RESPONSIBILITY TO PROTECT: A LATIN AMERICAN PERSPECTIVE

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I. INTRODUCTION

The question of humanitarian intervention was a central theme of the international agenda between the end of the Cold War, and up until the events of September 11, 2001. After the NATO intervention in Kosovo in 1999, the Secretary-General of the United Nations ("UNSG") at the time posed an interrogation to the UN: How should the international community react when human rights violations occur within a State, bearing in mind the traditional principles of sovereignty and non-intervention in internal affairs?¹

Events such as those in Somalia, Rwanda, Bosnia-Herzegovina, Haiti, and Kosovo, among others, exemplify the lack of response from the international community to these mass atrocities. The rejection of humanitarian intervention by a large number of States evidenced the

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need to start looking for a different answer to these types of situations.

More than a decade after the emergence of the Responsibility to Protect ("R2P") principle\(^2\) and eight years after its endorsement\(^3\) by the international community, recent events have once again emphasized both the importance and challenges of ensuring timely and decisive responses to the four core crimes covered by the principle.\(^4\) These events have stressed the need to further operationalize the principle in order to implement it effectively and prevent mass atrocities.\(^5\)

Recent events related to specific crises such as those in Sri Lanka and Côte d'Ivoire, the recent intervention in Libya, the ongoing conflicts in Syria and the Central African Republic ("CAR"), among others, demonstrate the persistent challenges involved in reaching a common understanding on how to ensure the timely and effective implementation of the R2P principle. At the same time, it is difficult to generate a common political will and an effective capacity to prevent or stop genocide, war crimes, ethnic cleansing, and crimes against humanity, whether committed by national and local authorities or non-state actors.

On the contrary, these discussions are not absent in Latin America and the Caribbean. As a matter of fact, this region has taken lead on the R2P debate by bringing about its own experiences and perspectives that shape a unique reading of the international community and its responsibilities when dealing with the State's inability to protect its own people and prevent mass atrocities.

In light of such difficult questions, this Article analyzes Latin America's past and present stance on the R2P principle. However, any discussion on this matter should start by briefly considering what we are talking about when we say "responsibility to protect,"\(^6\) what this principle encompasses, and finally the current situation regarding

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4. See id. ¶ 138.
5. See Ricardo Arredondo, La responsabilidad de proteger: De la noción a la acción [The Responsibility to Protect: From Concept to Action], Pensamiento Propio, Jan.-June 2009, at 185, 194-95 (Arg.).
the historical and political context which has determined the stance taken by many Latin American countries when implementing their foreign policy decisions.

II. FOREIGN INTERVENTIONISM OR PROTECTION OF HUMAN RIGHTS?

The dilemma was—and remains—between the sovereign right of a nation to be free from outside interference and the right of other states to defend and protect human dignity on a universal basis.\(^7\) This tension has been greatly exacerbated by the globalization process.\(^8\) This is a time when the globalization of markets and finance, not to mention other challenges such as climate change, piracy, and terrorism, test the strength and authority of the State. This notion of sovereignty, which is the traditional base of international politics,\(^9\) is going through a prolonged crisis of identity and purpose.\(^10\) Furthermore, the growing global media coverage of mass atrocities and the increasing involvement of civil society (a phenomenon that some authors call "empathy without borders")\(^11\) are also playing an important role. All of these factors have led to discussions about foreign intervention that are even more acute and controversial than in the past.

Faced with this dilemma, following a Canadian-Australian initiative, the International Commission on Intervention and State Sovereignty ("ICISS") was established, and by the end of 2001 it issued a report titled The Responsibility to Protect.\(^12\) The ICISS report sought to find a way out of the paradox posed by the Secretary-General, which proposed to introduce a fundamental change in perspective by considering the issue in terms of responsibility to protect rather than humanitarian intervention.\(^13\) The report concludes that sovereignty not only gives the state the right to "control" their affairs, but also confers

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9. See U.N. Charter art. 2, para. 1 ("The Organization is based on the principle of the sovereign equality of all its Members.").


11. See Daniel Fiott, INTRODUCTION TO OPERATIONALIZING THE RESPONSIBILITY TO PROTECT: A CONTRIBUTION TO THE THIRD PILLAR APPROACH 8 (Daniel Fiott et al. eds., 2012).


13. See id. at 9, 17.
upon it the primary "responsibility" to protect the population within its borders. Likewise, the report states that when a State fails to protect its people, due to lack of ability or willingness, the international community should take on that responsibility. The R2P principle has been further defined to encompass three different dimensions: (1) the responsibility to prevent; (2) the responsibility to react; and (3) the responsibility to rebuild.

The R2P concept was subsequently incorporated in a series of UN documents (although non-binding from a legal standpoint). In its report, A More Secure World: A Shared Responsibility: Report of the High-level Panel on Threats, Challenges and Change, the UN echoed the ICISS Report and stressed that more than a right to intervene, the States have an obligation *erga omnes* to take all measures in their power to prevent or put an end to serious and massive human rights violations as soon as possible. The report argues that it is a collective international responsibility, "exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing, and serious violations of international humanitarian law which sovereign governments had proved powerless or unwilling to prevent." The Panel stated that in order to legitimize the use of force by the Security Council of the UN, certain basic criteria should be considered, such as the seriousness of the threat, proper purpose, last resort, and proportionality of the response. As Focarelli noted, it is almost commonplace to observe that the conditions or precautionary principles developed by the ICISS and collected in the UN Report faithfully reflect those made by the Christian theological tradition of just war, although he acknowledges that the problem is not the guidelines themselves but how they are interpreted in each particular case.

In its 2005 report, In Larger Freedom: Towards Development, Security and Human Rights for All, the Secretary-General of the UN affirmed that the international community "must also move towards

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14. See id. at 13.
15. See id. at 17.
16. Id. at 17.
18. Id.
19. Id. ¶ 207.
embracing and acting on the 'responsibility to protect' potential or actual victims of massive atrocities." In this regard, he proposed that in order to authorize the use of force, a set of criteria must be fulfilled such as "the seriousness of the threat, the proper purpose of the proposed military action, whether means short of the use of force might reasonably succeed in stopping the threat, whether the military option is proportional to the threat at hand and whether there is a reasonable chance of success." 

The 2005 UN World Summit Outcome provides, for the first time, a common definition of the principle of R2P. The principle of R2P, embedded in paragraphs 138 and 139, represents an important step forward by establishing the obligation of states to protect their populations against genocide, war crimes, ethnic cleansing, and crimes against humanity. Similarly, it embodies the obligation of the international community to help States assume this responsibility and to react should they fail to protect their citizens against these four specified crimes and violations.

Since its first report, Implementing the Responsibility to Protect in 2009, the UNSG issued reports on an annual basis to try to clarify different aspects of the R2P principle and foster the debate among Member States. In 2010, the Secretary-General addressed an informal interactive General Assembly dialogue on Early Warning, Assessment and the Responsibility to Protect, and the following year on The Role of Regional and Sub-Regional Arrangements in Implementing the Responsibility to Protect. On September 5, 2012, the Secretary-General presented his report on The Responsibility to Protect: Timely and Decisive Response, and in 2013 he published his fifth report, State Responsibility and Prevention.

