Protection or Interference? The Legitimacy of Contemporary Humanitarian Interventions and the Engagement of Nonhegemonic Powers

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Abstract: In this article, we use the notion of legitimacy to analyse shifts in global humanitarian interventions since the 1990s, culminating in the contested adoption of the Responsibility to Protect (R2P) framework under the United Nations umbrella in 2005. We assess how this important shift was disputed with narratives of protection and interference, and argue that the engagement of non-hegemonic actors (specifically Brazil and Russia) with the scope of humanitarian protection has influenced the substantive legitimacy of this global governance issue over the past three decades by creating a norm-making process in which the fundamental features of humanitarianism have been tested and challenged.

Keywords: humanitarian interventions; Responsibility to Protect (R2P); legitimacy; Brazil; Russia.

Introduction

Throughout the 20th century, the international security regime was empirically distant from the rule of law and from issues surrounding human rights. During the past three decades, however, global governance has changed profoundly, imposing new norms and values that constrain the conduct of various international actors. Issues of legitimacy, embodied in the ideal of the global rule of law, have become more prominent. Even the notion of 'state sovereignty' has been drawn into question in order to comply with a cosmopolitan teleology that regards the protection of individuals as a global responsibility.

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The leading example of this shift in global security governance is the UN's Responsibility to Protect (R2P) framework. However, its passage into collective security governance has been difficult, with contesting powers providing strong resistance based on a criticism of the legitimacy of international institutions. Following repeated revisions, the UN managed to develop a complex set of guidelines that placed a concern about human life at the centre of global security, and related it to the norms and principles of international law. Crucially, it also defined mechanisms for the legitimate use of force to prevent atrocity crimes and human rights violations. However, this effort has been beset with problems. Global tragedies have been linked either to some form of multilateral inertia on the one hand, and to extensive unilateral interventionism on the other.

Using this as a starting point, we aim to examine attempts to alter the substance of the notion of international legitimacy within the global security regime for humanitarian interventions by considering the clash between a global protection narrative of individuals and resistance to its incorporation, grounded in arguments of Western interference worldwide and statist views of sovereignty.

Brazil and Russia were major players in the burgeoning dispute about interventionist norms and values, expressing their willingness to play more prominent roles in norm entrepreneurship at the beginning of the decade (Kotyashko et al 2018). While Brazil proposed a new approach, Responsibility while Protecting (RwP), for amending some aspects of the R2P framework via multilateral debates, Russia expressed its scepticism about R2P and unilateral actions, as demonstrated by its foreign policy towards Libya and Syria, which made their national interests a main driver of Russia's stance within the UN (Trenin 2016). These disputes about formulating and enforcing international norms (especially on security issues) rely on narratives of lawfulness. Whether intended to defend infringements of national sovereignty – which fundamentally contradict the principle of Westphalian sovereignty, but are supported by humanitarian commitments – or to conserve statist prerogatives, their conduct has led to reasonable accusations that this reformulation promotes obscured imperialist interests.

In what follows, we examine how this dynamic has driven opposing views on humanitarian norms and values. In the first section, we draw on aspects of international law to formulate the notion of 'substantive legitimacy' as a canon for the combined idea of a global rule of law and public authority in the international arena. Next, we present the transformation of norms for humanitarian interventions from the 1990s to the triggering of the R2P in Libya in 2011 as the context in which human rights narratives have become the focus of international interventionism. Following this, we examine Brazil and Russia as two excellent examples of the divergent reactions of non-hegemonic powers to issues such as the military intervention in Libya. Finally, we reflect on resistance to and the appropriation of humanitarian interventionist norms through the lens of 'substantive legitimacy.' We conclude that this framework progresses through a continuum of legitimacy deficits by examining the material components of interventionist practices, as well as procedural matters.

Categories of 'substantive legitimacy'

The issue of the legitimate use of force dates back to the formation of societies in antiquity, and has informed and guided conceptions of authority and legality ever since (Jubilut 2010). Given this correlation, discussions about the sources of legitimacy for the use of force become particularly complex at the international level. International legitimacy plays a central role in international organisations, which were instrumental in the transformation of international law throughout the 20th century (Paulus 2009: 76), and consequently in the building of institutional norms that shape the identity of international society (Clark 2007).

Legitimacy can be understood in various ways, based on a distinction between its normative, subjective or objective conditions (Jubilut 2010). In this article, we adopt a substantive understanding, which combines axiological relations and teleological expectations of norms, within the process of their formulation, as part of the perception of the legitimacy of normative frameworks. These perspectives facilitate an assessment of international military interventions, based on the principles embodied in the UN collective security system.

