



South Africa and the Responsibility to Protect: From champion to sceptic

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Abstract

This article provides an overview of the South African government's evolving position on the Responsibility to Protect (R2P). While the country was an advocate of R2P in the run-up to the 2005 United Nations (UN) World Summit and the related idea of non-indifference in Africa, its conduct while serving as a non-permanent member of the United Nations Security Council (UNSC) and subsequent developments have raised questions about its continued commitment to these principles. In particular, Resolution 1973 (2011) on Libya proved to be a turning point. It is argued that while South Africa continues to support the broad idea of civilian protection, it is in favour of a consultative, regional approach and has become increasingly critical of what it views as the selective application and militarisation of the R2P. In trying to make sense of the apparent contradictions in South Africa's position, it is necessary to situate the debate against the background of broader tensions in its foreign policy, particularly around the promotion of human rights. These, in turn, are linked to divergent and multiple foreign policy identities that the post-apartheid state is still coming to terms with.

Keywords

African Union, foreign policy, human rights, Libya, non-indifference, Responsibility to Protect (R2P), South Africa

Introduction

This article traces South Africa's position on the Responsibility to Protect (R2P) from the Mandela era, when the country was regarded as a champion of human rights in Africa, to the current climate where the African National Congress (ANC)-led government has expressed growing scepticism about R2P and related institutions like the International

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Criminal Court (ICC). In trying to find answers to why there has been this shift, the article commences with a brief discussion of the role of human rights in South Africa's foreign policy and considers the normative contribution the country has made to the entrenchment of R2P and related concepts like non-indifference on the African continent. This is followed by an overview of the South African critique of R2P, particularly around United Nations Security Council (UNSC) Resolution 1973 on Libya, which serves as a useful indicator of the changes in its approach to R2P.

One way of interpreting the shift is to situate it against the backdrop of South Africa's multiple foreign policy identities – including some that are deliberately nurtured by the government and others that are the result of role designations by the international community. These include being, first and foremost, an African state, an emerging power and regional leader while at the same time living up to its constitutional obligations of being a liberal democracy. This, in turn, is tied to two divergent strands within the anti-apartheid struggle that live on in the ANC government: a commitment to liberal values like democracy and human rights versus South–South solidarity and anti-Western sentiments. Relatedly, South Africa's foreign policy has to balance Western expectations of the country as a human rights leader and champion of liberal values in Africa with alliances with the rest of Africa and states like Russia and China, who have very different expectations. At the same time, the tremendous domestic challenges put pressure on the government to follow a pragmatic foreign policy, with economic and developmental interests trumping more idealist pursuits like the promotion of human rights.

Human rights as the cornerstone of South Africa's foreign policy

Any discussion of South Africa's approach to R2P needs to be undertaken against the backdrop of the central position that the protection of human rights occupied in the country's post-apartheid foreign policy. The emergence of a democratic South Africa in 1994 was accompanied by efforts to position itself as an African state with a strong commitment to multilateralism, international law, respect for human rights and democracy and South–South cooperation. Nelson Mandela highlighted the new ANC-led government's foreign policy priorities when he wrote, 'South Africa's future foreign relations will be based on our belief that human rights should be the core of international relations'.¹ The government continues to stress that human rights remains at the centre of its foreign policy. An aide-memoire to the President of the UN General Assembly, in motivation of South Africa's candidature of the Human Rights Council, states, 'It should be underlined that South Africa by its very nature and for historical reasons is among the countries within the United Nations that takes the international human rights agenda very seriously'.² Similarly, the preamble of the 2011 foreign policy white paper – *Building a Better World: The diplomacy of Ubuntu* – emphasises that 'Since 1994, the international community has looked to South Africa to play a leading role in championing values of human rights',³ especially in Africa. Despite all the pro-human rights rhetoric, however, in practice there has been a definite shift in foreign policy from an explicit focus on the protection of human rights to a more ambiguous position that at times seems to be supportive of the primacy of state sovereignty. This is

in direct contradiction to the emphasis on '*batho pele*' (putting people first) in the foreign policy white paper, which seems to suggest that state sovereignty and rights are secondary to those of citizens. In addition, the strong Africanist strand in South Africa's foreign policy means that the country has to be particularly careful when handling human rights issues in Africa.