23. See id. ¶ 6(h).
25. See id. ¶ 138.
As the Secretary-General explained, the principle of R2P is based on three pillars, namely: (1) the State bears the primary responsibility to protect its population from genocide, war crimes, crimes against humanity, and ethnic cleansing; (2) the international community must assist States in fulfilling their protection obligations; and (3) when a State manifestly fails to protect its population or is in fact a perpetrator of these crimes, the international community has a responsibility to take collective action.\(^\text{31}\)

The R2P principle has undergone criticism that it is humanitarian intervention under a different name.\(^\text{32}\) In particular, it has been said that it gives powerful countries a window of opportunity to use force under their own discretion, emphasizing mainly the "responsibility to react" dimension.\(^\text{33}\) In this regard, it must be recalled that R2P encompasses three different dimensions which involve using all available tools under Chapters VI, VII, and VIII of the Charter, ranging from non-coercive responses to collective action.\(^\text{34}\) This is a fundamental reflection towards the further development and the legitimacy of the principle.

The development of the R2P principle is welcome since it clarifies and strengthens the existing obligations of states to ensure the protection of civilians.\(^\text{35}\) In this regard, it represents an important step towards anticipating, preventing, and responding to genocide, war crimes, ethnic cleansing, and crimes against humanity. Furthermore, it upholds fundamental principles of international law, in particular international humanitarian, refugee, and human rights law. The principles should be applied as consistently and uniformly as possible, to which effect it is crucially important that early warning and assessment should be conducted fairly, prudently, and professionally and that the use of force should remain the measure of last resort. As the

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31. See Implementing the Responsibility to Protect, supra note 26, § 1.


34. See Implementing the Responsibility to Protect, supra note 26, at 4, 9, 23.

European Union put it, the principle has been considered to be “critical for the survival of the community of nations.”

The development of the R2P principle, particularly its prevention component, can advance global efforts towards a more peaceful world. This is bearing in mind that many mass atrocity crimes occur during periods of violent conflict, and these situations evidence the necessity to create effective capacities for structural and operational conflict prevention. Furthermore, in this way, it is possible to minimize the need to recourse to the use of force, leaving it as the last resort.

III. LATIN AMERICA, HUMAN RIGHTS, AND INTERVENTIONISM

Before considering the present stance of Latin American countries regarding the R2P principle, it is important to bear in mind Latin America’s history and its strong support of non-intervention. In addition, it is also relevant to analyze the well-built Latin American tradition regarding human rights. In my view, the combination of these elements is essential to understanding the current foreign policy positions of the States of the region vis-à-vis the R2P principle.

Additionally, it is also important to note that while many observers are accustomed to think of Latin America as a monolithic subject, the region shows a healthy political and ideological diversity that is reflected in the foreign policy positions taken by their governments which do not necessarily agree with positions held by these countries in the past.

The new political and ideological diversity “affects certain regional alliances to the extent that hemispheric geopolitical tensions translate into ‘ideological frontiers’” when addressing issues that take

37. See id.
38. Id. at 6.
39. Id.
42. See generally ANDREA OELNSER, INTERNATIONAL RELATIONS IN LATIN AMERICA: PEACE AND SECURITY IN THE SOUTHERN CONE (David Mares ed., 2005) (analyzing relations between Latin American countries).
up the foreign policy agenda of our countries. At the same time, there seems to be two muscular elements of continuity in the Latin American agenda: human rights and the principle of non-intervention in internal affairs.

Latin American foreign policy was built gradually during the Nineteenth and early Twentieth Century based on six principles: (1) sovereign equality of all States; (2) no intervention; (3) territorial integrity; (4) self-determination; (5) peaceful settlement of disputes; and (6) respect for international law. Successive Inter-American Conferences from 1899 strengthened these principles, rejected interventionism, and set up exemplary humanitarian practices such as asylum and convinced the United States to inaugurate the policy of the "good neighbor," which led to greater cooperation and understanding within the hemisphere.

After World War II, the adoption of the Charter of the Organization of American States ("OAS"), along with the American Treaty on Pacific Settlement, also known as the "Pact Of Bogotá," and the American Declaration of the Rights and Duties of Man, contributed to reinforcing these principles within the region. Indeed, it must be reminded that the American Declaration of the Rights and Duties of Man preceded the UN Universal Declaration of Human Rights and many of the principles of the Inter-American system were incorporated into the Charter of the UN. From these historic moments, the role of the OAS, with its lights and shadows, has served to demonstrate that countries are associated mainly for two reasons: strategic needs arising from sharing a massive geographical area, and the cul-

43. Ricardo Arredondo et al., Responsabilidad de proteger y prevención en América Latina y el Caribe: El rol de la sociedad civil [Responsibility to Protect and Prevention in Latin America and the Caribbean], COORDINADORA REGIONAL DE INVESTIGACIONES ECONÓMICAS Y SOCIALES (CRIES), Feb. 2011, at 11 (Arg.) [hereinafter CRIES].
44. Id. at 5-6.
45. Fernando Petrella, John Kerry, la OEA y la Argentina [John Kerry, the OAS and Argentina], INFOBAE (Dec. 18, 2013), http://opinion.infobae.com/fernando-petrella/2013/12/18/john-kerry-la-oea-y-la-argentina/#more-68.
46. Id.
tural and institutional affinities reflected in common values such as democracy, human rights, and republican principles.\textsuperscript{51}

The Latin American and the Caribbean region is one with a long history of human rights violations, foreign interventionism, and political instability.\textsuperscript{52} The past decade brought about a change with the implementation of democracy, the development of institutions, and the building of a unique Inter-American human rights protection system.\textsuperscript{53} This system fosters a regional-level mechanism that contributes to preventing mass atrocities and reinforcing the responsibility of States in protecting its own people.\textsuperscript{54} It represents an effort to overcome past failures and sets an example for the international community because it establishes preventive mechanisms to protect citizens and civilian populations.\textsuperscript{55}

However, when the odds of protecting human rights in other States arises, Latin America shows strong support for the principle of non-intervention in internal affairs and a clear reluctance to support any kind of foreign intervention.\textsuperscript{56} This is mainly due to historical reasons evidencing that interventionism has been used as an instrument of foreign policy in Latin America, mainly by the United States. But there are also many other examples of foreign interventions by the hegemonic powers of each historical period.\textsuperscript{57} In this regard, it is worth recalling the words of Argentine jurist Podestá Costa:

Facts show that interventionism has been due to several reasons: it has been founded on the desire to maintain political balance but also to cover it up several arguments were alleged from humanita-


\textsuperscript{52} See generally Tulio Halperin Donghi, \textit{The Contemporary History of Latin America} (John Charles Chasteen ed. & trans.) (1993) (Spain) (discussing the history of Latin America and the struggles it has faced in regard to human rights).


