Responsibility to Protect as a Norm under Construction: The Divergent Views from the South

by Raúl Salgado Espinoza | FLACSO Ecuador | rsalgado@flacso.edu.ec

The Responsibility to Protect (R2P) is an international norm that has its origins in the 1990s, in response to the failure of some states and of the international community to provide protection in cases of genocide and mass crimes against humanity (Bellamy 2015). However, there is no global consensus about its implementation. Since its recognition by the United Nations General Assembly in 2005, the construction and consolidation of R2P has had many ups and downs. This slow process of consolidation as an internationally binding norm is due to the fact that, even within regions, states have not been able to come to an agreement. A recent collection of studies about the position of the states of the Latin American area on R2P has shown that some of the states are strong supporters of this norm, while others have hesitated to support it, and others still have rejected it altogether (Serbin and Serbin Pont 2015a).

It is not that there are diverse views regarding R2P's fundamental principles concerning the obligation of the state to protect its population against four categories of crimes: genocide, war crimes, crimes against humanity, and ethnic cleansing. All of these are entwined with the fundamental human rights that are incorporated in the UN Charter of 1945, whose strong supporters have included the Latin American states (Arredondo 2009). Therefore, we need to ask why it is that some Latin American states hesitate to support R2P or have rejected it outright.

This analysis focuses on two arguments regarding the reason for the Latin American divergent views on R2P. One concerns the way that R2P was constructed and introduced as a global norm. The second is related to the proposed method of its implementation. Both arguments are driven by a constructivist perspective of international political events.

Opportunities for Constructing and Shaping the Norm R2P by Latin American International Political Actors

The intellectual and political roots of the responsibility to protect can be traced back to the reflections of Francis Deng and Roberta Cohen about the rights of civilians and the exclusive responsibility of states to protect their citizens. These members of the Brookings Institution, based in Washington, D.C., developed this idea from an original thought about "sovereignty as responsibility" at the beginning of the 1990s (Bellamy 2015).

The civil wars in the former republic of Yugoslavia, the killings and abuse perpetrated against civilians by the different militia groups, and the failure of the international community to stop the massive killings of the Tutsis in Rwanda caused Western politicians and intellectuals to question the responsibility of the international community in preventing and addressing such crimes (Hehir 2011). On one hand, the Bosnian and Somalian humanitarian crises raised questions about the need for humanitarian intervention and the use of external military force for the protection of peoples in conflict zones. On the other hand, the actions of NATO in the Kosovo conflict in 1998–1999, which had no mandate from the Security Council, triggered questions about the role of international law, given that NATO's actions were in contradiction with the principles of national sovereignty and noninterference contained in Article 2 (7) of the UN Charter. In response to these events, the secretary-general of the UN, Kofi Annan, invited the international community to arrive at an agreement on how to respond to such crises without undermining the established international law.

In response, the Canadian government sponsored the establishment of an International Commission on Intervention and State Sovereignty (ICISS) to develop guidelines for the conditions under which coercive measures, specifically military action, could be appropriate. The ICISS was restricted to a small group of politicians, academics and "friends" who developed the idea of the "Responsibility to Protect" as an obligation of the state to protect its population from genocide, war crimes, crimes against humanity and ethnic cleansing (Añaños 2010). However, in writing its proposal, the ICISS included few representatives from those countries that had experienced humanitarian crises. There were only 11 countries represented in the construction of this proposal as members of the Commission: Gareth Evans from Australia, Mohamed Sahnoun from Algeria, Gisèle Côté-Harper and Michael Ignatieff from Canada, Lee Hamilton from the United States, Vladimir Lukin from Russia, Klaus Naumann from Germany, Cyril Ramaphosa from South Africa, Fidel V. Ramos from the Philippines, Cornelio Sommaruga from Switzerland, Eduardo Stein Barillas from Guatemala, and Ramesh Thakur from India.