The African continent continues to be a central focus of South Africa's foreign policy. The reasons for this can be found both in historical relations and in South Africa's own self interest. During the apartheid era, South Africa's approach to the region was one of military destabilisation, at a tremendous cost to its neighbours. After 1994, there was a general feeling among the ruling elite that the new government had a responsibility to rectify the damage caused during apartheid and show their gratitude to neighbouring countries that had supported the liberation struggle. At the same time, it was clearly in South Africa's interest to promote peace, stability and economic development in the rest of the continent. The challenge became doing so without appearing to have hegemonic intentions. In addition, South Africa needs the continent's support if it wants to fulfil its ambition of being the spokesperson for Africa on the international stage. This means not behaving in ways that would open it up to criticism from other African governments, which includes not publicly condemning fellow African leaders for human rights violations.

An African approach to protecting civilians

Despite the fact that the debate around R2P is dominated by Western voices,⁴ it has been claimed that R2P has African roots, 'both in terms of its conceptualisation and implementation'.⁵ After the end of the Cold War, it was the Rwandan genocide that provided the impetus for the international community to revisit the idea of intervention to protect the lives of civilians. It can also be traced back to the Organisation of African Unity (OAU) Secretary General Salim Ahmed Salim's suggestion that 'the OAU should take the lead in transcending the traditional view of sovereignty, building on the African values of kinship and solidarity and the notion that "every African is his brother's keeper"'.⁶ With the creation of the African Union (AU), African states had already reconceptualised sovereignty away from 'sovereignty as non-intervention' towards 'sovereignty as responsibility'. South Africa has been critical of the 'tendency of Western actors to see their values and interests as representing the *only possible* incarnation of R2P',⁷ arguing that in fact the notion of non-indifference, regarded as a forerunner of R2P, was included in the AU Charter in response to the lack of action taken by Western powers in the face of human rights atrocities taking place in Africa.

Before the R2P framework gained broad international acceptance in 2005, South Africa was active in negotiating the move from non-intervention to non-indifference in Africa.⁸ At the time, then President Nelson Mandela articulated that 'we cannot abuse the concept of national sovereignty to deny the rest of the continent the right and duty to intervene when behind those sovereign boundaries, people are being slaughtered to protect tyranny'.⁹ The country was instrumental in the inclusion of a number of articles in the AU's Constitutive Act, including Article 4(h) that refers to 'the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity'.¹⁰ This was

in stark contrast to its forerunner, the OAU's emphasis on non-interference and respect for sovereignty. Relatedly, South Africa was also pivotal in developing the AU's peace and security architecture, including the Peace and Security Council, which would bear primary responsibility for implementing the continent's version of R2P. While the term R2P is not explicitly referred to in any of the AU documents, the three duties prescribed by the norm (prevention, reaction and reconstruction) are reflected in both the AU's Constitutive Act and its Peace and Security Council Protocol.

Furthermore, the mandate of the AU Mission in Sudan (AMIS) between 2004 and 2007, which explicitly referred to the protection of civilians, is an example of how R2P has been accepted in the organisation as justifying an intervention.¹¹ It is important to highlight, however, that the right or responsibility to intervene in a member state is confined to the AU and does not extend to actors external to Africa. This is based on the belief that regional and sub-regional organisations should play an active role in maintaining peace and security in their respective regions. South Africa is very much in favour of African-led humanitarian intervention, as part of a broader commitment to the notion of 'African solutions to African problems', and the idea that African states have greater legitimacy to intervene than external powers.¹² Subsequently, during the 2005 World Summit, South Africa played an important normative role by linking the emerging R2P norm to existing African ideas such as non-indifference. The country was also instrumental in getting buy-in from fellow African states as well as India and Latin America, who were initially resistant.

While South Africa played an important role in the development of R2P, it has been criticised heavily for paying lip service to the principle, but effectively undermining it in practice. It has, in turn, criticised what it regards as a militarisation of the R2P framework – referring to the use of force as a pretext for regime change. As holds true for the other states discussed in this volume, there is little if any disagreement about the first and second pillars. From a South African perspective, the debate around R2P is predominantly centred on the issue of the implementation of Pillar III,¹³ namely, what form intervention by the international community should take and under what circumstances the use of force is justified. The fact that the R2P norm is still in a formative phase means that different interpretations are inevitable.