\textsuperscript{55} Id. at 10.

\textsuperscript{56} See Samuel Flagg Bemis, \textit{The Latin American Policy of the United States} 237 (Harcourt, Brace & Co. 1943).

rian reasons to racial or religious persecution... in any case, what is essential is that interventionism has been left to the unilateral and ultimate government action, that decided whether or not to use it, as it considered appropriate in each case regarding its particular interest and the political circumstances of place and time. Intervention is not a tool to be used by weaker States against the strong. It is a weapon that can only wield the powerful in certain cases when accidental circumstances so warrant... Therefore, there is no right of intervention.58

Perhaps it is unnecessary to underline that Podestá Costa’s words are as relevant today as when they were written more than fifty years ago. They also serve to explain why the principle of non-intervention has become a cornerstone of the American system. As Caminos reminds us, the rules on non-intervention in the OAS Charter are stricter than those of the UN Charter, for they not only prohibit the use of armed force, but also all other forms of interference or attempted threat against the personality of the State in its political, economic, and cultural elements.59

Similar to the UN Charter, the OAS Charter contains numerous rules on the promotion and protection of human rights. These include the principle laid down in Article 3(e) that reads:

Every State has the right to choose, without external interference, its political, economic, and social system and to organize itself in the way best suited to it, and has the duty to abstain from intervening in the affairs of another State. Subject to the foregoing, the American States shall cooperate fully among themselves, independently of the nature of their political, economic, and social systems.60

In 1965, the Inter-American Juridical Committee issued an opinion about the difference between non-intervention and collective action.61 Overall, their findings reinforce the concept of non-intervention as “a fundamental principle of international law” incorporated in both the Charters of the OAS and the UN.62 Among other reasons, the Committee concluded that interventionism is an illegal...

58. INTERVENCION HUMANITARIA Y RESPONSABILIDAD DE PROTEGER, supra note 6, at 252 n. 548.
60. OAS. Charter art. 3, para. e.
62. See id. at 125.
act because no State or group of States has the right to intervene, directly or indirectly, in the internal or external affairs of any other for any reason. Collective action consists of the fulfillment of agreements freely entered into and accepted by the State concerned with safeguarding their interests, and those of the international community to which it belongs. A foreign intervention means a violation of State sovereignty. Conversely, the aim of collective action is to repair the inflicted injury to any international organization.

Despite these strict rules on non-intervention in the American system, the region has seen quite a few instances of alleged "humanitarian intervention." In some domestic situations where there have been massive violations of human rights in countries under non-democratic regimes, the OAS, through its political bodies, has authorized some measures to overcome these crises. Among the most significant cases are the occupation of the Dominican Republic by armed forces of the United States in 1965, the OAS action during the Somoza dictatorship in Nicaragua (1978-1979), and the activities of the United States in Grenada (1983) and Panama (1989).

However, in light of the provisions of the OAS Charter, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Inter-American Democratic Charter, and the practice of the Organization, it can be argued that human rights are no longer subject to the exclusive domestic jurisdiction of Member States of the OAS. However, the ability of the OAS and other organizations in Latin America to adopt measures for the protection of human rights and international humanitarian law depends on the applicability of the instruments referred to in a particular case and on the political will of Member States to adopt concrete measures to this aim. Still, it is worth noting that in Latin America, a unilateral humanitarian intervention carried out by any Member State would be considered a violation of the principle of non-intervention.

63. See id. at 126.
64. See id.
65. See id.
66. See id.
68. See Caminos, supra note 59, at 978.
69. See id. at 978, 980, 983, 987.
70. See id. at 977.
71. See id.
the Latin American and Caribbean States continue to consider the principle of non-intervention as the cornerstone on which the framework of international relations is based and therefore sustain that "the doctrine of humanitarian intervention is inconsistent with the Charters of the United Nations and OAS."72

IV. IS THERE A LATIN AMERICAN PERSPECTIVE ON THE RESPONSIBILITY TO PROTECT?

As mentioned before, Latin American countries today show a divergent stance toward many issues affecting both the regional and the international agenda.73 In the case of R2P, it is generally possible to draw three types of ideological boundaries that I call the Bolivarian, the Inter-American, and eclectic positions. The Bolivarian and Inter-American have clearly defined attitudes, while the eclectic borrows elements from the first two.

The Bolivarian frontier or ALBA, which includes Cuba, Venezuela, Nicaragua, Bolivia and Ecuador, depart from what can be called an "anti-imperialist" stance that situates Latin America in an opposite position to the United States.74 Therefore, it seeks to strengthen the non-intervention principle, rejecting all forms of foreign interference.75 From this perspective, the United States is perceived as "the enemy" of national sovereignty, a core value of this position.76 Therefore, the responsibility to protect is perceived as a covert instrument of the hegemon that intends to intervene to protect or enforce its own interests in the region.77

The Inter-American frontier is one that brings together most of the States of the region, both leftist governments (Uruguay, El Salvador) and right or centre governments (Mexico, Chile, Colombia, Peru). These countries, while holding dear the principle of non-intervention, consider the R2P principle is a positive tool for the protection

72. See id. at 983-84.
73. See Roberto Russell, Foreign Policy, in THE 'NEW LEFT' AND DEMOCRATIC GOVERNANCE IN LATIN AMERICA 44, 44 (Cynthia J. Arnson & José Raúl Perales eds., 2007).
74. See Fernando Bossi, Organizational Sec'y, Bolivarian Peoples’ Cong., 10 Points to Understand the ALBA (Nov. 3, 2005), http://alianzabolivariana.org/que_es_el_alba.php.
75. See id. ("The peoples of the ALBA . . . will refuse to accept the new colonialist imposition . . . .")
76. See id. ("The United States government hopes to take advantage of the slightest weakness shown by Latin Americans and Caribbeans. If they sense dissension, they will try to put us against each other to later defeat us.")
77. See id.
of human rights in humanitarian crises and therefore support the consolidation of the principle.  

Finally, the eclectic frontier gathers countries like Brazil and Argentina which maintain a clear assertion for the promotion and protection of human rights, however do not seem to fully support the R2P principle. Rhetorically they seem to support the R2P principle, but they have also expressed some doubts on this issue. Brazil and Argentina maintain that R2P needs further elaboration, particularly regarding the responsibility to react and the eventual use of force. In the case of Argentina, its support for the principles of national sovereignty and non-interference in the internal affairs of States is persistent in its discourse, yet Argentina is also considered an “R2P Champion.” On the other hand, Brazil cautiously took an extra step when it brought the concept of Responsibility While Protecting (“RWP”) into the 2011 UN debate, both criticizing and validating the R2P principle.