Two interrelated dimensions are central to understanding the political-procedural progress of the legal structure within the context of legitimacy: the notion of public authority, and the primacy of the rule of law at the international level. The impossibility of establishing a body of authority corresponding to the nation-state's modulations, which centralise legal enforcement (Held 1997), does not imply an inability to formulate *foci* for international debate and resolution (Rosenau 2000); rather, it raises questions about the appropriate formulation of global instruments. Normative multiplicity is expressed in the duality between 'hard' law (within the traditional scope of international law) and 'soft' law (contained in the transition between non-binding and binding spheres).

The 'international rule of law' derives from a broader conception of legal systems that express the concept of the rule of law in national orders. It endows the international community with legitimising features by constraining power, in an effort to achieve procedural fairness. From the proliferation of international courts (Slaughter 2003) to the movement towards promoting accountability for human rights violations (the best example being the International Criminal Court), the supposed consolidation of the global rule of law reflects attempts to consolidate international law as the unquestionable regent of international conduct, as well as a constraining element of states' internal decisions (Amaral Júnior 2012).

It is evident that this legal discourse is not automatically verifiable or effective on the international stage. Its most significant feature is the rhetorical pre-eminence of human rights as a universal value, which permeates all contemporary legal forms. Thus, it is pertinent to highlight the universalist dilemmas surrounding the consolidation of cosmopolitan juridical frameworks (Benhabib 2009). At first glance, these may imply a normative standardisation, derived from the Kantian legacy. Its factual consequence is a certain resistance to this new normative matrix grounded on moral justifications, as well as the questioning of covert interests at play in the political game that occasionally operationalises

legal mechanisms, as strikingly demonstrated by the debate about interventionist legal mechanisms forming the subject of this article.

Therefore, the legitimacy-legality binomial (Jubilut 2010) plays an important role in the justificatory narratives of interventions, referring to the articulation of the categories briefly discussed in this section. The perception of substantive legitimacy by non-hegemonic actors establishes a dialogue between the humanitarian values introduced in international security doctrines and the institutional capacity to respond effectively and without obscured interests (Chesterman 2009; Imerman 2017), without formulating facile paths for the execution of imperialist projects. As Ralph and Gallagher (2015: 561) have noted:

> The failure to include states in decisions on how norms are implemented makes it more difficult to effectively deliver the substantive agenda the norm articulates. The failure to deliver substantive outcomes moreover robs the hegemon of the argument that can justify the hierarchical decision-making process. The legitimacy deficit, which already exists on grounds that the decision-making process is unrepresentative, increases. This does not necessarily lead to the collapse of the liberal order, but it makes the realisation of its ideals harder.

Thus, the articulation of juridical apparatuses exposes the complexity of the international normative phenomenon by combining international society's axiological fronts with a constituent process that entails the participation and inclusion of its members' diverse interpretations, so that the desired behaviours are, in fact, connected to some degree of consensus. Therefore, the idea of 'substantive legitimacy' relies on the consolidation of a norm guided at its core by a set of accepted values as well as acquiescence, embodied in various international mechanisms agreed to by important actors.

Starting with the search for substantive legitimacy, we will now look at the transformation of the humanitarian framework since the 1990s in order to contextualise the debate about nonhegemonic engagement in this vital sphere of global governance.

Human rights and international security: the protection goals in international security

The 1990s were a significant period in global governance, in which security goals were subsumed under the broad umbrella of 'human security' (Roznai 2014; Chinkin and Kaldor 2017). Under institutional definitions emanating from different agencies, specifically UN agencies, policies were articulated to address security concerns centred on human security in a more structural way than traditional threats to international security, such as nuclear war. These definitions became central to policies, definitions of national guidelines, international credit lines, and academic research (Krause 2014). Since then, international organisations have provided actors involved in peace agreements and

post-conflict reconstruction with frameworks for protecting human life on many fronts. This movement is visible not only in the general frameworks developed by international bureaucrats, but also in binding instruments such as UN Security Council resolutions. International debates have been dominated by terms such as 'democracy,' 'rule of law,' 'free and fair elections,' 'law enforcement' and so on, as ways of achieving social stability as well as goals in their own right (Hegre 2014).

Therefore, it is important to note how institutional definitions of human security have influenced the UN's normative architecture, and become a basis for multilateral engagement. Apart from the conceptual distinctions in academic analyses, such as broad and narrow definitions (Buzan and Hensen 2012; Krause 2014; Roznai 2014), a clear principle can be discerned, namely that the international community has a duty to protect human life and to allow it to thrive in various ways. In this sense, diverse internal social factors have become part of international concerns about promoting safety, mainly of vulnerable populations, and are aimed not only at establishing security as a state obligation, but also at incorporating it into the effort to safeguard human rights. Economic and political structures have been portrayed as important sites for the involvement of international organisations, primarily in post-conflict contexts, as a path towards stabilisation. Therefore, international normative development displays a growing willingness to fuse the comprehensive interpretations of two deeply entrenched branches: the human security concept, and international human rights law (Roznai 2014).