It is important to note that the limited domestic debate about R2P has been conducted mainly by government, think tanks, academia and some non-governmental organisations (NGOs). It is not a public debate in which broader society has become engaged, save for some instances where the media has questioned South Africa's peacekeeping motivations, as was the case with the deployment of troops to the Central African Republic (CAR). This is in line with a general lack of public debate about foreign policy, with most citizens being primarily concerned with domestic challenges such as unemployment. This was confirmed by the findings of a recent foreign policy public opinion survey: asked to rank a number of pressing domestic versus global issues, respondents identified unemployment as the number 1 concern (at 34% overall), while global issues like conflict in Africa, climate change and global inequality were all cited by 5 per cent or less of respondents.¹⁴

South Africa is strongly in favour of a more multi-dimensional approach to R2P, focusing on consultation, mediation and dialogue. The government believes that an approach of

engagement rather than coercion is the best way to encourage other states to adhere to international human rights standards. According to Landsberg,¹⁵ this has allowed the country to avoid being perceived as a 'bullying hegemon' trying to impose R2P by force. This is in line with its broader approach to conflict resolution that includes prevention, resolution and post-conflict transitional justice, reconstruction and peacebuilding.¹⁶ This has its roots in South Africa's historical experience, with the country's own peaceful negotiated settlement regarded as the preferred model for addressing conflict and based on an unwavering conviction that conflicts can only be resolved through the participation of all stakeholders. This is also reflected in the positions South Africa has taken in the Human Rights Council,¹⁷ where it has consistently refrained from condemning governments for human rights abuses, with the exception of Israel.

On the other hand, it is also a response to the isolation South Africa experienced in 1995, after then President Nelson Mandela condemned Nigerian President Sani Abacha's execution of human rights activists and called for sanctions against the country. As a consequence, South Africa came under heavy criticism from other African states, including accusations that it behaved in an un-African manner and continued to serve Western and White interests. This is a lesson that the ANC-led government has not forgotten and one that lies at the heart of its reluctance to openly condemn African governments for human rights abuses. Instead, it prefers to employ an approach that is sometimes referred to as constructive engagement. The case of former President Thabo Mbeki's quiet diplomacy towards Zimbabwe is perhaps the most frequently cited example. In response to the post-2000 crisis in that country, marked by political repression, economic disintegration, widespread state-sponsored violence and societal collapse, the South African government refused to condemn Mugabe's regime and instead argued that an approach of behind-the-scenes engagement was more appropriate. As Hamill and Hoffman, however, point out:

one of the tragic ironies of this situation is that the very phenomena Mbeki warned of if a more punitive policy was pursued – refugees, economic collapse, and political breakdown – have all come to pass in the era of 'quiet diplomacy'.¹⁸

South Africa's discomfort with R2P is also linked to what it regards as its inconsistent application. Mamdani's argument that 'the new global regime of R2P bifurcates the international system between sovereign states whose citizens have political rights, and de facto trusteeship territories whose populations are seen as wards in need of external protection'¹⁹ speaks to this concern. He elaborates by pointing out that the R2P regime reserves condemnation for one type of mass violence that targets civilians – genocide – while other forms of mass violence such as inter-state violence or counter-insurgency are regarded as 'what states do'.²⁰ He further notes that labelling violence in a particular way – we need to only be reminded of the debate around whether or not to call what happened in Rwanda in 1994 genocide or not – serves to 'demonize[s] the perpetrators of one kind of mass violence, and at the same time confer[s] impunity on perpetrators of other forms of mass violence'.²¹ It is this hypocrisy, this selective application of principles that is at the heart of South Africa's critique not only of R2P but also of the functioning of the Security Council and the current system of global governance as a whole. The fact that it

is the Security Council and effectively its five permanent members who can invoke the R2P doctrine is at the heart of scepticism about the doctrine and its implementation.

Despite its clearly stated preference for negotiated solutions, South Africa is not, in principle, against any form of intervention. It has supported an interventionist form of R2P at the regional level, and its role in the AU-mandated missions in Darfur and Burundi shows that it is willing to participate in consent-based intervention and indicates a strong preference for a regional approach. A South African ambassador summarises the perceived inconsistency on R2P as follows: '[on] values we are clear: you can't kill civilians. But we have issues with the mechanisms and sequencing that the West prioritises'.²² The problem, however, lies with exactly those situations where diplomacy or consensual military intervention was not effective. The Libyan situation, discussed below, was a case in point. It is in these instances that South Africa's reluctance to engage in a more robust form of intervention becomes untenable.