This map of plural Latin American politics creates difficulties when addressing the issue in regional organizations or groups, since geopolitical alliances based on ideological agendas often obstruct the possibility of reaching a consensus on any matter. In this sense, the ideological frontiers, especially those promoted by ALBA, have become a serious obstacle to the extent that other governments in the region do not know how to defend the Inter-American perspective that most share. For instance, the events in Venezuela at the beginning of 2014 do not allow room for hope since the Maduro Administration, similar to the Chavez regime, claims to respect and abide by

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78. See generally Alfredo Toro Carnevali, El concepto de Responsabilidad de Proteger: La perspectiva de la República Bolivariana de Venezuela y otros países en desarrollo [Venezuela and Other Developing Countries’ Perspective on the Responsibility to Protect], PENSAMIENTO PROPIO, Jan.–June 2012, at 135, 151-53 (Arg.) (discussing how Venezuela, Ecuador, Nicaragua, and Cuba oppose the concept of the Responsibility to Protect and believe the concept facilitates imperialism and interventionism, which disrespects the sovereignty of the States).


80. See Juan Carlos Sainz-Borgo, La Responsabilidad de Proteger: La Perspectiva de Brasil [Brazil’s Perspective on the Responsibility to Protect], PENSAMIENTO PROPIO, Jan.–June 2012, at 193 (Arg.) (explaining how the “Responsibility to Protect” doctrine needs to shift towards the concept of “Responsibility while Protecting”).

81. See RESPONSIBILITY TO PROTECT, supra note 79, at 11.

82. See id. at 10.

democratic principles and human rights while the situation in the country shows the opposite.

The first reaction by Latin American countries to the Implementing the Responsibility to Protect report was cautious. Many countries shared the premise that the inclusion of the R2P concept in the 2005 UN World Summit Outcome was an achievement, but at the same time they believed that the wording contained certain vulnerabilities that made it necessary to move slowly in implementing the concept.\textsuperscript{84} Some States were certain that the issue could be addressed at the UN General Assembly ("UNGA") and agreed that it was desirable that the debate lead to the issuance of a resolution.\textsuperscript{85} However, five reports and years later, the UNGA has not formally included the issue in its agenda. This situation made the Representative of Guatemala, the country that submitted the draft for the first UNGA resolution on R2P,\textsuperscript{86} urge the body to include this issue as "a formal agenda item to clarify the way forward."\textsuperscript{87}

With respect to the three pillars established in this first Report of the UNSG, Latin American countries generally share the view that the first pillar, which provides that each State has the responsibility to protect its own population, is not a problem.\textsuperscript{88} The same is true in regard to the second pillar regarding capacity building and assistance, although some countries argue that it would be desirable to further debate and elaborate more on the subject.\textsuperscript{89} The third pillar, which upholds the necessity of a "timely and decisive response," is clearly the most controversial one as it opens the possibility of the use of force within the framework of Chapter VII of the UN Charter.\textsuperscript{90} In this regard, it should be noted that there remained some sensitivity to the potential risks of abuse arising from the application of the concept in practice, which proved truthful after NATO's actions in Libya in 2011.

\textsuperscript{85} See RESPONSIBILITY TO PROTECT, supra note 79, at 2, 6.
\textsuperscript{86} Id. at 8.
\textsuperscript{88} Statement Delivered on Behalf of the Permanent Mission of Guatemala to the United Nations (Sept. 11, 2013).
\textsuperscript{89} See RESPONSIBILITY TO PROTECT, supra note 79, at 5.
\textsuperscript{90} Id.
In February 2009, a regional forum took place in Mexico City, organized by the Ministry of Foreign Affairs of the Government of Mexico and the Global Centre for the Responsibility to Protect in order to continue the discussion of all the issues involved around R2P. During the forum, a clear watershed was evident between those countries that wanted to build up the principle as outlined by the UNSG in his first Report, a position led by the host country and Chile, and those countries with a radically different view of the principle, which emphasized the risks of developing a rule on the R2P principle. There was agreement on the first two pillars and the idea that one of the main roles of the State is the responsibility to protect its own population. Similarly, it was considered necessary to emphasize prevention efforts, recalling the central role of UN agencies, regional bodies, other forms of inter-State cooperation, and the role of civil society, all of which make it unnecessary to create new structures.

While there were some countries and NGOs that intended to relate the R2P principle to the development agenda (arguing that the cases in which R2P would eventually apply are likely to take place in the less developed world, therefore making it necessary to attack the causes of poverty and development), the majority opposed such a linkage. Although it is undeniable that there is a link between development, human rights, and security issues, as repeatedly stated by the former UN Secretary-General Kofi Annan, it was deemed that discussing R2P in the causes of conflict context would produce a dispersal debate when the aim sought was just the opposite. In effect, the goal of the debate was to find tools to implement what the Heads of State and Government agreed in 2005—to change the legal nature of R2P from a principle to a standard, thus from mere guidance to a compulsory rule. In order to do so, it was essential to narrow the debate to arrive to concrete outcomes in the shortest possible time.

93. Id. at 1.
94. Id.
95. See Responsibility to Protect, supra note 79, at 8.
96. See Meeting Summary, supra note 92, at 2.
The third pillar remained the most controversial one for the reasons stated above. It must be noted that if the debate on R2P were to focus only on this aspect, there would be a grave risk that an extensive and comprehensive discussion of the other two pillars could not be carried out, with the consequent danger of paralyzing the dialogue and negotiations. In this regard, some countries have argued that it is not possible to advance the operationalization of the principle without a proper reform of the Security Council, including the limitation or possibly the elimination of the veto power of the five permanent members on this matter. However, other countries noticed that the discussion on Security Council reform is much broader, as it has been on the UN agenda for more than twenty years with no substantial progress. Therefore, to subordinate the debate on R2P to this subject would indefinitely postpone the implementation of the principle. Moreover, in situations where there are massive violations of human rights and/or international humanitarian law, it would be ludicrous to argue that the UN Security Council ("UNSC") action is subject to a possible and future reform of the Council's working methods. Some States that believe there is a pragmatic way forward to implement R2P within the current UN legal framework maintain this view.

Another issue discussed was the contention made by the Secretary-General that in case of paralysis of the Security Council, the General Assembly could adopt coercive measures under the provisions of Uniting for Peace Resolution 377(V). This created controversy to the extent that, while it would be an exceptional situation, it clearly departs from the provisions contained in paragraphs 138 and 139 of the Outcome Document and the rules of the Charter itself. Although this possibility is not expressly provided for in these instruments, it would not hurt to use it since the law enforcement efforts ultimately adopted would enjoy greater consensus and therefore, might have greater legitimacy. There was consensus that if authorization for the use of force is granted, enforcement action should be the last resort and its application should be taken on a case-by-case basis, avoiding all kinds of automaticity.
Some Latin American NGOs were in favor of extending the scope of the principle, as they feel that circumscribing its use to the "four crimes" might leave a large number of human rights violations without adequate protection. However, most forum participants expressed support for maintaining and developing the principle as adopted in 2005, and considered that if this stance was taken, it would reopen a deep and very difficult debate. Moreover, participants noted that maintaining a *numerus clausus* of cases (the four crimes) decreases the chances of trying to use R2P for cases other than those for which it was originally intended.