Hence the fundamentals of this norm were, for the most part, constructed from the perspective of the "protector." This does not invalidate the argument that fundamental human rights should be defended and promoted. Nevertheless, the creation and discussion within a selective group of actors reduced the possibility that other national states would identify with this new norm. In addition, the number of external observers who served as members of the Advisory Board was also restricted. In this group only the following countries were represented:

Canada, the United States, Chile, Palestine, the United Kingdom, Poland, Mexico, Egypt, Greece, Thailand, South Africa, and Argentina. This could also have limited the discussion of the options for international action in cases where states failed to protect their populations. All these restrictions may also have contributed to the international negative reaction to this norm following its introduction and debate in the World Summit of 2005.

The reluctance to embrace R2P is evident in the diversity of views of the Latin American countries on this norm. Most of the countries that had been involved in the shaping of this norm from its beginning, either with a national representative as members of the ICISS or as members of its Advisory Board, are included in the so called Latin American "champions" or UN group of friends of the R2P (Serbin and Serbin Pont 2015a).

A High-Level Panel on Threats, Challenges and Change was established on the request of Secretary-General Kofi Annan in the following years to further develop R2P. However, similar to the ICISS, out of a total of 16 panelists, the High-Level Panel included only two national representatives of the Latin American community, a former minister of Foreign Affairs of Uruguay, and a former general secretary of the Ministry of External Relations of Brazil. From a total of 45 panel meetings, consultations, and workshops on the emerging norm, only two High-Level Panel meetings for consultation were carried out in the Latin American region: in Rio de Janeiro in March 2004, and in Mexico City in May of the same year. By contrast, 33 meetings were conducted in Western countries, 21 of them in the United States, according to the 2004 Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change.

The High-Level Panel focused on the issues of collective security, responsibility, and commitments of the states to fundamental human rights. The report from these meetings also supported the proposal that the norm would be implemented by the international community based upon the decision and agreement in the Security Council (Bellamy 2015).

Again, the report of the High-Level Panel was written by a small, selective group of academics and political actors from a limited number of countries. The countries represented in this panel were Australia, Brazil, China, Egypt, France, Ghana, India, Japan, Norway, Pakistan, Russia, Tanzania, Thailand, the United Kingdom, Uruguay, and the United States. The other member states of the United Nations were able to discuss the proposed norm and contribute to its construction only after its initial formulation during the World Summit of 2005. Those Latin American states that did not participate in the 2005 summit had no opportunity to give input in the crucial early stages. Thus the majority of the Latin American countries had little direct investment in it, and this may have reduced the possibilities of its acceptance.

However, there is a group of Latin American states described by Andrés Serbin and Andrei Serbin Pont (2015a) as the "champions or UN group of friends of R2P." They have been vocal advocates for R2P in the debates of 2009, 2012, and 2013. This group of states includes Argentina, Chile, Costa Rica, Guatemala, Mexico, Panama, and Uruguay. Serbin and Serbin Pont (2015a) point out that some of these countries, such as Chile, Argentina, Guatemala, and Uruguay, support R2P because they have experienced very violent military dictatorships, with a high level of crime and violation of the human rights of their populations. The protection of human rights and the construction of new mechanisms for their implementation are fundamental concerns of the present democratic regimes. Other states, such as Costa Rica, have traditionally advocated for human rights, and they are continuing their position by supporting the emerging norm of R2P.

In addition, most of the so-called champions of the R2P have been directly or indirectly involved in its construction at various points. For example, Guatemala was represented in the ICISS, which created and proposed the norm. Argentina, Chile, and Mexico were represented in the Advisory Board, which was created to "help Commissioners ground their report in current political realities, and assist in building the political momentum and public engagement required to follow up its recommendations" (ICISS 2001, 82). Uruguay was represented on the High-Level Panel. It is not surprising that the countries that only had limited opportunities to contribute to its formation appear in the group of skeptics and spoilers.

