

Brazilian transnational normative entrepreneurship on RWP and the unrealized potential of the concept on the concerning the venezuelan migrant crisis

O empreendedorismo normativo transnacional do Brasil quanto ao RWP e o potencial não realizado do conceito quanto à crise migratória venezuelana

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Abstract

The present study aims to analyze the gap between the position of the International Relations of the Federative Republic of Brazil towards the conceptual enlargement of the institute of the Responsibility to Protect (R2P) to Responsibility while Protecting (RwP), practiced while addressing the case of Muammar Gaddafi's Libya, towards the current situation of Venezuelan refugees on Brazilian borders and the judicial decision on closing borders, appreciated at appeal level by the regional section of Federal Justice in Brazil. Brazilian Foreign Relations, in an exercise of normative entrepreneurship, presented Responsibility while Protecting as an alternative to R2P, in the sense that, as humanitarian intervention shall be taken as ultima ratio, measures to reestablish peace and development in affected States must be a priority of action on an international level,

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deviating from the use of force. However, in a moment when a neighboring country goes through a political crisis that attracts the attention of great powers to the possibility of intervening, Brazil fluctuates between positioning itself favorably to the welcoming of refugees and, at the same time, judicially closing borders. Thus, it might be that RwP can be considered as a mere exercise of political theory an international level. The position the Brazilian State adopts when the responsibility while protecting – an institute of Brazilian initiative – crosses our borders is somewhat different from its discourse towards it. In order to proceed with the preparation of the present study, the deductive analytical method of research was adopted, using bibliographical research as technique.

Keywords: Responsibility to protect, Responsibility while protecting, Migration, Refugees.

Resumo

O presente estudo possui como objetivo analisar a lacuna entre o posicionamento das Relações Internacionais da República Federativa do Brasil quanto à propositura de ampliação conceitual ao instituto da Responsabilidade de Proteger (R2P) para Responsabilidade ao Proteger (RwP), utilizado no endereçamento do caso da Líbia de Muammar Gaddafi, frente à atual situação dos refugiados venezuelanos na fronteira com o Brasil e a decisão jurisprudencial de fechamento de fronteiras, apreciada em grau de recurso pelo TRF-1. O Estado Brasileiro, em um exercício de empreendedorismo normativo, apresentou a Responsabilidade ao Proteger como uma alternativa ao R2P, no sentido de que, como a intervenção humanitária deve ser tomada como *ultima ratio*, medidas para reestabelecer a paz e o desenvolvimento nos Estados afetados devem ser a prioridade das ações a nível internacional, afastando o uso da força. No entanto, em um momento no qual um país vizinho passa por uma crise política que atrai a atenção de grandes potências para a possibilidade de intervir militarmente, o Brasil oscila entre posicionar-se favoravelmente ao acolhimento e, ao mesmo tempo, jurisprudencialmente fechar fronteiras, condenando a população fronteiriça ao limbo migratório. Logo, a RwP pode ser considerada como um exercício de retórica política a nível internacional, apenas? Como o Estado brasileiro se posiciona quando a responsabilidade ao proteger – instituto de iniciativa brasileira – cruza a nossa fronteira? De forma a proceder com a elaboração do presente estudo, adotamos o método analítico dedutivo de pesquisa, utilizando a pesquisa bibliográfica como técnica.

Palavras-chave: Responsabilidade de proteger, Responsabilidade ao proteger, Migração, Refugiados.

Introduction

In a moment of rare international political innovation, Brazil presents an admittedly

critical stance towards the Principle of Responsibility to Protect - R2P in the second decade of the 21st Century, in a context in which international actors with enough capacity of starting conflicts are multiplying and contemplating the dispatch of humanitarian interventions becomes more frequent.