The Libya fiasco: tipping the scales against R2P

During its first term as a non-permanent member of the UNSC (2007–2008), South Africa's controversial votes on human rights abuses in, among others, Zimbabwe and Myanmar²³ – justified on the basis of procedural objections – seemed to contradict South Africa's earlier position on the primacy of the UNSC with regard to R2P.²⁴ It was, however, its second term (2011–2012), and the vote on Libya in particular,²⁵ that can be seen as a turning point for South Africa in terms of its position on R2P.²⁶ Some scholars²⁷ note that Libya showcased the tension between South Africa's support for the conflicting norms of sovereignty and non-intervention, on one hand, and humanitarian intervention to protect civilians, on the other. In 2011, South Africa, together with the other two African non-permanent members of the UNSC, Gabon and Nigeria, supported Resolution 1973 (2011) calling for humanitarian intervention in Libya. This was in direct contradiction to the position of the AU ad hoc high-level committee – of which South Africa's President Jacob Zuma was a member – that had been tasked with finding a negotiated settlement to the crisis.²⁸ This highlighted the complexities of the multilateral arena, where states have diverging and often contradictory alliances that play out in different ways, depending on the issue at hand. South Africa's initial support for Resolution 1973 generated considerable controversy domestically – both within the ranks of the ANC and outside of it. Government responded by subsequently condemning the North Atlantic Treaty Organization (NATO) intervention, arguing that Western powers had used Resolution 1973, aimed at the protection of civilians, as a pretext for regime change. According to Pretoria, there had been no indication that the agreement to a no-fly zone would mean that the possibility of a negotiated settlement involving Qaddafi was off the table. Towards the end of 2011, South Africa's ambassador to the UN, Baso Sangqu, articulated South Africa's reservations about R2P in a United Nations General Assembly (UNGA) debate on the protection of civilians. He noted:

South Africa has registered its concerns publicly with the manner in which efforts employed by the Security Council to protect civilians have been exploited in the recent past ... Regime change, arming civilians and harming civilians cannot be justified in the name of protecting

civilians and those entrusted with such responsibility must uphold their responsibility while protecting ...²⁹

Africa and Pretorius point out that ‘These shifting responses³⁰ to the Libyan conflict may be indicative of an unsteady normative base in South Africa’s foreign policy. The co-existing values of a regard for sovereignty and the aversion to “unconstitutional changes of power” were placed in uncomfortable proximity to the value of human dignity, and the right to life’.³¹

The result of the Libyan case was that South Africa was now seen as having firmly joined the ranks of R2P sceptics, including its BRICS (Brazil, Russia, India, China and South Africa) partners, all of whom had abstained from the Libya vote. Despite perceptions that following its disillusionment with the implementation of the Libyan resolution South Africa consistently voted against R2P while serving on the UNSC, the country in fact voted in favour of Security Council resolutions invoking R2P and calling on the governments of Sudan, Cote d’Ivoire, Guinea Bissau, the CAR, Yemen, Libya, the Democratic Republic of the Congo (DRC) and Burundi to uphold their responsibility to protect their citizens.³² It must be noted, however, that the resolutions supported all referred to Pillar I and in some cases Pillar II, but never to Pillar III. This underlines the notion that South Africa is not against R2P in principle, but against resolutions sanctioning the use of force that are framed as R2P. At the same time, South Africa has been accused of hypocrisy and double standards itself. For example, the decision by the Zuma government to unilaterally send South African soldiers to the CAR, without support from other states in the region or the AU, did little to legitimate Pretoria’s accusations of Western double standards. Media reports that 13 South African soldiers were killed in clashes with rebels in the CAR raised questions about the motivations for deploying the troops (it was speculated that mining interests were the main reason), especially when it emerged that troops had been deployed without public knowledge.

Regarding the apparent convergence between South Africa and the other BRICS states – Russia and China in particular – around the use of force in aid of R2P, respect for sovereignty and disregard for external interference in the domestic affairs of a state, their motivations are arguably quite different. It could be argued that South Africa’s critique of R2P is more procedural than substantive.³³ While South Africa is supportive of the notion that sovereignty at times needs to be suspended in order to protect civilians, it has a problem with the selective application of the norm and the tendency to use force for reasons that go beyond the mere protection of civilians. This builds on a historically informed scepticism about the west’s selective application of R2P and its intellectual predecessor, humanitarian intervention, when it comes to Africa. This is different from the Chinese and Russian insistence of non-interference, based predominantly on the recognition of sovereignty as the most important norm in international relations. South Africa’s position thus diverges from both the Western position as well as from the Russian and Chinese ones.