The UN became a great advocate of this approach, and made use of the window of opportunity that opened in the 1990s to consolidate its role not only as a proxy of national interests but also as a policy formulator and legitimate international actor, given that:

> The UN somewhat uneasily brings together both political power structure and individuals' rights: on the one hand, the 1945 power structure remains in place within the SC [Security Council], and on the other, human rights institutions have proliferated within the UN in a way that was not envisaged in 1945 (Chinkin and Kaldor 2017: 106).

A major driver of this novel course of action has been the calamity of internal armed conflicts around the globe, affecting mostly civilian populations, and characterised by Mary Kaldor (2012) as the 'new wars' phenomenon. Therefore, the UN has started to use the idea of the protection of human rights as a motto for its law-making processes, as well as guidelines for its actions on the ground (Orford 2011, 2013; Seaman 2014).

As noted earlier, this movement is attached to the centrality of human rights as a path towards global legitimation, which emerged vividly under the narrative of liberalism victory at the end of the Cold War (Orford 2003; Roznai 2014). Accompanied by the neo-liberal structural economic reforms of developing countries (Hermet 2008), human rights protection and promotion moved to centre stage in international politics, with special attention paid to intra-state armed conflicts as the new subject of international security (Kaldor 2018). As the nuclear superpower threat faded from the mainstream security

narrative, large-scale massacres such those in Srebrenica (1995) and Rwanda (1994) were presented as examples of events that demanded international action.

Three issues emanating from this need to be highlighted. The first is the legitimacy of the foundational idea underpinning the notion of international responsibility, namely that human life should be protected beyond state borders (Orford 2003), clearly in association with the cosmopolitan rhetoric of a moral obligation towards humanity (Benhabib 2008; Costa 2003). The second is how far the notion of 'international security' (Rothschild 1995) should be stretched – that is, that 'international security affairs' should be more than belligerent violence and also supersede national limits, thereby defining the responsibility and sphere of action of international bodies concerned with security, notably the UNSC. And finally, what sorts of actions by which actors should be regarded as legitimate, thereby conforming to the principles of cosmopolitan protection.

This conjuncture is closely related to a vital post-1945 issue, namely the legitimate use of force by and on behalf of the global community. Given that it is the only formal international body with the power to do so, the UNSC has become the most prominent actor in this regard, drawing on its global authority as built into the San Francisco Charter (Chinkin and Kaldor 2017). Therefore, the frameworks used by the Council have played a major role in the shifts in rationale for humanitarian interventions. A key shift was the use of Chapter VII of the San Francisco Charter ('action with respect to threats to the peace, breaches of the peace, and acts of aggression') as a trigger for humanitarian interventions. This change was only possible because of the sedimentation of the interpretation that international security affairs appreciated by the Council ought to address human suffering in any part of the globe.

The first prominent document that expanded the scope UN interventions was *An Agenda for Peace*, sponsored by Secretary-General Boutros-Boutros Ghali (UN 1992). It defined four types of UN's action in internal armed conflicts and humanitarian crises, namely a) preventive diplomacy; b) peacemaking; c) peacekeeping; and d) peace-building, with Chapter VI and Chapter VII of the Charter as their legal basis. More than just a practical manual, the report advanced the axiology we have addressed so far as the main reason for the UN to exist, and argued how its legal regime was relevant for protection goals in the field of international security even when violence took place within sovereign states.

Since then, numerous other UN documents have dealt with various logistical issues emanating from this framework, thereby deepening the understanding of this operational model, and building a normative schema for justifying the use of force. This trend is evident in the arguments in favour of the use of Chapter VII in the *Supplement of An Agenda for Peace* in 1995 (UN 1995) as well as the Brahimi Report (UN 2000), which reinforced the authority of the UNSC to delegate forceful interventions, and stated that the wording of resolutions represented pathways to successful outcomes (Faganello 2014). The same happened in respect of the Capstone Doctrine (UN 2008) and the High-Level Panel of 2015 (UN 2015), both of which acknowledged that, given its limited resources, the UN was experiencing major operational difficulties in fulfilling its promises of reconstruction

and social stabilisation. What these documents reveal, however, is a change in language about the same principles. Numerous problems over time are provided with the same remedies, albeit formulated in different ways, and two main points are reiterated: the UNSC's formal authority to enforce legal interventions, and the commitment of the international community to protect people and communities affected by open violence.

The most sophisticated narrative appeared in *Responsibility to Protect* in 2001 (Orford 2011). The massive failures of humanitarian interventions during the 1990s – notably the massacres in Srebrenica and Rwanda, the deaths of American soldiers in Somalia, and the legal breach over Kosovo – resulted in the establishment of the International Commission on Intervention and State Sovereignty (ICISS), sponsored by the Canadian government. It has been tasked with building a lawful basis for interventions related to the humanitarian dimension we have examined thus far, and taking the duty to protect beyond international security crises for once and for all (Bellamy 2015; Evans 2006; Norooz 2015; Orford 2011).