However, in three different moments, the theoretical approach of Brazil's Foreign Relations policy has shown a commitment to alleviating negative consequences for humanitarian interventions worldwide. Brazilian normative protagonism presented a breakdown of paradigms on an international level – a Third World country proposing a conceptual change in one of the most important legal institutes of International Law - a position that tends to be seen as *chasse gardée* of the great powers (BENNER, 2013).

From this perspective, in 2011, Brazil opened the UN General Assembly with a speech by President Dilma Rousseff (PUC-SP, 2011) about the necessity of further ripening of the conceptual form of the Responsibility **to** Protect, so that it could evolve into becoming Responsibility **while** Protecting, which would later be elucidated by the Brazilian Ambassador to the UN, Maria Luiza Ribeiro Viotti (UNSC, 2011), presenting a Conceptual Note to the United Nations Security Council on the rationale for the extension of the concept – a matter never fully addressed by the council -, on which then Minister of Foreign Relations, Antonio Patriota (MRE, 2012), would express later on, towards the reinforcement of the importance of the R2P institute, regarding the need to internationally equalize the use of force in situations of humanitarian crisis and, for the same purpose, "to create mechanisms that can provide an objective and detailed assessment of such hazards, as well as ways and means of avoiding damage to civilians".

Back then, a humanitarian intervention was under way with the acquiescence of the Security Council: the crisis in Libya ran out of control of the intervention troops and it culminated in a trail of destruction that would justify two arguments from the Brazilian Diplomatic Mission towards the assessment of humanitarian interventions: the use of the Principle of the *Primum non nocere* (MRE, 2012) - a Latin expression meaning "first, do no harm", so that no harm was done, and secondly, in an even more tragic hypothesis, concerning that the intervention mission did not cause *more harm* to the civilian population than the previous situation, which ultimately gave cause to the intervention.

The same Nations, united, which established the concept of R2P, years before, at the 2005 World Summit (UNRIC, 2005), would call into question the effectiveness of the institute of the R2P, following a disastrous intervention in Somalia, in 1992-93, the lack of action in Rwanda, in 1994, and the controversial mission in Kosovo (O'SHEA, 2012), in 1998-99, proposing a doctrinal revision as to which countries would have the right to propose intervention with the objective of avoiding the 4 crimes listed in the Rome Statute - genocide, crimes against humanity, crimes of war and crimes of aggression (ICC, 1998) – based on the fact that only major international powers could finance extra-marine interventions and, for their own private reasons, could have interests other than the protection of civilians (CARNEVALI, 2015).

However, seven years later, Brazil is experiencing a humanitarian crisis on its neighboring frontiers, welcoming refugees from one of the states that supported the Brazilian

position on the RwP, fearing future intervention in its territory, yet, however, without being able to calculate the proportion of the situation which would follow almost a decade later: Venezuela.

Since Nicolás Maduro assumed the presidency, after the death of Hugo Chávez, a serious economic crisis has plagued the country, generating popular revolts, strongly restrained by the local government, which culminated in a flow of about 57 thousand Venezuelans to Brazil (ACNUR, 2018) - a relatively small number, compared to the 470,000 who migrated to Colombia in 2017, alone (Ministerio de Relaciones Exteriores de Colombia, 2017).

Nonetheless, in a first court decision, Federal Justice conceded interlocutory relief at the request of the State of Roraima to close borders with the help of the state's police, due to a decree on the same topic, under the number 26.681-E (JUSTIÇA FEDERAL, 2018), performing an usurpation of constitutional jurisdiction of the Federation to legislate about the entrance of migrants, besides, evidently, while dealing with the issue of humanitarian welcoming and refugees, posing a violation to the Convention Relating to the Statute of Refugees and other conventional obligations to which Brazil has submitted on the same topic. Such decision would later be suspended in appeal level, by the Regional Court of Federal Justice of the First Region (TRF-1, 2018), reaffirming the commitment the Brazilian government has with its humanitarian obligations.