Calls to withdraw from the ICC

Related to its increased scepticism about R2P, South Africa has also become a vocal critic of its counterpart, the ICC.³⁴ Following the government’s failure to arrest Sudanese

President al-Bashir while he was attending an AU summit in Johannesburg in June 2015, despite its obligations under the Rome Statute (not only is South Africa a signatory, but it has also ratified the treaty domestically), the ANC has subsequently called for South Africa's withdrawal from the ICC and for other African states to join it.³⁵ The argument made most consistently to justify the decision to allow al-Bashir to leave the country was the alleged impact this would have had on South Africa's relations with the rest of the continent. Chairman of the ANC sub-committee on International Relations, arguably the most important foreign policy decision-making body in the country, contended that had the decision been taken to arrest al-Bashir, 'definitely we would have isolated ourselves as South Africa'.³⁶ The decision was in line with a decision taken at an AU summit in January 2012, which urged member states not to honour ICC warrants for the arrest of al-Bashir. Such justifications only further serves to entrench the claim that African states place more value on protecting morally corrupt leaders and regimes than protecting civilians.

Special adviser to the Minister of International Relations and Cooperation, Eddie Maloka, explains the apparent reversal of South Africa's position on the ICC as follows:

South Africa was active in the establishment of the ICC because we thought the body would help advance our agenda to transform and democratise the international system. Instead, and to our disappointment, the ICC has come to reflect the untransformed international system with its one-sided and undemocratic tendencies.³⁷

This builds on a long-standing criticism that the ICC is targeting political leaders in Africa while failing to hold accountable those responsible for war crimes in places like the Middle East. The ongoing debates around this issue are reflected in seemingly contradictory statements coming out of government and the ruling party. While in a press statement the Department of International Relations and Cooperation underlines, 'The Government remains committed to international criminal justice and to cooperate with the Court in the pursuit thereof as was envisaged in the Rome Statute',³⁸ the ANC had earlier released a statement that its highest decision-making body, the National Executive Committee, 'is of the view that the ICC is no longer useful to prosecute crimes against humanity'.³⁹ Similar to South Africa's procedural concerns about R2P, this should not be interpreted as opposition to the idea of international criminal justice, but rather to the way in which the ICC is seen to be operating and doing the bidding of the powerful states in the UN Security Council.⁴⁰

The response by African states to what they perceive to be initiatives that advance Western interests and unfairly target African states has been to create alternative institutions. For example, in 2014, it was proposed that the African Court of Justice and Human Rights create a third chamber that will fulfil a similar function to the ICC. This is similar to the creation of the AU's peace and security architecture that, to a large extent, mirrors that of the UN. The decision taken by the BRICS states to create a New Development Bank is another example of the way in which states that feel excluded from the decision-making process in existing institutions of global governance see no other option but to create alternative structures. These developments present a major challenge to the future

of global governance as we know it, but should also be seen as an opportunity to address the shortcomings of what remains essentially a Western-dominated system of international order.

Constraints on South Africa's R2P stance

As highlighted earlier, South Africa operates in a complex multilateral setting, and its membership of a range of international and regional organisations – including the UN, the Non-Aligned Movement (NAM) and the AU, together with its multiple identities – it is, among others, an African state, a regional hegemon, a spokesperson for the developing world and a liberal democracy – all place different obligations on it, forcing a trade-off of values. Both critics and government officials often employ this argument to explain or justify South Africa's apparently incoherent policy decisions. In recent years, however, this argument has been weakened by the fact that there has been a clear shift towards prioritising particular identities and their related values, namely, African and anti-Western identities. For example, warnings about the damage that certain actions – such as allowing President al-Bashir to leave the country in contravention of South Africa's obligations under the Rome Statute to arrest him – can do to the country's international reputation are increasingly dismissed. While criticised by Western powers and NGOs, South Africa's actions – it is argued – are welcomed by its African counterparts and important allies such as China and Russia. This is, of course, not surprising given the ANC's historical suspicion of the Western international community, particularly the United States and the United Kingdom, on account of its role in supporting the apartheid government until the mid-1980s. One could therefore contend instead that the shift in South Africa's position on R2P is directly related to changes in the ruling party about the country's foreign policy identity and concomitant interests, values and priorities. While for the first decade after apartheid, the new government was still navigating its way through the murky waters of international alliances, it would seem as though there is now a much clearer perception of what the state's foreign policy priorities are, and who it should align itself with. In particular, this has meant a shift away from the previous focus on the promotion of human rights as an essential element of its then predominantly liberal democratic identity, which has progressively been eroded both by domestic and international developments. Growing interest from emerging powers like China has allowed South Africa to reduce its dependence on its traditional Western partners and their expectations of foreign policy behaviour. This has been accompanied by intensified domestic pressures to address the country's economic challenges through a foreign policy focused first and foremost on economic interests, often to the detriment of other values like human rights promotion.