While efforts have been made to portray the R2P as a brand-new legal mechanism, it is rooted in humanitarian narratives which themselves strengthen the UNSC as a source of authority, based on the San Francisco Charter as the fundamental vehicle for overriding national sovereignty, and justifying it in the name of civilian protection (Orford 2011). Notwithstanding these remarkable continuities, it is important to highlight the novel side of the R2P. The innovation is not about its core, but mostly about its potential development if the letter had followed the framework of the resignification of and infringements on national sovereignty. From this view, the ICISS Report (2001) was not just a general guideline, but a detailed framework for the international community to act in a more responsive way without imploding post-war classical structures. As Orford (2011: 33) puts it:

> The ICISS report was designed to respond to that challenge. In the name of preventing the misuse of humanitarian motives to justify intervention by powerful states, it called for the international community to take collective action to prevent conflict, to respond to conflict and to react after conflict. The result is a detailed argument for the political authority of the international community and for the consolidation and integration of executive rule by international actors.

R2P is the sum of many important issues that have emanated from misguided humanitarian interventions. The idea that human rights abuses rather than Westphalian sovereignty should play a central role in considerations around the use of force provoked resistance from various quarters, and had to be repeatedly revised in order to comply with national interests and be accepted as a valid juridical argument. Based on the claim that the international community is responsible for human life on a global scale, R2P tries to build a legal pathway to infringements of national sovereignty via ideas of authority and legitimacy (Orford 2011). By using this argument in a broad sense, even when accompanied by a set of precautionary principles (Jubilut 2008), this approach threatens most states in the Global South.

In the 2005 World Summit Report, R2P was incorporated in paragraphs 138 to 140 (Weiss 2007) after suffering a modular renovation. At its core, it was linked to four crimes that were already recognised by international law, namely genocide, war crimes, ethnic cleansing, and crimes against humanity, and the need to constrain eventual abuses (Norooz 2015). Fears about a serious rupture in Westphalian structures were pushed aside, and the path towards its acceptance was open (Welsh 2013). One more reformulation, adopted in two Secretary-Generals' Reports in 2009 and 2010, provided the R2P with a polished operational framework, namely the well-known Three Pillars approach (Norooz 2015). The adoption of 'Protection Responsibilities of State' (Pillar 1), 'International Assistance and Capacity Building' (Pillar 2), and 'Timely and Decisive Response' (Pillar 3) as fundamental vectors for putting the R2P in motion did not change any of its original features, but clarified its operational use, and made this more palatable to actors that resisted violations of national sovereignty.

As noted above, a main feature is the reaffirmation of the UNSC as the primary authority. Regional organisations are also named as great validators of R2P action. However, within the scope of the UN, the Council remains the primary source of legitimate power. The UNSC's authority has been a crucial issue for acquiescence to the R2P over the past decade. Despite criticism of the UNSC's legitimacy and its undemocratic *modus operandi*, it remains an essential mechanism (Chinkin and Kaldor 2017; Cohen 2008; Lopes 2007), working along diverse legitimacy axes:

> Three principal sources of institutional legitimacy might govern the behavior of states with regard to the Security Council. First, Security Council decisions could align with recognized international norms; those norms would then lie at the heart of any explanation of actor behavior that accepted those decisions. Second, the Security Council's institutional procedures and decision rules may be viewed as appropriate by member states. Finally, the Security Council may produce outcomes of value to member states; over time, those positive outcomes legitimate its decisions (Kahler 2010: 33).

The plurality of sources of legitimacy becomes clear when powers initiate interventions or military attacks challenging UNSC authorisation. In the 2003 invasion of Iraq and Russia's 2014 annexation of Crimea, the use of force outside the UN regime was considered unlawful. The NATO intervention in Kosovo (1999) – for which the main rhetoric was that the military operation was legitimate, but illegal – was sharply criticised and was only accepted after a late approval by the UNSC, which argued that its principles aligned with the international teleology of protection (Kennedy 2004).

All this shows how the protection of human lives under the narrative of cosmopolitan responsibility became the main driver of global security after the end of the Cold War. The liberal wave in the North and crises alongside political transitions in the global South gave the UN's political and bureaucratic institutions an opportunity to play a leading role in promoting human rights in association with humanitarianism, resulting in a

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narrative of international tutelage (Orford 2003). Numerous normative guidelines have been published for multilateral activities, establishing principles of protection towards violence-affected populations, painting a scenario of human rights imperatives within the consolidated political and juridical ambit of the traditional Westphalian international system (Amaral Júnior 2003).

We will now consider how two contesting countries – Brazil and Russia – incorporated and resisted this set of norms and how the legitimacy of this framework has been portrayed in recent debates, deeply influencing global governance on security matters in the process.