Concomitantly, a Common Civil Suit (ACO), also proposed by the State of Roraima (STF, 2018), claimed provisional interlocutory relief on closing borders with Venezuela, which was later ruled by Brazilian Supreme Court, in 2021, as partially proceeding, as to grant Roraima financial and operational support from the Brazilian Federation, in what might possibly be a reflex of responsibility while protecting, as it will later be discussed.

Still, this ruling, while consistent with the overarching ethos of the 'Responsibility while Protecting' (RwP) framework — a doctrine deeply entrenched in Brazilian policy formulation — appeared to diverge from the fundamental principle of preventive action that stands central to RwP (not to be confused with R2P). It is essential to note that the RwP concept underscores the necessity of pre-emptive measures to avoid escalation and potentially graver consequences, fostering a protection strategy that prioritizes foresight and proactive engagement.

In this sense, such attitudes reflect a disparity between the positioning of Brazilian Foreign Relations, when it comes to the Responsibility to Protect, both nationally and internationally. The rhetoric Brazil poses towards the commitment with the protection of civilian populations, and claiming international community to go through all other hypothesis of protection before considering an intervention, exposes an elegant, sophisticated message of normative protagonism that, however, does not reflect the reality of Brazilian authorities. Consequently, Responsibility while Protecting can be considered solely as an exercise of refined political theory. How does Brazilian State positions when Responsibility while Protecting – and institute of Brazilian entrepreneurship – crosses borders?

In order to proceed with the developing of the present study, due to the need to establish a descending chain of reasoning, starting from general premises, we adopted the analytic deductive method of research, using bibliographical research as technique.

Broadening the concept of Responsibility to Protect (R2P) to Responsibility while Protecting (RwP)

Human Rights, as a legal branch without hierarchy among subjects, due to principles such as The Sovereign Equality of States and Self-determination of Peoples, gives extreme importance to the exhaustion of all possible resources before actually considering the use of force, as it is established in the Charter of the United Nations (1945), in cases for which the Security Council gives its acquiescence, since war is forbidden, unless in the cases expressly defined by the Charter.

Only this organ, as the guardian of the UN institutional mandate to protect "future generations from the scourge of war," has the authority to accredit the use of the available contingent of military forces in the countries for security and peace operations - in a normative dynamic following the historical context of World War II, a major interstate conflict.

However, due to the increase in the speed of wars and the lowering of the cost of production of war materials, the conflicts of international relevance during the last decades were mostly intra-state, breaking with the legal system of conflict prevention. Parastatal elements that cause conflict, such as terrorist groups, do not conform to the principles of *jus in bello*. Interventions would need more consistent justification.

This was due to the fact that the dynamics of International Relations from the 1990s on has been profoundly shaped by multiple humanitarian interventions, which represent a shift in power relations between nations after the end of the Cold War, a *New Interventionism* (ORFORD, 2003), meaning States would be willing to rely on the use of force in the name of so-called humanitarian values.

This new spirit of internationalism would prove to be not so unusual, confronting such conditions with long studied Richelieu's *raison d'état* (KISSINGER, 1994) - meaning that the interests of a State might justify whichever means chosen to pursue them. This reconsidered world order - thought arguably controversial from the moral aspects - would be supported by mainstream internationalists (ORFORD, 2003), shaping the narrative of International Law towards the use of force.

Also, the mandate of the United Nations Security Council - *to promote peace and security and to solve international problems* - would be expanded to its fullest. During the Cold War and the decades that precede major humanitarian interventions, such as the one that happened in Kosovo, the coercive power of the UNSC was underutilized, due to the frequent use of veto power, as to paralyze its functions, for the United States and the former Soviet Union would "ensure that no actions that threatened their spheres of interest would be taken" (ORFORD, 2003). As a natural reflection of the new surge in politics in the 90s, the automatic use of veto power came to an end.