Related to this, while South Africa often justifies its preference for negotiated solutions to conflict rather than intervention as a matter of principle, there are also other, more pragmatic, reasons. First, there is currently a lack of political will: in the face of high levels of poverty, inequality, crime and service delivery protests, government's priority is meeting domestic developmental goals. Second, the country suffers from a serious lack of capacity to enforce R2P – it is simply not in a position to take on global or even responsibilities that will require it to channel more resources into military

operations. One of the defining features of a regional power,⁴¹ a label often ascribed to South Africa, is the ability to manage security in its region. While South Africa has committed a substantial amount of resources to various efforts to address conflicts on the continent – it has been an active mediator in, among others, the Democratic Republic of the Congo (DRC), Burundi and Sudan and has served in 14 international peace operations on the continent⁴² – the 2014 Defence Review confirms that South Africa can now only afford to deploy 3000 troops to peacekeeping missions.⁴³ In light of the fact that it remains one of the most powerful states in Africa and continuously emphasises the importance of regional responses to threats to peace and security, together with the high likelihood that many, if not most, future humanitarian crises that might warrant an R2P response will be in Africa, South Africa cannot afford to be overly enthusiastic about supporting intervention on the basis of protecting human rights. Ultimately, South Africa is caught between a rock and hard place. It supports the broad notion of R2P, within the African context, but at the same time is suspicious of outside intervention on the continent. This means that any legitimate intervention can only come from within Africa. In light of continued constraints on African resources, with few exceptions, R2P as constructive engagement rather than military intervention seems to be the only viable form of responsibility South Africa is willing and able to take on for the time being.

Similarly, while the AU has been a trendsetter with regard to institutionalising R2P, its track record when it comes to implementation has been less than stellar.⁴⁴ In terms of peacekeeping, which is arguably one of the most visible elements of R2P, the UN remains the continent's principal peacekeeper. This is partly due to the fact that African states still lack the capacity and resources for effective implementation, something that was clearly seen in the Libyan case. While the AU was critical of NATO's involvement, it was obvious that the continent lacked the necessary resources and political will to take action without international involvement. In the end, however, the Libyan intervention has served to revive the long-held suspicions of the motivations behind Western interventions in Africa. Despite early optimism about the progress made in Africa with regard to internalising the new R2P norm, Africa and Pretorius' assessment that 'it was obvious from the start that the introduction of a new normative framework would result in its uncomfortable coexistence with competing or pre-existing norms or arrangements'⁴⁵ is now all too fitting. Driving the point home even further and based on interviews conducted at the AU headquarters in Addis Ababa, Zähringer⁴⁶ concludes that the R2P is politically dead within the organisation. This, however, overstates African opposition to the norm of R2P. As noted above, it is not that South Africa and most other African states are against the principle that the international society has certain responsibilities towards ensuring that civilian lives are protected in all states, but rather that they disagree about the procedural issues of who decides when and how those responsibilities should be exercised.⁴⁷

Conclusion

This article has shown that South Africa is committed to the principle of the protection of civilians, although it favours a multi-layered, moderate approach to implementing R2P, focusing on a regional approach, and conflict prevention and resolution through

dialogue and engagement. This does not mean that it is categorically opposed to the use of force, but it is concerned about it being used as a pretext for regime change. Furthermore, the apparent contradictions in South Africa's position on R2P are consistent with the broader tensions in its foreign policy. These include a constitutional commitment to promoting and protecting human rights, solidarity with African states and a desire to reform what is regarded as an inequitable system of global governance, where principles like R2P are inconsistently applied by the powerful states. It is argued that these contradictions are becoming fewer and that a new consensus seems to be emerging about where South Africa's future alliances lie and what the implications are for its foreign policy.