V. *Latin America at the UN Debates*

The overall positions mentioned above were reiterated by various Latin American countries at the five Thematic Dialogues on the Responsibility to Protect, which took place between 2009 and 2013 at the General Assembly. Each of these Thematic Dialogues were preceded by a report of the UNSG that helped focus the debate on a certain aspect of the principle, as was recalled in the first part of this paper. A close look at the statements made by the representatives of Latin American countries shows that there was little to no modifications on the different positions previously adopted by the States of the region. From these reports, press releases, documents, and positions taken in different fora, it is possible to draw three diverse stances on R2P.

A. *The Advocates of the Responsibility to Protect*

As previously mentioned, Chile, Uruguay, Mexico, and Guatemala have emerged as "champions" in promoting the R2P principle. Some of them even point out that R2P has acquired the status of a legal rule. In this regard, Chile, referring to the legal

104. *Id.*
105. *See Meeting Summary, supra note 92, at 1.*
106. *Id.*
107. *Id.*
108. *See Annual Report, supra note 7.*
111. *Id.* at 17-19.
nature of R2P, argued that the principle adopted at the 2005 UN Summit had acquired the nature of norm and expressed its “firm commitment to R2P, whose solid foundations were established by the Heads of State and Government in paragraphs 138 and 139 of the 2005 Outcome Document and which cannot be selectively addressed or revised.” On the use of force, Chile stated that the collective imperative is not to intervene, but to adopt any “timely and decisive” action in accordance with the UN Charter, and that “there is no automaticity, triggers, or implicit green lights for coercive action in what the world leaders agreed.”

Mexico, using similar concepts to those of Chile, emphasized the type of practice the Organization should develop in order to invoke R2P to the extent that such practice will guarantee the legitimacy and prestige of the Organization. In this regard, Mexico stated that a gradual practice should be developed to strengthen multilateral action and reinforce the role of the UN to respond to situations that have been observed in the past from the sideline or have been validated ex post facto.

Other countries of the region, such as Uruguay, Costa Rica, Guatemala, Colombia, and Panama, among others, have also expressed their continued support for the commitment made in 2005, stressing that attempts to extend the principle to other cases or associate it with other notions is outside the agreement reached in the Outcome Document. Uruguay reiterated its support for the 2005 consensus and recalled that “the prohibition to commit genocide, ethnic cleansing, crimes against humanity and war crimes are not only

115. Id. (“I prefer to . . . cite the distinguished jurist Sir Ian Brownlie . . . . In the fourth edition of his book Principles of Public International Law” he indicates that “[t]he final act or other statement of conclusions of a conference of States can be a form of multilateral treaty . . . it can be considered to be a source of international law. Moreover the practices of political bodies, such as this General Assembly, whose resolutions are not binding have . . . ‘considerable legal meaning.”).
116. Id.
117. Id.
119. Id.
122. Id. at 14.
obligations within the framework of the Human Rights International Law, but are real *jus cogens* norms of absolute respect and inviolability."\(^{126}\) Furthermore, bearing in mind the lesson from the Libyan intervention, Uruguay underlined the necessity to detach R2P "from imprecise associations with notions that have nothing to do with the 2005 consensus, such as the pretext of the external use of force in order to comply with other aims that are not to prevent or stop mass atrocities including regime change."\(^{127}\)

### B. The Opponents

On the other side of the table are countries like Venezuela,\(^{128}\) Nicaragua,\(^{129}\) Bolivia,\(^{130}\) and Ecuador.\(^{131}\) Former Foreign Minister, Miguel D'Escoto Brockmann, in his capacity as President of the 63rd UNGA, opened the thematic dialogue by expressing a strong rejection of the R2P principle, calling it "debatable."\(^{132}\) He vindicated the principles of sovereignty and non-intervention and recalled that:

> Recent and painful memories related to the legacy of colonialism, give developing countries strong reasons to fear that laudable motives can end up being misused, once more, to justify arbitrary and selective interventions against the weakest states. We must take into account the prevailing lack of trust from most of the developing countries when it comes to the use of force for humanitarian reasons.\(^{133}\)

Brockmann sought to shift the focus of the debate, stating that the way to solve a crisis is by attacking "the root causes" which are "underdevelopment and social exclusion."\(^{134}\) He argued, "To the extent that the principle is applied selectively, in cases where public opinion in P5 Member States supports intervention, as in Darfur, and

133. *Id.*
134. *Id.*
not where it is opposed, as in Gaza, it will undermine law.\textsuperscript{135} He said that the doctrine of R2P is not necessary and does not guarantee that States will intervene to prevent another Rwanda.\textsuperscript{136} Thus, D'Escoto did not advocate for a capable system of collective security.\textsuperscript{137}

Similarly, Venezuela argued that in this debate "there are no binding rules" and warned against "the dominance" they have in the world today.\textsuperscript{138} "It is controversial, first of all, because of the dominance—which we are sure will change in the future—enjoyed in today's world by the prevailing imperial powers, whose interests often determine the course of the dynamics of international relations."\textsuperscript{139} In a curious interpretation of the current security scheme in the Charter of the UN, Venezuela considered that an effective implementation of the elements of R2P will require a substantive reform of the UN Charter.\textsuperscript{140} Furthermore, Venezuela maintains that R2P and the recommendations made by the UN Secretary General:

[H]ave not been accepted or adopted as valid by the Member States, nor have they been discussed in any intergovernmental framework. Therefore, the call for States to fulfill these recommendations goes beyond the mandate of the Secretary General, and cannot be accepted . . . . There are still mixed feelings and thoughts concerning the Responsibility to Protect.\textsuperscript{141}

However, "Venezuela supports the establishment of an intergovernmental process within the General Assembly for this issue to be formally discussed."\textsuperscript{142} Ecuador associated its position with that of the Non-Aligned Movement and advocated that the R2P principle should be "implemented pursuant to premises that do not undermine the guarantees and the sovereignty of States."\textsuperscript{143} Using soccer as a metaphor, it could be said that Ecuador, in a clear attempt to "smear" the field, affirmed that the proposals in the first report of the UNSG were part of negotiations in other areas such as disarmament, sanctions, Security Council reform, humanitarian assistance, international coopera-

\begin{itemize}
  \item \textsuperscript{135} Id.
  \item \textsuperscript{136} Id.
  \item \textsuperscript{137} See id.
  \item \textsuperscript{138} U.N. Doc. A/63/PV.99, supra note 112, at 3.
  \item \textsuperscript{139} Id.
  \item \textsuperscript{140} Id. at 4.
  \item \textsuperscript{141} Ambassador Samuel Moncada, Permanent Representative of the Bolivarian Republic of Venezuela, Interactive Debate on the "Responsibility to Protect" at the 67th Session of the General Assembly of the United Nations (Sept. 11, 2013) available at http://responsibilitytoprotect.org/Venezuela%202013.pdf.
  \item \textsuperscript{142} Id.
  \item \textsuperscript{143} U.N. Doc. A/63/PV.98, supra note 110, at 9.
\end{itemize}
tion, among others. Therefore, Ecuador deemed it relevant to consider the results that have been achieved in these deliberations as part of a negotiations package. For that reason, Ecuador concluded that while there is no clarity on the conceptual scope, policy parameters, and the actors, any decision that would force States to implement this concept could not be taken. As in the past, Ecuador, reaffirmed that the legitimacy of the R2P concept can only be based on the following elements: (1) establishing clear grounds which may be considered sufficient to justify international intervention; (2) identifying on a case-by-case basis, the limits of the eventual intervention, excluding case-by-case exhaustively the regime change, the occupation of the territory, or the natural resources of the state; (3) determining that the use of force should be the ultimate recourse that would exhaust the peaceful solutions to the controversy and exclusively lower the authority of the UN Security Council, and how that will dispose of Chapter VII of the Charter; (4) establishing monitoring mechanisms in order to avoid resolutions authorizing the use of force beyond the limits set by the Security Council; and (5) ensuring compliance with the provisions of the UN Charter about the manner in which military contingents act on behalf of the international community, preventing the occurrence of privatized military operations.

