing world".<sup>124</sup> Both of these identities are evident in the language of RP. On the one hand, the concept is framed as a responsible, constructive contribution to R2P's normative development from a "leading actor on the

---

<sup>119</sup> *Timely and Decisive Response*, *supra* note 7 at 13-15.

<sup>120</sup> Writing in 2012 (prior to RP's conception), Liu concluded that the Chinese position was that international action is permissible only with the consent of the host state. See Liu, *supra* note 52 at 160.

<sup>121</sup> This concern was discussed in Yevgeny PRIMAKOV, "UN Process, not Humanitarian Intervention, is World's Best Hope" *New Perspectives Quarterly*, (2 September 2004), online: [New Perspectives Quarterly <www.digitalnpq.org/global\\_services/global%20viewpoint/02-09-04primakov.html>](http://www.digitalnpq.org/global_services/global%20viewpoint/02-09-04primakov.html).

<sup>122</sup> See Bellamy, *supra* note 112 at 628.

<sup>123</sup> For more on China's view of its role in the world see Alastair Iain JOHNSTON, "How new and assertive is China's new assertiveness?" (2013) 37 *International Security* 7; Yeophantong, *supra* note 5.

<sup>124</sup> Suzuki, *supra* note 48 at 2.

international stage”.<sup>125</sup> On the other hand, RP conveys China’s deep scepticism of Western motives for intervention, and positions itself as a perspective which reflects the “general stand and concern of the vast developing countries”.<sup>126</sup> While China’s growing involvement in international peace-keeping and non-traditional security arrangements such as the Somali anti-piracy framework points to a broader shift towards greater acceptance of its responsibilities as a global power, some of the language in RP illustrates Beijing’s continuing identification with the developing world. How these often contradictory dual identities are balanced by China in the future, and how this is reflected in its relationship with R2P, will be fascinating to observe.

A third significant aspect of RP is that it represents a distinctive, non-Western contribution to the evolution of international norms and global governance. This development raises a number of important issues relating to the processes of normative change and the impact of shifts in global power, which can only be briefly addressed here.<sup>127</sup> Traditionally, normative development within the international system has been seen as the West’s domain. On the whole, within the academic literature non-Western states have been viewed either as passive receivers of Western ideas who are gradually socialised into accepting such norms, or as recalcitrant states who remain resistant to their adoption.<sup>128</sup> This perception of normative development as a Western-dominated endeavour has been mostly true for much of R2P’s short life. This is not to say that contestation over the concept can be divided neatly along North-South lines, nor is it to ignore the important contributions to R2P’s conceptual design made by non-Western figures such as Francis Deng, Kofi Annan and Ramesh Thakur. However, as Oliver Stuenkel correctly notes, R2P has remained “largely dominated by established powers at both the policy and the academic level”.<sup>129</sup> Now though, as global power shifts away from the West, the BRICS and other non-Western states are beginning to assert their own normative preferences more decisively across a range of issues, including R2P.<sup>130</sup> Both China’s RP and Brazil’s RWP proposals are recent illustrations of the increasing willingness of emerging powers to play a role as norm entrepreneurs in crafting and floating their own perspectives on sovereignty and intervention. RP is explicitly framed as an example

---

<sup>125</sup> Ruan, *supra* note 11 at 13.

<sup>126</sup> *Ibid.*, at 12.

<sup>127</sup> For more detailed discussion of normative development see Alexander BETTS and Phil ORCHARD, eds., *Implementation and World Politics: How International Norms Change Practice* (Oxford: Oxford University Press, 2014); PU Xiaoyu, “Socialisation as a Two-way Process: Emerging Powers and the Diffusion of International Norms” (2012) 5 *Chinese Journal of International Politics* 341; Martha FINNEMORE and Kathryn SIKKINK, “International Norm Dynamics and Political Change” (1998) 52 *International Organization* 88. On power shifts within the international system see Rowena MAGUIRE, Bridget LEWIS and Charles SAMPFORD, eds., *Shifting global powers and international law: challenges and opportunities* (Oxford: Routledge, 2013).

<sup>128</sup> For a critique of the traditional focus on Western-initiated normative development see Pu, *supra* note 127. For the leading account on non-Western perspectives see Amitav ACHARYA, “How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism” (2004) 58 *International Organization* 239.

<sup>129</sup> Oliver STUENKEL, “The BRICS and the Future of R2P: Was Syria or Libya the Exception?” (2014) 6 *Global Responsibility to Protect* 3 at 4.