There is a second group, consisting of those Latin American states, such as Brazil, that do not disagree with R2P but see it as facilitating interventions that may cause greater suffering to the civilian population. Some interventions have "aggravated existing conflicts, allowed terrorism to penetrate into places where it previously did not exist, given rise to new cycles of new violence and increased the vulnerability of civilian population" (United Nations: General Assembly 2011, 3). This argument has motivated Brazil's proposal of a new concept to the General Assembly, known as "responsibility while protecting." This notion suggests that while there may be a collective responsibility to protect through the use of force, the impact of the intervention on the civilian population

must be less than the suffering that is already taking place. Brazil's proposal initially had momentum, but that eroded in the face of criticism from the Western countries and Brazil's failure to develop the proposal more fully (Serbin and Serbin Pont 2015b). Thus the Brazilian view is complex: on one hand, Brazil embraces the idea in some form; yet there is also mistrust about its implementation, in light of military interventions that have had terrible consequences for the civilian populations, as we saw in the cases of Libya and Syria.

The skepticism and distrust concerning R2P are in part due to the formulation that emerged from the World Summit of 2005, which was contained in a confusing and voluminous text (Añaños 2010). This was surely one reason for the diverse (mis) understandings of the fundamentals of R2P, and the consequent "revolt" of some countries following the publication of the World Summit Outcome 2005 (Bellamy 2009). But that process was also deeply flawed. Once again, the opportunities for participation, contribution, and discussion were very limited. The failure to include many of the Latin American states in the process contributed greatly to their lack of commitment to R2P, as well as to their skepticism about the real intentions of R2P's proponents. In addition, however, the reluctance of many Latin American states to support R2P is also rooted in their more fundamental mistrust of the idea of interventionism.

Interventionism and the Latin American Mistrust towards the Legitimate Implementation of the Norm R2P

The lack of a unified view of the Latin American countries regarding R2P is also due to the commitment of the Latin American states to the principles of sovereignty and nonintervention, as well as the historical lack of support from world's leading states in the face of the military interventions in the Latin American countries by the United States, and the residual mistrust toward the European colonialist states (Serbin and Serbin Pont 2015a). This can be found in the group that Serbin and Serbin Pont have classified as the "grey zone" and "rule entrepreneurs." This includes Ecuador and Brazil, among others. The mistrust is even more prominent in the group characterized as the "skeptics or spoilers." Of these, Venezuela and Cuba are particularly important, as they reject R2P entirely. These states see the proposal and internationalization of R2P as simply another mechanism for the imperialist behavior of the stronger states, acting in their national geopolitical interests (Toro Carnevali 2012; Alzugaray 2015).

As suggested by Arredondo (2015), the Latin American states have traditionally supported the development of an inter-American law system that encourages the peaceful settlement of conflicts, with a strong emphasis on the principles of sovereignty and non-interference in the internal affairs of states. These principles are fundamental to the Latin American identity that has been constructed over the last two hundred years. They are also in direct opposition to the third pillar of R2P that, in conjunction with the first two pillars, provides the framework for implementation.

Pillar one has been linked to the principle of sovereignty as responsibility, following the Secretary-General Report of 2009 by Ban Ki-moon. This first pillar provides that the state has the fundamental responsibility to protect the people living in its territory from genocide, war crimes, crimes against humanity and ethnic cleansing. The Latin American states generally support this pillar, given the history of military dictatorships and human rights violations (Arredondo 2009, 2015).

The second pillar provides that the international community has a responsibility to encourage and support states in their fulfillment of pillar one, by helping to create legal and practical mechanisms, such as training security forces, providing financial assistance for development, and assisting states facing crises and the outbreak of conflicts. Some Latin American states see grounds for concern regarding the international community in conjunction with this second pillar, given the history of the experience of the international community's indifference towards human-rights violations during the military dictatorship in countries such as Argentina, Guatemala, Chile and Nicaragua.

Some of these human rights violations were in fact coordinated with the support of the U.S. intelligence service, as U.S. government documents have shown. In light of this experience, politically unstable and multicultural states can consider themselves to be vulnerable to external attempts incite military revolts and social agitation by influential states such as the United States, which has not formally committed itself to many of the treaties of the Inter-American legal system. Of particular concern is that the determination of whether a crisis constitutes grounds for intervention lies with the Security Council.