C. The Eclectic

As previously discussed, the eclectic frontier gathers countries like Brazil and Argentina that maintain a clear assertion for the promotion and protection of human rights, however do not seem to fully support the principle of R2P. Rhetorically they support R2P, but they have also expressed some doubts about it.

Brazil, bearing in mind that all members of the UN support the promotion and protection of human rights, urged UN Member States to avoid a Manichean division between those who are human rights

144. Id.
145. Id.
defenders and those who allegedly do not protect human rights. Brazil was against the reopening of the debate on the R2P principle and noted that it should not apply to situations that are outside the scope of the four enumerated crimes, such as AIDS, natural disasters, and climate change. Brazil was clear on the legal nature of the principle, noting that it never argued that R2P is properly a principle, much less a new legal standard, but just a strong policy encouraging all countries to comply with international law.

Nevertheless, Brazil, reaffirming the principle of "non-indifference," noted that there is a legal framework to act in humanitarian crises, and the lack of implementation of the R2P principle cannot be invoked as an excuse to let these crimes take place. Referring to the "structure of pillars" posed by the UNSG, Brazil supported the development of pillars I and II. However, contrary to what is affirmed by the Secretary-General in his report, Brazil stated that the third pillar is a subsidiary of the first and that it is a course of action of an exceptional nature. This point of view, as it will be seen below, was maintained by Brazil two years later when it submitted its concept paper on Responsibility While Protecting. The case of Brazil is particularly striking because during previous discussions it had expressed concern about whether the enforcement action is necessary or appropriate. However, during the thematic dialogue, Brazil took a more positive tone and accepted the third pillar though stressing that such use of force should be considered an exceptional procedure and a last resort.

At UNSC, Brazil voted in favor of Resolutions 1970 (Peace and Security in Africa) and 1973 (Libya) which allowed the use of force in the Libya case, and later elaborated on a new doctrine called Responsibility While Protecting, which mainly argues that the international community must show a great deal of care while exercising R2P.
Brazil supports a restrictive view with regard to the use of force, affirming that it can only be used as a last resort and it must always be authorized by the Security Council in accordance with Chapter VII of the Charter, or in exceptional circumstances by the General Assembly in line with its resolution 377 (V).159 Particularly, Brazil wishes that:

(d) The authorization for the use of force must be limited in its legal, operational and temporal elements and the scope of military action must abide by the letter and the spirit of the mandate conferred by the Security Council or the General Assembly, and be carried out in strict conformity with international law, in particular international humanitarian law and the international law of armed conflict;

(f) In the event that the use of force is contemplated, action must be judicious, proportionate and limited to the objectives established by the Security Council.160

From a legal point of view, Brazil’s RWP evidenced the need to establish clear rules to define how an intervention should be approved and implemented. As Rodrigues stated, “The Security Council cannot be only a channel to allow interventions, but it’s a guardian and supervisor during the whole process. The powers involved in the implementation of the mandate (NATO or others) should be accountable to the SC during the whole process, not only at its end.”161 Although this initiative was presented by Brazil’s President, Dilma Roussef, Brazil has lacked further initiative and has been thoroughly criticized for its almost unilateral action when presenting RWP.162

Historically, Argentina has expressed its willingness to contribute to the search for answers to humanitarian crises, as the international community has witnessed in the last two decades.163 In this regard, Argentina expressed a clear preference for the utilization of collective security mechanisms provided for in the UN Charter, and its reluc-

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159. 2011 Brazil Letter, supra note 83.
160. Id.
stance to accept that R2P is exercised unilaterally by a State, a coalition of States, or regional organization without the authorization of the Security Council. Also, Argentina has affirmed that the UNSC has the legal framework and tools to implement the responsibility to react to cases where grave, massive, and systematic violations to human rights and humanitarian law occur. This requires the will of the Member States, and in particular, the permanent members of the UN Security Council (P5) to exercise this subsidiary responsibility effectively and legitimately.

This position was foreshadowed in 2000, after a presentation by the UNSG on the “dilemma of intervention.” At that time, Argentina stated that the principle of non-intervention in the internal affairs of a State should balance itself with the principle of non-indifference to the massive violations of human rights and humanitarian law.

Following this logic, Argentina shared the opinion that the weight of R2P falls on the Security Council, and warned about the negative consequences that would result if an intervention was carried out by a coalition or organization of States or without authorization. Notwithstanding that, Argentina believed that, if possible and when necessary, Member States should be able to initiate proceedings before regional agencies, according to the conditions of Article 53 of the UN Charter, maintaining that they keep the UNSC fully informed.

Moreover, Argentina holds that the Security Council, through several of its resolutions, has created a legal framework that has substantially improved the international regime for the protection of peoples. At the same time, Argentina considers that the Council has

166. See La República Argentina, supra note 164, at 130.
170. See Intervención Humanitaria y Responsabilidad de Proteger, supra note 6, at 281.
received a mandate from the UNGA which urges measures of "collective action in a timely and decisive manner to protect populations from genocide, war crimes, the ethnic cleansing and crimes against humanity."\textsuperscript{172}

Following the Report of the Secretary-General from July 23, 2009, the Argentine government decided to join the group of like-minded countries to work together in promoting and strengthening the principle, bearing in mind the close relationship between human rights, peace and international security.\textsuperscript{173} This decision is part of a policy to promote, protect, and respect human rights and international humanitarian law, a policy that Argentina has sustained since its return to democracy in 1983.\textsuperscript{174} During the past thirty-years, Argentina has shown its concern and commitment to this area, which has earned it a prominent place in the defense of international humanitarian causes, along with active participation in causes related to prevention, cessation, and mediation in situations where gross and systematic human rights violations and international humanitarian law take place.\textsuperscript{175}