<sup>130</sup> See e.g. Lindsay BLACK and Yih-Jye HWANG, “China and Japan’s Quest for Great Power Status: Norm Entrepreneurship in Anti-Piracy Responses” (2012) 26 *International Relations* 431; Nele NOESEL, “China and Brazil in Global Norm Building: International Law and the International Criminal Court” (2013) 18 *Political Papers* 701.

of China having “the courage to speak out and contribute its ideas to the world”.<sup>131</sup> Rather than rejecting R2P’s third pillar after its experience with the Libyan intervention, Beijing has attempted to re-define it by advancing a new, restrictive interpretation of the circumstances in which non-consensual civilian protection measures, including military force, can be operationalized. In this respect the creation of RP may represent an important milestone in China’s relationship with R2P, in which it transitions from playing a subtle norm-shaping role towards a more proactive stance as a norm-maker and norm entrepreneur. Although much will depend on the extent to which Beijing seeks to promote RP in the future, the formulation of a distinct Chinese interpretation is, in itself, a notable development.

There are at least two important implications of this shift towards a more influential role for non-Western powers in the development of international norms. The first is that Western states will need to adapt to a new international environment in which the redistribution of power means that they no longer hold a monopoly on global norm-making. Thorsten Benner observes that the West has largely been “unprepared for the non-linear, open-ended politics of norm contestation and evolution in which non-Western powers also play important roles”.<sup>132</sup> This was illustrated by the initially hostile Western reaction to Brazil’s RWP concept, which appeared at least partly attributable to its source as a non-Western proposal.<sup>133</sup> With respect to China’s RP idea, Western powers should engage constructively with Beijing’s initiative, rather than dismiss it as an attempt to derail R2P.<sup>134</sup> In an increasingly complex normative environment in which certain tenets of the Western liberal order, such as R2P, are subjected to challenge or reinterpretation the continuing legitimacy of such norms will depend on the West’s willingness to accommodate non-Western perspectives.<sup>135</sup> The sooner Western powers recognise this, the better the prospects of bridging the current divisions over the content and implementation of R2P’s third pillar.

A second, broader implication of the redistribution of global power and the growing articulation of non-Western normative preferences is a possible move towards a more diverse, pluralistic international order. William Burke-White recently outlined the emergence of what he calls “a multi-hub structure for international law, distinct from past structures such as bipolarity and multipolarity.”<sup>136</sup> Within this new configuration “a growing number of states play issue-specific leadership roles in a flexible and fluid system”, thereby operating as separate “hubs” of power.<sup>137</sup> When these “hubs within the system seek to gain followers, they have opportunity and incentives to articulate distinct preferences for the evolution of the substance of international law that reflect their own interests and may be attractive to

---

<sup>131</sup> Ruan, *supra* note 11 at 13.

<sup>132</sup> Benner, *supra* note 45 at 6.

<sup>133</sup> As discussed, some of the negative reaction was also due to conceptual problems within RWP.

<sup>134</sup> For a similar call for respectful dialogue between Western and non-Western powers see Thakur, *supra* note 7 at 72-73.

<sup>135</sup> For more on legitimacy and R2P after Libya see Jason RALPH and Adrian GALLAGHER, “Legitimacy Faultlines in International Society: The Responsibility to Protect and Prosecute after Libya” (Review of International Studies, forthcoming). See also Amitav ARCHARYA, “The R2P and Norm Diffusion: Towards a Framework of Norm Circulation” (2013) 5 *Global Responsibility to Protect* 466.

<sup>136</sup> William W. BURKE-WHITE, “Power Shifts in International Law: Structural Realignment and Substantive Pluralism” (Harvard International Law Journal, forthcoming).

<sup>137</sup> *Ibid.*, at 5.

potential followers”.<sup>138</sup> Burke-White identifies Beijing’s preference for a more absolutist version of sovereignty as an example of rising powers offering an alternative vision to the West’s more conditional interpretation of sovereignty.<sup>139</sup> By promoting a more state-centric conception of international law China (and Russia) may become hubs that attract followers among the BRICS and other non-Western states.

Recent developments surrounding China’s RP initiative support this perspective. First, the language of RP – framed as a concept that “expresses the hope that the voices of the developing countries are duly respected” – suggests that China is indeed positioning itself as a hub for non-Western states to attach to on the issue of R2P.<sup>140</sup> Second, the decision to host an international conference on RP in Beijing in October 2013, involving predominantly BRICS representatives, can also be interpreted as an attempt to promote further discussion of the Chinese concept.<sup>141</sup> These are signs that China may be seeking to build broader support for its own, more restrictive vision of R2P’s third pillar.