Pillar three provides that the international community has a responsibility to use unspecified means to protect populations against genocide and the other major human rights violations, if a state is failing to protect its population. In this case, pillar three invites the international community to take collective action in accordance with

the Charter of the United Nations, where Chapter VII authorizes the Security Council to act. The people to be protected, or their representatives, are rarely included in this decision-making process. Decisions in the Security Council are restricted to a selective and small group of members, who portray themselves as the protectors, but often judge according to their national interest (Lucci 2012; Alzugaray 2015). This is one of the reasons for the ambivalent position of Ecuador towards R2P (Villagómez Reinel 2013; Bermeo Lara 2015).

Moreover, the principle of peaceful conflict resolution that the Latin American states have historically claimed stands in opposition to Chapter 7 of the UN Charter, which enables the Security Council to make decisions on the use of force on behalf of the international community. Again, the process of decision making is limited to a few international actors, and there is no agreement on the sequence of the measures to be taken in R2P situations. Moreover, pillar three does not provide for the participation of those who are to be protected.

It is understandable that some Latin American states would be skeptical of the legitimacy and objectivity of the protectors. This is particularly true given that the region has experienced dozens of direct and indirect military interventions in violation of international law by the United States, in order solely to further its own national interest.

Finally, the recent military interventions in Iraq, Libya, and Syria have demonstrated that the use of military action, ostensibly to protect the population, has instead contributed to the devastation of these countries and increased the suffering of their people. Hence, a further discussion about the concept of "responsibility while protecting" in conjunction with the "responsibility and agreement of the protected" may strengthen the normative force of R2P so that it gains greater global acceptance.

Conclusion

There is no global consensus concerning the emerging norm of the Responsibility to Protect. Hence, it can be said that it is a norm that is still under construction. R2P has had a mixed reception from the Latin American countries, with many questioning its legitimacy. There is not a common view of what R2P is or how it should be implemented. The mixed responses among Latin American views in regard to R2P are first due to the fact that most Latin American countries had only limited opportunities to contribute to its formulation. Nor were there representatives of many of those groups of people that suffered from the historical failures of protection on the part of the states and the international community.

Second, the appropriation of R2P by the United Nations Security Council has enabled a few powerful nations to shape its contents and its implementation. Moreover, there are concerns on the part of some Latin American countries because the decision-making process does not include those who are to be protected. In addition, the sociocultural and political diversity, and in some cases the instability, of the countries of the South creates concern that R2P may be used to justify a destabilizing intervention.

Finally, the experiences of the southern countries regarding the reckless behavior of some powerful countries and their lack of respect for the international norms and human rights in the region have reinforced the concerns of the Latin American countries about the legitimacy of the principle of the responsibility to protect.

References

Alzugaray Treto, Carlos

2015 "Cuba and RtoP: A Critical Approach from a Humanitarian Anti-Hegemonic Global South Powerbroker." *Pensamiento Propio* 41: 225–240.

Añaños Meza, Cecile

2010 "La responsabilidad de proteger en Naciones Unidas y la doctrina de la responsabilidad de proteger." *Anuario Mexicano de Derecho Internacional* 10: 199–244.

Arredondo, Ricardo

2009 "La responsabilidad de proteger: De la noción a la acción." *Pensamiento Propio* 29: 185–208.

2015 "The Responsibility to Protect: An Argentinean Perspective." *Pensamiento Propio* 41: 67–94.

Bellamy, Alex J.

2009 "Realizing the Responsibility to Protect." *International Studies Perspectives* 10: 111–128.

2015 "The Three Pillars of the Responsibility to Protect." *Pensamiento Propio* 41: 35–64.

Bermeo Lara, Dolores

2015 "Ecuador and the Responsibility to Protect: A Case For Constructive Engagement." *Pensamiento Propio* 41: 193–210.

Hehir, Aiden

2011 "The Responsibility to Protect in International Political Discourse: Encouraging Statement of Intent or Illusory Platitudes? *International Journal of Human Rights* 15 (8): 1331–1348.

Academic Freedom and Civil Rights in Rafael Correa's Ecuador: Summary of Reports Solicited by the Executive Council of LASA

by Carmen Martínez Novo | University of Kentucky | carmen.martinez@uky.edu

ICISS (International Commission on Intervention and State Sovereignty)

2001 *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty.* Ottawa: International Development Research Centre.