On this occasion, Argentina reiterated its support for the R2P principle\textsuperscript{176} on the grounds that a State has the primary responsibility to protect its population and that the international community has a subsidiary responsibility, which should be carried out through the UN in a timely and decisive manner.\textsuperscript{177} In this regard, Argentina expressed that experience has shown that the UNSC has determined, in various occasions, that massive and systematic violations of human rights and international humanitarian law are a threat to peace and international security.\textsuperscript{178} From this, Argentina concluded that the current UN legal framework provides for an opportunity to react and to decisively end these types of situations if the UNSC has the political will to do so.\textsuperscript{179} Nevertheless, Argentina was reluctant to define crite-

\textsuperscript{172} General Assembly, Draft Resolution Referred to the High-Level Plenary Meeting of the General Assembly by the General Assembly at its Fifty-Ninth Session at 31, A/60/L.1 (Sept. 15, 2005).
\textsuperscript{173} See Intervención Humanitaria y Responsabilidad de Proteger, supra note 6, at 281-286.
\textsuperscript{174} See id.
\textsuperscript{175} See id.
\textsuperscript{177} See La República Argentina, supra note 164, at 122.
\textsuperscript{178} See id.
\textsuperscript{179} See id.
ria in order to guide the process of decision-making by the Security Council. On the one hand, Argentina felt that adopting criteria could lead to a procedural debate that could affect the decision-making process. However, in case of an eventual paralysis of the Council, some countries might be tempted to act unilaterally by using those criteria of legitimacy to act outside the system.

Considering that many States have expressed deep reservations about R2P, linking the principle to humanitarian intervention, Argentina believed it would be useful to make efforts aimed at promoting the principle in developing countries, in particular, those that could potentially take place in areas with risky human rights situations. This position is based on the understanding that implementing R2P is necessary to advance a common strategy model that will have the consensus of the wider UN membership.

When the UNSG report titled Early Warning, Assessment and the Responsibility to Protect was debated at the UN General Assembly in 2010, again Argentina showed a favorable attitude towards R2P. On that occasion, the representative of Argentina said that R2P is an essential obligation of States since it combines all international obligations to protect the human person. However, when States fail to satisfy their obligations, the UN cannot remain inactive and must take action to prevent the commission of grave crimes. The implementation of R2P requires careful and detailed discussion, and the General Assembly is the appropriate forum for this debate. Argentina is convinced that, as stated in paragraph 139 of the Outcome Document, the UNGA should continue to examine the issue, in order to implement R2P. Argentina considered that “the ‘duty to protect’ ... is nothing but the synthesis of other international obligations and reiterated the importance of prevention efforts and assistance, particularly in the case of those States that lack the infrastructure required to apply these types of international cooperation programs.” With respect to the third pillar, referring to the timely and decisive response, Argentina considered the adoption of measures by the UN system in implement-

180. See id.
181. See id.
182. See id.
183. See id.
184. See id.
185. See Statement of Argentina, supra note 171.
186. See id.
187. See id.
188. See id.
189. See id.
ing R2P to be very useful in protecting populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. However, Argentina felt hesitant to accept assumptions that unilateral actions could constitute a collective armed action, and argued that the collective security system must be activated using the mechanisms provided for in the UN Charter. At that time, Argentina’s position emphasized three essential aspects: (1) the need to respect human rights; (2) the importance of early warning and assessment; and (3) the continued international commitment, through the General Assembly, on the subject. Argentina noted that political dialogue between Members should continue specifically on how to implement the strategy and stated that the UN action must be complemented by regional or subregional efforts.

When the situation in Libya arose in early 2011, Argentina expressed “its deep concern over the grave situation” while regretting “the loss of life and violence occurring in the fighting.” It urged for “a quick and peaceful settlement, within a constructive democratic dialogue that grants full respect for human rights and the will of the Libyan people.” Further, Argentina was deeply concerned about the serious human rights violations in Libya, and co-sponsored a special session of the Human Rights Council, called for by the UN High Commissioner for Human Rights, Navi Pillay. Mr. Pillay requested an immediate end to the grave human rights violations committed by the Libyan authorities, and the launch of an international investigation into the violent repression of demonstrations in that country. However, Argentina expressly rejected the inclusion of the proposed measures under Chapter VII of the UN Charter, which it conditioned to a

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190. See William Pace, Civil Society, Latin America and the Development of the Responsibility to Protect, PENSAMIENTO PROPIO, Jan.-June 2012, at 13, 14 (Arg.).

191. See Statement of Argentina, supra note 171.

192. See id.

193. See id.


195. Id.

corroboration of the situation by objective, serious, and concluding data.197

These conditions were intended to prevent the kind of action that was later triggered by the authorization granted by UNSC Resolutions 1970 and 1973, for which there is heavy criticism. These Resolutions represented the first instance in which a case of R2P led to a military intervention. The adoption of Resolution 1973 had the support of the Arab League and the African Union, which conferred upon them unquestioned legitimacy from the beginning,198 although two permanent Members (China and Russia) and three other Members (Brazil, Germany and India) abstained.199 The resolution established a no-fly zone and a naval embargo on Libya and authorized Member States to take “all necessary measures . . . to protect civilians, excluding a foreign occupation force of any form on any part of Libyan territory.”200

In July 2011, a meeting organized by the Government of Mexico for the previous Special Advisor on R2P, Edward Luck, and the Latin American “friends of R2P,” was held to discuss the third report by the Secretary-General on the matter.201 During this meeting, the Argentine delegate supported Luck’s view that in implementing R2P, the cultural and institutional differences of each region must be taken into account and respected.202 In this regard, she recalled the development of R2P in Latin America, where situations of massive and systematic human rights violations took place before the emergence of R2P.203 Similarly, she highlighted the fact that Latin America has assigned significant value to the principle of non-intervention.204

Many delegations, including Argentina, agreed that the R2P principle does not imply the emergence of a new rule, but rather summarizes existing obligations regarding the obligation of the State to protect its population in light of universal standards and regional protection of human rights and international humanitarian law mecha-

199. Id.
200. Id.
202. See La República Argentina, supra note 164, at 125.
203. See id.
204. See id.
nisms. Therefore, it confirmed the importance of second and third pillar, and reaffirmed the notion that the third pillar must be considered a last resort in cases of grave and massive violations of human rights which can be categorized as one of the four crimes. There was also widespread agreement and concern to avoid selectivity and "regime change" as veiled objectives of powerful countries. Likewise, the important role of regional agencies in implementing R2P obligations was addressed, considering the specific mechanisms adopted in the OAS framework as well as other sub-regional organizations. In this regard, the "democratic clause" adopted at OAS, Southern Common Market (Mercosur), Union of South American Nations (Unasur), etc., was recalled. Similarly, the precursor role of the Inter-American system for the promotion and protection of human rights and the fight against impunity was also mentioned. While regional initiatives may not have developed solutions for the fight against impunity in cases of massive and systematic violations of human rights, the lessons learned from these experiences could be the basis for regional capacity building.