At present, it is unclear what this increasingly complex and contested normative environment will mean for the future of R2P’s third pillar. Three possible scenarios can be briefly sketched here. One is that pressure from China and other non-Western states could lead to the emergence of a more tightly constrained global interpretation of pillar three.<sup>142</sup> This could result from Western powers recognising the need to accommodate the types of decision-making guidelines and monitoring mechanisms proposed in RP and RWP. Incorporating such proposals into R2P – either formally or informally – would provide a greater level of specificity about when and how pillar three should be operationalised. However, the adoption of RP and RWP ideas would not go as far as creating a positive duty on the UNSC to take action in response to a manifest failure to protect, nor would it formally alter the legal framework on the use of force. Instead, the need for UNSC discretion to be exercised on a case-by-case basis within the existing collective security system would remain central to R2P’s third pillar. Under this first scenario, by evolving but ultimately remaining a global concept, R2P’s coherence and integrity as a universal norm would be preserved.

A second possibility is that failure to evolve at a global level could lead to R2P fragmenting through the formation of distinct or regional sub-sets of the concept. These separate versions might be based around distinct hubs, which would then apply R2P in their own area based on a regional or local interpretation.<sup>143</sup> A third conceivable option is that neither of the first two scenarios eventuates. A re-defined, stricter global interpretation of R2P’s third pillar could fail to materialise, while initial signs of the emergence of alternative regional sub-sets might also run out of momentum. Under this scenario, we could be left with multiple, conflicting interpretations of R2P’s third pillar, none of which would have a sufficiently broad following to generate consensus – even within a regional or local framework - on international action for civilian protection purposes.

---

<sup>138</sup> *Ibid.*, at 6.

<sup>139</sup> *Ibid.*, at 51.

<sup>140</sup> Ruan, *supra* note 11 at 12.

<sup>141</sup> This is not to say that all of the BRICS currently hold identical positions on R2P; they were, after all, unable to maintain a unified position on proposed civilian protection measures against Syria.

<sup>142</sup> This possibility is recognised by Burke-White, *supra* note 136 at 51.

<sup>143</sup> Burke-White suggests that “distinct versions of sovereignty and R2P will be championed by competing hubs and applied differently within their respective subsystems”. *Ibid.*

#### IV. CONCLUSION

China's RP proposal represents an attempt to re-interpret R2P's third pillar at a time of renewed contestation over the content and implementation of the concept. It reflects Beijing's deeply held concerns over R2P's potential for abuse. Although many of the elements of RP are drawn from previous initiatives such as Brazil's RWP and the 2001 ICISS report, the repackaging of these ideas in a more restrictive form gives the overall concept a distinctive Chinese flavour. In its current shape, some aspects of RP appear to be framed too strictly or narrowly to offer workable guidelines for determining the permissibility of military intervention for civilian protection purposes. Clarification and refinement is needed in certain areas.

RP does, however, provide several important insights into the current Chinese stance on R2P. First of all, it indicates that Beijing *does* recognise that non-consensual military intervention for humanitarian purposes can be an appropriate course of action for the international community to pursue, albeit within a very narrow range of circumstances. Second, by including elements which resemble decision-making guidelines, RP suggests a shift in China's attitude towards such criteria. Having previously opposed the inclusion of guidelines in earlier versions of R2P, Beijing now appears to view them as useful tools for safeguarding the concept against the risk of abuse. Finally, the creation of the RP proposal, plus its discussion at the recent Beijing conference, points to China exploring the possibility of assuming a more prominent role in the future normative development of R2P. Following on from Brazil's RWP initiative, RP provides a further illustration that rising, non-Western powers are becoming increasingly willing to contribute to the evolving normative architecture on sovereignty and intervention. This has potential implications both for R2P and for the international system more broadly. One possibility, briefly considered in this article, is a move towards a more diverse, pluralistic normative order.

RP's impact on the future development of R2P will depend on how China proceeds with the concept, and how other states respond to it. If Beijing decides to formally adopt the idea and promote it internationally it could play an important role in future discussions on R2P's third pillar. With Brazil appearing unwilling to push its own RWP concept any further, there is an opportunity for China to take up the reins. Two things could help to position RP as a useful normative initiative. The first would be to detach the RP idea from the rest of Ruan's article, which contains highly critical language that could undermine Western receptivity towards the concept. A separate, revised account of RP that clarifies and refines the original ideas in more neutral language would be less likely to arouse suspicions over the motives behind the Chinese initiative. Second, Beijing could consider putting RP on the agenda for consideration at the next BRICS summit, with a view to achieving broader endorsement of the proposal.<sup>144</sup> This could then enable it to be introduced for discussion at a global level within the UN system, in a similar way to RWP's initial promotion by Brazil. If China does decide to formally adopt and promote RP in the future Western powers should engage constructively with the proposal. Its ideas may ultimately contribute to bolstering the

---

<sup>144</sup> The next annual diplomatic meeting of the BRICS is due to be held in Russia in July 2015.

normative content and legitimacy of R2P's third pillar, which in turn could lead to better prospects for operationalising this dimension of the concept.