Brazil and Russia

Given the legitimacy puzzle of intervention norms, it is important to examine the attitudes of nonhegemonic actors towards key examples of humanitarian responses and sovereignty disruptions. Brazil and Russia are excellent cases because of their protagonism during the debates about the military intervention in Libya (Kotyashko et al 2018). Brazil is a historical candidate for a permanent seat in the UNSC, and presents itself as a voice for developing countries, especially in Latin America; Russia is a surviving Cold War military power, a permanent member of the UNSC, and a Eurasian economic heavyweight.

Both countries strongly addressed the proposed military intervention in Libya on the grounds that it subverted the UN's basic mandate, raising important issues about the use of force (Kotyashko et al 2018) and its usual relation to international law (Ziegler 2016a); specifically, the debate about and formulation of R2P occurred in light of their perspectives on the sovereignty postulate (Welsh 2013). Their stances reflected different bets on their power projections and were good examples of the impact of resistance on the consubstantiation of international norms.

Brazil, therefore, highlights various possibilities on the spectrum of disputes about intervention instruments, which have been marked by narratives of protection and interference since the 1990s. Brazil's perspective as a global player (Visentini 2013) was used to try to carve out a new role as international leader, at least on the discursive level. Its engagement with international security matters were displayed through its nonbelligerent posture, safeguarding principles of non-intervention written in its 1988 Federal Constitution (Almeida 2014).

This constitutional postulate has guided Brazil's attitude towards the R2P (Stunkel 2016). Regarding the foundations of international law, Brazil's most prominent criticism concerned the vagueness of UNSC Resolution 1973 authorising military intervention in Libya, which allows the use of 'all necessary measures' for protecting civilians without any restraints on the use of force. A few months after the resolution's rapid adoption, the Brazilian president, Dilma Rousseff, presented the Responsibility while Protecting (RwP) proposal to the UN General Assembly. It was intended to complement the R2P's original principles, which were developed within the UN.

RwP seeks to impose limits and conditions on the application of the R2P. It states that international action should prioritise prevention and capacity-building (Kenkel and Stefan 2016) – in line with the Brazilian foreign policy axes (Almeida 2014), especially development aid initiatives (Kenkel and Stefan 2016) – and reinforce the criteria for the use of force as a last resort:

> [T]he discussions that Brazil's efforts instigated suggest a degree of coalescence around certain principles or guideposts that will likely arise within any future discussion on the use of force. These include the principles of last resort (including language on the exhaustion of all peaceful means and no practicable alternative) and proportionality (whereby the prospects of a reasonable chance of success to achieve a specified aim are weighted against the risk of unintended consequences), as well as the principle of right intention or proper purpose combined with defined objectives (reflecting a desire for clarity as to a mandate's aims, with the possibility of future mandates to be organised into phases so as to provide for periodic briefings) (Harrington 2016: 232).

Nevertheless, this did not resonate sufficiently with global actors to lead to its complete adoption. Without pleasing Western powers, because it was aimed at more rigorous control of criteria for trigging international action, or pleasing contesting countries, given its appearance of reinforcing the possibility of interference (Benner 2013), the Brazilian formulation failed to make a significant impact on prescriptions for the operationalisation of interventions (Kenkel and Martins 2016; Kenkel and Stefan 2016). One reason why this proposal was so short-lived was the difficulty in formulating norms for international responsibility beyond those supporting the imperative of force (Benner 2013). This showed that nonhegemonic players are not regarded as norm builders; generally, they are relegated to the role of challengers, or expected to demonstrate obedience to structures sponsored by great powers (Stunkel 2016). At this point, it is reasonable to conclude that the dichotomy between 'sovereignties' (mainly actors from the Global South) and 'interventionists' (Western powers) is insufficient to explain the dispute over intervention mechanisms. This polarity creates a form of political Manicheanism in which contesting powers are seen as old-fashioned and unreliable. In this instance, Brazil's posture demonstrated the opposite through its observations about human rights principles and how military interventions actually weaken the protection of civilians.

Brazil's supposed acceptance of the R2P, via its proposed reinterpretation through the RwP, does not fully reflect its stance as an advocate of Southern interests, or its understanding of the principle of non-intervention from a humanitarian perspective. Its view of acquiescence to humanitarian norms is formed via a legalistic conjunction with human rights norms as guarantors of the interpretation of sovereignty as responsibility, without surrendering the state's legal security. Its proposal reflected the multilateral profile it intends to project as an aspirant member of the UNSC, and presents the narrative that

the body must be endowed with legitimacy in its composition and proceedings. Brazilian rhetoric has tried to relate to lawful standards for operationalising military incursions, based on the collective security, international law and human rights principles consolidated in the San Francisco Charter.