In thinking about a way forward, the ideational role of states like South Africa and its India, Brazil, South Africa Dialogue Forum (IBSA) partners is significant. As Kuwali⁴⁸ points out, one of the challenges of operationalising R2P is conceptual: there needs to be more clarity around what exactly it is. If R2P is seen as a Western concept that is being imposed on non-Western states, then perhaps the discussion needs to shift its focus. In a similar vein, Brockmeier and Rotman argue that 'it is not useful to frame debates on the protection of people from atrocities under the strict label of the Responsibility to Protect'.⁴⁹ There needs to be extensive engagement with broader debates around, for example, the effectiveness of the use of force in protecting civilians, the relationship between peace and justice and the efficacy of mediation and other non-coercive forms of conflict resolution such as preventive diplomacy. South Africa started this process in 2008 when, as chair of the UN Security Council's Working Group on Conflict Prevention, it attempted to develop a broader understanding of R2P and to link it more explicitly to conflict prevention and resolution.⁵⁰ Importantly, as Beresford⁵¹ points out, South Africa's approach to conflict resolution and transitional justice offers an alternative to the type of intervention that was seen in Libya. Geldenhuys⁵² raises another related question, namely, whether R2P should continue to be confined to the four mass atrocities (genocide, war crimes, crimes against humanity and ethnic cleansing). He contends that most such atrocities are preceded by a systematic violation of human rights, suggesting that the focus should be on prevention and early warning, which, of course, is easier said than done. This is also linked to Mamdani's point that R2P, as it is currently understood, places too much focus on particular types of mass violence. Another way of salvaging the principles underlying R2P would be to encourage the development of alternative and related concepts such as responsibility while protecting, of which the global South can take ownership. It has been noted that emerging powers want recognition, consultation and inclusion in decision-making processes, and drawing on bridging concepts developed in the south, without claiming them for the north, would be one step in the right direction.

Another debate central to the issue and also related to the ICC is the apparent tension between lasting peace and security and justice and accountability. Instead of increasingly distancing themselves from R2P, states like South Africa should be leading initiatives to reframe the debate and push for revisions that are more acceptable to those who currently object to it. This would be in line with the ANC government's commitment to international law, as well as its stated desire to reform institutions of global governance to make them more equitable and representative of the interests and concerns of developing

states. South Africa is in a unique position to advance a more multi-dimensional, inclusive version of R2P, being a natural intermediary between the west, emerging powers and the global south, and Africa in particular. It would be shortsighted to forgo such an opportunity to make a real contribution to global governance for the sake of outdated ideological reasons.

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Notes

1. Nelson Mandela, 'South Africa's Future Foreign Policy', *Foreign Affairs*, 72(5), 1993, p. 97.
2. Permanent Mission of South Africa to the United Nations, 'Note 142/06 to the President of the General Assembly', 2006, available at: <http://www.un.org/ga/60/elect/hrc/southafrica.pdf> (15 May 2013).
3. Department of International Relations and Cooperation (DIRCO), *Building a Better World: The Diplomacy of Ubuntu – White Paper on South Africa's Foreign Policy* (Pretoria: DIRCO, 2011), p. 4.
4. For exceptions, see the special issue of *Conflict, Security & Development*, 14(4), 2014 on 'Major Powers and the Contested Evolution of a Responsibility to Protect' and the special issue of *Global Responsibility to Protect*, 2, 2010 on 'Africa's Responsibility to Protect'. For an excellent overview of the development of R2P, see Ramesh Thakur, 'Review Article: The Responsibility to Protect at 15', *International Affairs*, 92(2), 2016, pp. 415–34.
5. Jeremy Sarkin and Mark Paterson, 'Special Issue for GR2P: Africa's Responsibility to Protect – Introduction', *Global Responsibility to Protect*, 2, 2010, p. 339.
6. Francis M Deng, 'From "Sovereignty as Responsibility" to the "Responsibility to Protect"', *Global Responsibility to Protect*, 2, 2010, p. 364.
7. Harry Verhoeven, CSR Murthy and Ricardo Soares de Oliveira, "'Our identity is our currency": South Africa, the Responsibility to Protect and the Logic of African Intervention', *Conflict, Security and Development*, 14(4), 2014, p. 521 (emphasis in original).
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9. Cited in Sarah Brockmeier and Philipp Rotman, 'Debating the Responsibility to Protect', Global Public Policy Institute Policy Paper, July 2015, p. 33.
10. Landsberg, 'Pax South Africana and the Responsibility to Protect', pp. 441–42; Deon Geldenhuys, 'South Africa: The Idea-Driven Foreign policy of a Regional Power', in Daniel Flemes (ed.), *Regional Leadership in the Global System: Ideas, Interests and Strategies of Regional Powers* (Farnham: Ashgate, 2010), p. 160. See also Dan Kuwali and Frans Viljoen (eds), *Africa and the Responsibility to Protect: Article 4(h) of the African Union Constitutive Act* (Oxon: Routledge, 2014) for an exploration of the challenges to the implementation of article 4(h).