On February 21, 2012, an informal meeting organized by the Permanent Mission of Brazil, Brazil’s Minister of Foreign Affairs, and the UN Special Adviser for R2P, was held on the concept of RWP to address the components of the concept paper submitted by Brazil. The meeting was followed by a lively debate and was marked with high participation by Member States. Argentina expressed its support for the Brazilian initiative, stressing that it represents a "substantive" contribution and "overcomes" the R2P principle. Argentina stated that this proposal "rightly captures our own vision" and "represents an opportunity to progressively develop a substantive aspect of R2P." It further added that it is imperative to strengthen protection strategies on the ground with clear and predictable rules, since it is unacceptable that the very protection the international community intends to provide could result in further damage to the same innocent civilians they seek to protect. Taking into consideration that the Se-

205. See id. at 126.
206. See id.
207. See id.
208. See id.
209. See id.
210. See 2011 Brazil Letter, supra note 83.
211. See id.
212. La República Argentina, supra note 164, at 127.
213. See id.
214. See id.
curity Council's actions are based on a case-by-case basis, Argentina highlighted the need to establish clear rules that respond to the essential objective of protection, and consequently prevent the concept from being manipulated and misrepresented in order to implement regime change.215

One of the corollaries of the armed intervention in Libya was the reluctance of many Latin American countries, including Argentina, to support any kind of use of force in Syria.216 As the Argentine representative put it:

The concerns risen (sic) by the coercive action in Libya include resorting to the use of force without trying other measures first, regime change, the adequacy of air strikes to protect civilians, the need for the Security Council to do a follow up of the authorized measures and accountability of those authorized use of armed force. Those reservations must be addressed in order to ensure that action by the United Nations does not cause more victims than civilians protected, that it does not incur in legitimizing political objectives beyond those of the Organization and, in the end, to ensure the legitimacy of collective action by the United Nations.217

VI. CONCLUSIONS

There is no consensus in Latin America and the Caribbean on the principle of R2P, but instead, there are three main trends amongst the countries in the region and their approach to this principle. On one hand there is a group of countries that promote a strong opposition against the concept. This group is represented by Venezuela, Cuba, and other ALBA member countries, whose criticism of the principle is based on the prevalence of state sovereignty and the principle of non-intervention.218 The second group of countries is characterized by a steady support for R2P, and represented by Mexico, Panama, Chile, Costa Rica, and Guatemala amongst others.219 A third group, including Argentina and Brazil, two countries with a very strong human

215. See id.
216. See Tettamanti, supra note 197.
219. See id.
rights discourse, have a long history of support for UN lead missions and an active role in the development of R2P, although from different perspectives. In the case of Argentina, its support for the respect of state sovereignty and the principle of non-intervention is persistent in its discourse, yet it is also considered an "R2P Champion," bearing in mind that it has taken an active role in promoting the principle since its inception. On the other hand, Brazil has taken a more cautious approach by taking the concept of RWP into the UN debate, both criticizing and validating the R2P principle. Yet Brazil has lacked further initiative and has been thoroughly criticized for its almost unilateral action when presenting RWP.

Within this framework, two contending juridical traditions struggle to impose their own principles to foreign policies of Latin American Governments: (1) the tradition of unrestricted respect for state sovereignty and the defence of the principle of non-intervention, and (2) a strong tradition of promotion and protection of human rights, particularly relevant after the demise of military dictatorships in the eighties.

An analysis of the Latin American States’ positions shows that while a large number of governments have accepted the principle of R2P, many of them are still reluctant to legalize the unilateral use of armed force on humanitarian excuses, especially in light of the abuses that have taken place in the past. In that sense, most States do not feel inclined to open the norm under Article 2.4 of the UN Charter in order to include an exception for humanitarian intervention. As Goodman clearly explains, "The overriding concern about pretext wars turns on assumptions about state opportunism and the power of both law and perceived legitimacy in regulating state behavior."

220. See id.
222. See 2011 Brazil Letter, supra note 83, at 3.
224. See Perceval, supra note 221.
225. See id.
The regional roundtables convened by the ICISS, as well as the subsequent consultations on the Report with NGOs and Governments coordinated by Canada and other civil society organizations, served to evidence that in most cases there was a widespread hostility towards the notion of humanitarian intervention, and a broad consensus against the idea of an alleged "right of intervention," particularly when that alleged right was associated with unilateralism.228

But this deep skepticism towards intervention did not necessarily translate into a rejection of the underlying purpose of R2P—the prevention of genocide and mass atrocities and the protection of vulnerable populations.229 The adoption of a text, which focused on the rights of endangered populations rather than the alleged right of intervention, contributed to a wide range of State and civil society actors who expressed a disposition to recognize that sovereignty entails responsibilities and that an international intervention can be legitimate in certain circumstances. However, the Commission's approach to unilateral intervention and apparent openness to actions authorized by the Security Council revealed that it was unlikely that the R2P principle would be accepted without a careful examination.230

The military intervention of 2011 in Libya shows the need to clarify the role of regional and sub-regional organizations when applying R2P. Although such organizations can be both legitimizers and operational agents for the implementation of R2P, they often lack capacities and resources to carry out operations in a meaningful way.

The three mentioned trends and established traditions raise a series of questions on the validity of the R2P principle in this region. First, the usefulness of R2P in Latin America and the Caribbean, taking into account the existence of a preventive system such as the Inter-American Human Rights System, even if it is applicable ex post facto. Second, the different positions that it entails for the foreign policies of the LAC countries, particularly within a very dynamic process of regionalism and regional transformation, and the prevalence of the principles of national sovereignty and non-intervention. Third, the involvement of several Latin American countries in peace operations

229. See Perceval, supra note 221.
230. Intervención Humanitaria y Responsabilidad de Proteger, supra note 6, at 41.
and both the impact and influence of the LAC experience and debate on the issue of humanitarian intervention for the global agenda. Finally, the role of civil society organizations and networks in prevention in a region where democratic systems prevail.

As the representative of Argentina before the UNSC recently stated, "It is crucial that we put into practice regional and universal early-warning mechanisms to prevent atrocities, an aspect in which regional and national scope becomes essential to cooperation and dialogue in order for the rule of law to be strengthened."

Most Latin American States have expressed their willingness to contribute to the search for answers to the humanitarian crises, and expressed a clear preference for the use of collective security mechanisms provided in the Charter of the United Nations. They have also expressed a reluctance to accept the R2P principle to be exercised unilaterally either by a State, a coalition of States, or a regional body without express authorization of the UNSC. Moreover, most Latin American countries have advised that the UNSC already has the legal framework and tools to implement that responsibility to react to serious, massive and systematic violations of human rights and humanitarian law violations. The will of its Member States, and in particular, the P5, is a required condition to effectively and legitimately exercise that vicarious liability imposed on the international community as a whole.

As the Permanent Representative of the United States of America to the UN eloquently stated, "The international consensus around R2P remains a signal achievement of multilateral cooperation and a testament to our common humanity." Latin America will continue to support and foster R2P. However, this drive will heavily rely upon how the international community, and particularly its most powerful members, use this principle in the future.

232. See STATE RESPONSIBILITY AND PREVENTION, supra note 218, at 3.
233. See id.
234. See id.