Russia, on the other hand, as part of its opposition to the 'Western liberal agenda,' has adopted a more reticent attitude towards the R2P, particularly due to its revision of state sovereignty (Baranovsky and Mateiko 2016). It believes that there is a material continuity between the heavily criticised humanitarian interventions of the 1990s and the R2P as a disruption of territorial sovereignty (Trenin 2016). The Russian attitude establishes a direct correlation between its view of a 'statist international law' (Averre and Davies 2015) that prioritises prerogatives for protecting the integrity of the state as a guarantor of the international order, in contrast with placing the individuals at the centre of post-Cold War governance (Allison 2013). For Russia, therefore, sovereignty remains a fundamental right of the state which should not be breached in the name of the protection of individuals (Kurth 2015).

The Russian reservations also address the country's internal concerns about its influence over its Soviet neighbours, as well as the possible impacts on its security and financial relations (Ziegler 2016b). Moscow's interventions in Georgia (2008), justified via the R2P narrative (Evans 2012) and in Ukraine (2014) clearly demonstrate Russia's apprehension about its area of influence without much appreciation for multilateral principles (Baranovsky and Mateiko 2016). The element of morality in the notion of Just Wars and in the R2P itself does not resonate with Russian strategic thinking (Kurth 2015), and also does not agree with the universalist pretension that the norms of intervention are intended (Trenin 2016). Rather, it does so via a unilateral understanding of legal boundaries within a pluralistic perception of international law that allows regional interpretations – in this instance, the former Soviet space (Mälksoo 2015). In this sense, Russia's conduct is hardly influenced by multilateral principles, and its explicit purpose is the maintenance of Eurasian control (Ziegler 2016b) – one that resists the shifts in collective security governance dealt with in this article.

Even so, it cannot be argued that Moscow entirely rejects international norms for intervention, or even that it disregards the UN as a critical forum (Trenin 2016). By endorsing a statist interpretation of sovereign prerogatives, the need for consensus on the part of the host state – a crucial issue for humanitarian interventions throughout the 20th century, even under Chapter VII – has become a major area of disagreement about the R2P. The issue of consensus is particularly apparent in the formulation of the Third Pillar as 'decisive timely response' (Kuhrt 2015). Russia's understanding of the inviolability of sovereignty as built into the San Francisco Charter is read as a principle of the constitutional order derived from the document (Allison 2013; Averre and Davies 2015), which is based on a 'restricted' view that does not allow the reformulation of sovereignty in the course of novel intervention doctrines (Kuhrt 2015). It does recognise the importance of preventing atrocities as a key element of the international security agenda, but opposes the use of force as means of exerting external influence over other countries (Baranovsky and Mateiko 2016).

Therefore, the intervention in Libya (2011) is fundamental to evaluating the acceptance of R2P's normative process through canons of dissonant voices. Like other states, Russia began to criticise the intervention after the NATO operation that culminated in Gaddafi's death. Mission outcomes were badly received, and generated dissatisfaction in the international community about use of the R2P to advance Western interests (Ralph and Gallagher 2015; Thakur 2013). Since then, Russia has used its veto power in the UNSC to block all other resolutions that has ventured into sovereign disruption. Syria is the most flagrant example of this, as it plays a key role in Russia's strategic interests in the Middle East. As a result, the Syrian conflict has been marked by institutional inaction by the UN and the injection of unofficial belligerent resources (Kaldor 2018). Next, we will examine how the responses towards the incursion in Libya have affected the incorporation of humanitarian norms in justifications for the use of force through narratives of legitimacy.

Unpacking norms: resistance and appropriation

The main reactions and difficulties related to humanitarianism can be traced to the debate about two core features of international norms: whether they are truly binding, and whether they are perceived as legitimate. To determine if and how norms are accepted, observers must look beyond simple power relations and unpack the conduct of actors who are rarely seen as the main sponsors of breakthrough norms, but can present major opposition to their incorporation. Given how the UNSC – the most important locus of our subject – is structured, we must pay attention to how nonhegemonic powers relate to the application of this set of norms. In this sense, Russia and Brazil serve as two major examples of divergent postures. We will examine the intervention in Libya as a critical point in the R2P's trajectory and its consequences in terms of humanitarian norms.

The military intervention in Libya in 2011 has been the subject of much debate as a benchmark in terms of acquiescence to the R2P. Even though this principle was mentioned in the UNSC's previous resolutions (Kolb 2018), it was only fully incorporated in the text of resolution 1973 to justify certain substantial and operational goals. Given the Gaddafi regime's brutal repression of civilian dissent, there was no substantial disagreement over whether this was a suitable case for triggering the R2P. Resolution 1973 was approved quickly, and used the phrase 'all necessary measures' in respect of civilian protection (Thielborger 2012). A few weeks later, a coalition led by NATO began military operations aimed at supporting efforts to remove Gaddafi from power, which culminated in his death. Military operations were successful (Dembinsk and Reinold 2011) and were authorised according to international legal criteria (Norooz 2015). However, when the incursion acquired regime-change features, certain contesting powers, notably BRICS members, accused the leading role players - namely the USA, France and the UK – of manipulating the original mandate to pursue their own interests in the region (Ralph and Gallagher 2015).