Lucci, Juan José

2012 "La responsabilidad de proteger y los intereses de los 5 miembros permanentes: Los casos de Darfur, Myanmar y Siria." *Pensamiento Propio* 35: 45–82.

Serbin, Andrés, and Andrei Serbin Pont

2015a "Latin America and the Responsibility to Protect: Divergent Views from the South?" *Pensamiento Propio* 41: 11–33.

2015b "Brazil's Responsibility while Protecting: A Failed Attempt of Global South Norm Innovation?" *Pensamiento Propio* 41: 171–192.

Toro Carnevali, Alfredo

2012 "El concepto de Responsabilidad de Proteger: La perspectiva de la República Bolivariana de Venezuela y otros países en desarrollo." *Pensamiento Propio* 35: 135–167.

United Nations

2004 *A More Secure World: Our Shared Responsibility; Report of the High-Level Panel on Threats, Challenges and Change.* New York: United Nations Department of Public Information.

United Nations: General Assembly

2011 A/66/551-S/2011/701. Letter dated 9 November 2012 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General.

Villagómez Reinel, Pablo

2013 "La responsibilidad de proteger y el problema de la paz." *Línea Sur* 4 (7): 32–67. ■

The arbitrary detention of Franco-Brazilian professor Manuela Picq on August 13, 2015, after being beaten by the police while she demonstrated peacefully and covered the protests, the revocation of her valid cultural exchange visa, and her internment in an undocumented immigrant shelter in Quito, led the Executive Council of LASA (EC) and LASA's past presidents to write a letter of concern to the Ecuadorian government. This event, as well as the repression of peaceful antigovernment protests that specifically targeted indigenous protestors, led the EC to request a report on the state of academic freedom and civil liberties in Ecuador by a group of experts. The EC solicited reports from Felipe Burbano de Lara (FLACSO-Ecuador), Catherine Conaghan (Queen's University, Canada), María Amelia Viteri (Universidad San Francisco de Quito), Rudi Colloredo-Mansfeld (University of North Carolina, Chapel Hill), and Carmen Martínez Novo (University of Kentucky). The reports indicate that there are serious threats to freedom of speech, academic freedom, and other civil rights in Ecuador. The threats discussed in the five reports are summarized here. The complete individual reports follow this summary.

Enactment of Laws That Limit Freedom of Expression and Academic Freedom

The laws analyzed in the reports are the Organic Law of Communications (Ley Orgánica de Comunicación, LOC), the Organic Law of Higher Education (Ley Orgánica de Educación Superior, LOES), and the Organic Law of Intercultural Education (Ley Orgánica de Educación Intercultural, LOEI). These laws centralize the control of communications and education in the executive and put an end to the relative autonomy that organizations of civil society previously enjoyed in regulating their systems of cultural production.

The sector most severely affected is privately owned media that the regime portrays as controlled by power groups and as destabilizing of the current political process. The Organic Law of Communication gives the executive wide powers to control, regulate, and sanction communications through two institutions: the Superintendencia de Comunicación (SUPERCOM) and the Consejo de Regulación y Desarrollo de la Información y Comunicación (CORDICOM). SUPERCOM has initiated 269 processes against journalists and media outlets. From the processes that have been resolved, 82 percent have resulted in sanctions that include fines, written warnings, public apologies, and rectification of previous statements.

The Organic Law of Higher Education provides the executive ample powers to regulate and control higher education institutions. The LOES creates regulatory bodies appointed by the executive, without representatives directly selected by the universities, to regulate, evaluate, and sanction the institutions of higher education. Institutions of higher education are forced to register their teaching and research objectives within one of the development goals of the government. Everyday academic life has been affected by low-level administrative regulations with budgetary effects. The evaluation of universities has resulted in the closure of several of them.

The Organic Law of Intercultural Education puts an end to the autonomy that organized indigenous peoples enjoyed. This decision violates ILO Convention 169 as well as the 2007 United Nations Declaration of the Rights