11. Musifiky Mwanasali, 'The African Union, the United Nations, and the Responsibility to Protect: Towards an African Intervention Doctrine', *Global Responsibility to Protect*, 2, 2010, p. 397.
12. Deon Geldenhuys, 'The African Union and Sovereignty as Responsibility', *Africa Insight*, 42(3), 2012, p. 60.
13. The three pillars of the Responsibility to Protect, as stipulated in the Outcome Document of the 2005 United Nations World Summit and formulated in the Secretary-General's 2009 Report (A/63/677) on Implementing the Responsibility to Protect, are as follows:

Every state has the responsibility to protect its populations from genocide, war crimes, crimes against humanity and ethnic cleansing, 'Every state has the responsibility to protect its populations from genocide, war crimes, crimes against humanity and ethnic cleansing;

The international community has a responsibility to encourage and assist states in exercising this responsibility, The international community has a responsibility to encourage and assist states in exercising this responsibility;

The international community has a responsibility to use appropriate diplomatic and humanitarian and other means to protect populations from these crimes. If a state is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in cooperation with regional organisations, and in accordance with the Charter of the United Nations. (Office of the Special Adviser on the Prevention of Genocide, 'The Responsibility to Protect', 2015, available at: <http://www.un.org/en/preventgenocide/adviser/responsibility.shtml> (accessed 10 March 2015)

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15. Landsberg, 'Pax South Africana and the Responsibility to Protect', p. 444.
16. For more on this, see Beresford, 'A Responsibility to Protect Africa from the West?'
17. For a discussion of South Africa in the Human Rights Council, see Eduard Jordaan, 'South Africa and Abusive Regimes at the UN Human Rights Council', *Global Governance*, 20, 2014, pp. 233–54; Eduard Jordaan, 'South Africa and the United Nations Human Rights Council', *Human Rights Quarterly*, 35(1), 2014, pp. 90–122.
18. James Hamill and John Hoffman, "'Quiet Diplomacy" or Appeasement? South African Policy Towards Zimbabwe', *The Round Table*, 98(402), 2009, p. 376.
19. Mahmood Mamdani, 'Responsibility to Protect or Right to Punish?', *Journal of Intervention and State Building*, 4(1), 2010, p. 53.
20. Mamdani, p. 57.
21. Mamdani, p. 59.
22. Graham Maitland, quoted in Verhoeven et al. (2014), p. 526.
23. It justified voting against resolutions to condemn the Myanmar and Zimbabwe governments for human rights abuses on procedural grounds: namely that the Human Rights Council, not the Security Council, was the appropriate body to discuss these matters.
24. Aboagye, 'South Africa and the R2P', p. 33.
25. For further detail, see Sandy Africa and Rentia Pretorius, 'South Africa, the African Union and the Responsibility to Protect: The Case of Libya', *African Human Rights Law Journal*, 12, 2012, pp. 394–416.

26. What transpired in Libya following the passing of UN Security Council Resolution 1973 has been regarded as a turning point in the debate around R2P in general. See Jason Ralph and Adrian Gallagher, 'Legitimacy Faultlines in International Society: The Responsibility to Protect and Prosecute after Libya', *Review of International Studies*, 41(3), 2015, pp. 553–73; Justin Morris, 'Libya and Syria: R2P and the Swinging Pendulum', *International Affairs*, 89(5), pp. 1265–83; Aidan Hehir and Robert Murray (eds), *Libya, the Responsibility to Protect and the Future of Humanitarian Intervention* (Basingstoke: Palgrave Macmillan, 2013); Paul Williams and Alex Bellamy, 'Principles and Prudence: Libya, the Responsibility to Protect, and the Use of Military Force', *Global Governance*, 18(3), 2012, pp. 273–97.
27. Faith Mabera and Tim Dunne, 'South Africa and the Responsibility to Protect', *R2P IDEAS Brief*, 3(6), 2013, p. 3.
28. Aboagye, 'South Africa and the R2P', p. 38. For a detailed analysis of the AU's response to the Libya crisis see Alex de Waal, 'African Roles in the Libyan Conflict', *International Affairs*, 89(2), 2013, pp. 365–79.
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