The Libyan intervention triggered a major backlash against the R2P itself, provoking the responses outlined in the previous section. The recklessness of the Western powers in

carrying out this mission triggered a defensive response on the part of Russia and China. Both countries have vetoed resolutions on the matter ever since, and their attitude has influenced the debates over the Syrian conflict (Bellamy 2016; Kaldor 2018).

This brief account illuminates the R2P's current status. The possibility of defending the R2P against unspoken Western interests has been a central topic in debates about its legitimacy. The Brazilian RwP proposal submitted to the UN General Assembly in 2011 showed that controversies over normative and operational matters had not been settled, as previously believed, but were alive and capable of interfering with the protection ideally intended in the R2P's origins.

The RwP proposal was short-lived, and did not result in much conceptual innovation (Kenkel and Martins 2016). It reinforced the notion that missions should be faithful to their mandates, and that the use of force should be a last resort. This lack of substantial innovation and the perception that it could impede timely and effective responses led to Western and other contesting powers withholding their support for this idea (Benner 2013). The RwP could have been a promising asset of Brazilian foreign policy, but was eventually abandoned.

Although the RwP was unable to improve the use of the R2P, it shed light on central obstacles to a more comprehensive acceptance of the protection principle. As Alex Bellamy (2016: 275) has noted, 'there are three particularly important elements of this concept [RwP]: decision-making criteria for the use of force; the provision of judicious analysis to guide decision-making; and the establishment of an accountability mechanism to oversee the UNSC's work.' These three points focus attention on the R2P's operationalisation; however, to address these matters as merely procedural is surely a mistake. Given that enforcement mechanisms can rely on different arguments, and highlight states' acceptance or rejection of a specific regime (Chinkin and Kaldor 2017; Koskenniemi 2018a), normative efficacy based on the idea of legitimacy is rather relevant on the international level. Therefore, an appreciation of this dimension should not be used to compartmentalise this analysis, especially in the case of the scope of humanitarian interventions and R2P, which has a strong teleological framework.

The view that the R2P should be situated in a broader context of principles and instruments seeks to counter an impression of an ethereal source of global governance formulation concerned with technical details and removed from power relations (Kennedy 2004; Koskenniemi 2018b). It also discredits the impression of an unassailable domination by the Global North, showing patterns of behaviour used by Southern actors to place themselves in the international system. Nonhegemonic agents are not mere objects of norm formulation, but play an active role in the creation, transformation, acceptance and/or rejection of norms, directly influencing their legitimacy and operationalisation.

By examining how these actors relate to this process, we focus on how supposed foundational ideas are transported to diverse places, and connect (or not) with various situations with particular backgrounds. As a way to resist or resignify ideals constructed within institutional structures and distributed by political discourses, contesting powers break with their own behaviour patterns to position themselves as active players in the

global arena. They assume the role of legitimising actors, not only for a specific branch of law and politics, but also for the constellation of norms and principles of the international community. This erratic ballet occurs because it is not only a matter of authority, but a combination of authority and the perception of which actors, and for what reasons, profit from the implementation of rules and their outcomes.

This dynamic highlights our central subject: the stance of outsiders on the core features of principles and norms, as well as their degree of substantive legitimacy. R2P's trajectory is a typical case. The principle was based on arguments in favour of human rights protection over the last few decades and combined contemporary cosmopolitanism and modern traditions such as Just War (Acharya 2013; Orford 2013) to build a normative framework that was disputed in the political arena of international forums. Moreover, its incorporation is only reasonable within specific contexts and interpretations of the notion of sovereignty (Ziegler 2016a).

Thus, this theme should not be analysed episodically by examining situations such as those in Libya and Syria as 'rules' or 'exceptions' to the normative framework as if this was consolidated (Bellamy 2011; Stuenkel 2014). Rather, it should pay attention to how an authorisation by or veto from a determined group of actors – namely Western and non-Western powers within the UNSC – affects acceptance, and creates a new political landscape in terms of security affairs. We do not believe that its impact on events in Libya and Syria should be seen as separate initiatives related to isolated aspects, but as part of a recurrent issue: the lack of legitimacy of humanitarian interventions based on both its constitutive (norms and principles) and operational (decision-making procedures) elements.

Given the UNSC's intrinsic political and legal hybridity, it is important to understand its capacity to effect normative transformations, whether axiological or instrumental, as the subject and object of the international rule of law (Farrall and Loiselle 2017), which has a direct impact on the substantive legitimacy of the political–juridical framework. For this reason, distortions in the decision-making process, the UNSC's composition, and the conduct of operations are connected to central issues of contemporary global governance – as the resignification of sovereignty addressed above – and determine the concrete failure of rhetorical constructions based on moral arguments once contesting voices arise. This is the case of R2P: such strains weaken the human rights promotion narrative from an international security perspective, as shown by a range of flagrant violations during humanitarian interventions since the end of the Cold War.

Even though agreement on the matter of addressing these issues is perceived as a global concern, it is hard to claim consensus on the R2P, especially in the aftermath of Libya's collapse. Although it is feasible to argue that protecting people against mass atrocities has become a motto for action taken by the international community (Serrano 2011), this has not been accompanied by acquiescence to infringements on national sovereignty (Amaral Júnior 2003). Even the 'constitutional' interpretation of the protective features of the San Francisco Charter (Kennedy 2004) has not outlasted traditional readings of international law, as demonstrated by Russia's posture towards the R2P. The perception that the

rhetoric of human rights promotion is misused to promote imperialist interests (Bhuta 2008) – especially in humanitarian intervention scenarios – voids its legitimacy.

Conclusion

In this article, we have used the canon of 'substantive legitimacy' to analyse the transformation of humanitarian interventions and the R2P framework under the UNSC umbrella since the 1990s. More than understanding this as a fluid movement based only on axiological matters, we have assessed how this important shift was disputed using narratives of protection and interference.

We have argued that the engagement of nonhegemonic actors with the scope of humanitarian protection has influenced the evolution of the substantive legitimacy of this key global governance issue over the past three decades by creating a normative process in which the fundamental features have been tested and disputed. Two main features of this political–juridical clash are most prominent in our canon: arguments about the relativisation of sovereignty, which are based on narratives of human rights promotion and civilian protection, and reactions to Western instrumentalisation of its lawful narrative. On the surface, these two movements may seem divided or at different stages, in that the first overcame controversy and became stabilised, and the second occurred during after a supposed distortion of the spirit of the R2P in 2011. By searching for lines of substantive legitimacy – combining the axiological framework with procedural matters – this false division can be discarded, as it is the correlation of these features that can portray the evolution of the incorporation of this set of principles.

Following this line of argument, the positions taken by Brazil and Russia are crucial for illuminating the quarrel over norms and their meaning, because they reveal a fundamental disagreement about the transformations we have discussed here. Having said that, the influence of nonhegemonic actors goes beyond the obstruction of advances in the assimilation of novel juridical-political frameworks; they have the power to challenge key mindsets in the current collective security regime. Thus, the UNSC's paralysis since the episode in Libya indicates not only resistance towards principles of international law, but also the demand for a structural reformulation of the decision-making process to assert its authority in the terms we have used here. This study is a first effort to design the state of the art on this theme, which demands the time and space to ascertain the effectiveness of these normative spectrums proposed by non-Western powers.

Notes

1   The UN developed out of the League of Nations, the first attempt to universalise international law in the 20th century. It sought to endow international relations with the idea of a global rule of law that influenced juridical and institutional institutions in the post-1945 era (Carvalho and Benhossi 2016).

2   Contrary to expectations, *'soft' law* does not lack effectiveness rather expresses values of importance to the international community, thereby comprising a more flexible form of regulation (Nasser 2005). Therefore, it is indispensable for the consolidation of crucial conceptual frameworks embodied in international regulations.

3   The best known formulation of 'human security' appears in die UNDP's *Human Security Report* of 1994. Another important reference is the remarks by Secretary-General Boutros-Boutros Ghali in *An Agenda for Peace* in 1992.

4   For a comprehensive analysis of the R2P principle, see Norooz (2015) and Orford (2011).

5   The 2001 Report briefly mentions validation through the UN General Assembly as an alternative to UNSC inertia. However, the conditions for approval are not feasible or legally binding, and still acknowledge the Council's duty and primary responsibility for addressing these issues.

6   Some analyses regard this not as contestation, but as a contribution to the process of norm formulation (Kotyashko et at 2018; Stuenkel 2016).

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Proteção ou Ingerência? A Legitimidade das Intervenções Humanitárias Contemporâneas e o Engajamento de Poderes Não Hegemônicos

Resumo: Neste artigo, usamos a noção de legitimidade para analisar a transformação de intervenções humanitárias e a Responsabilidade de Proteger (na sigla em inglês, R2P) sob o guarda-chuva do CSNU desde os anos 90. Avaliamos como essa importante mudança foi contestada usando narrativas de proteção e ingerência, e argumentamos que o envolvimento de atores não-hegemônicos (especificamente Brasil e Rússia) no escopo da proteção humanitária afetou como a legitimidade substantiva do tópico de governança global evoluiu ao longo das três últimas décadas criando um processo de depuração normativa no qual os princípios fundamentais do tópico foram testados e contestados.

Palavras-chave: intervenções humanitárias; Responsabilidade de Proteger (R2P); legitimidade; Brasil; Rússia.