At the same time, considering the struggles of power between capitalism and socialism were replaced by unavoidable collateral politics in the coming decade after the fall of the

Berlin Wall, questions would arise on the new dynamics on the use of force to prevent conflicts in the most variable scenarios - *was the mandate of the UNSC extensive enough as to permit war to prevent war itself?* And is the sacrifice of human lives, for the sake of the Rule of Law, defensible, when its implementation represents breaches of the UN Charter (of article 2, to be precise)? (KOSKENNIEMI, 2002).

Humanitarian interventions, by definition, were designed to alleviate or to prevent massive and systematic violations of human rights that are inconsistent with the United Nations institutional mandate to prevent wars, meaning that States *shall refrain from the threat or use of force against the territorial integrity or political independence of any state*, as stated by article 2(4) of the UN Charter. This prohibition encompasses exceptions, though: in the exercise of self-defense or otherwise explicitly authorized by the Security Council.

Then happened Rwanda, Srebrenica and Somalia, major failures of the international community in implementing the UNPROFORs (United Nations Protection Forces). When the intervention in Kosovo occurred, it would lead to an apologetic Kofi Annan to release a statement to *The Economist*, with a call for a change on the concept of State sovereignty – the idea most largely affected by the humanitarian interventions. Maybe – *maybe* – perished innocent lives were not supposed to be an intercurrent of humanitarian interventions (ANNAN, 1999). States should bear in mind when intervening the need to keep *Responsibility to Protect*.

Following the failure of international interventions in scenarios such as the Somali war, the Rwandan genocide and the war in the Balkans, UN member states commit themselves to the 2005 World Summit to "protect populations against genocide, war crimes, ethnic cleansing and crimes against humanity", in the sense that

Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability (Security Council Report, 2005).

In other words, the Responsibility to Protect (R2P) institute includes the use of humanitarian means by the nations who have launched the Summit to assist in protecting communities exposed to the crimes set forth above, as well as to repress acts of aggression, according to the Final Document of the World Summit, presented at the 60th Meeting of the United Nations General Assembly, also the 60th Anniversary of the founding of the UN.

However, incidents subsequent to the establishment of R2P, such as the humanitarian intervention in Libya (O'SHEA, 2012), the first in which the Security Council Resolution explicitly used the Responsibility to Protect to validate the use of military forces for peacekeeping means, which would call into question the real interests of major powers on the deployment of troops to other States.

The campaign culminated in the death of dictator Muammar al-Gaddafi, adding Libya to

the list of States that were part of the emancipation phenomenon called the "Arab Spring" and transcended the limits of peacekeeping. The initial aim was to protect civilians, not to promote a regime change - something quite favorable to some Western countries.

Thus, criticisms began to be directed at the intentions of intervening and, "contingentially", to bring down a government, with all possible violations of popular and State sovereignty. In this sense, in an exercise of normative entrepreneurship, the Brazilian State, in three hypotheses, would propose a conceptual extension to R2P that would guarantee that the same failures would no longer occur. In that sense, considering that intervention might be deployed to prevent "uncivilized" behavior by States, as David Luban would state, in practice, the argument on the need of intervention "proves to be far more precarious, both practically and philosophically, than friends of humanitarian intervention would like to believe" (LUBAN, 2002).

At the opening of the General Assembly of the United Nations in September 2011 - the first time in which the first speech, traditionally held by Brazil, was made by a female Head of State since the creation of the Organization - Dilma Rousseff, in declaring Brazil's position on the need for a reform in the Security Council components, also established Brazil's position on Responsibility to Protect: "Much is said about the responsibility to protect; yet we hear little about responsibility in protecting. These are concepts that we must develop together" (ISU, 2011).

In this sense, Dilma address has significantly endorsed the commitment to leverage every available diplomatic resource towards the prevention of humanitarian interventions, underscoring the primacy of proactive measures as the most effective strategy to shield populations from harm. Furthermore, the speech delineated a firm stance on the imperative of safeguarding civilians, establishing a doctrine of non-harm as a cardinal principle in instances where humanitarian interventions become an unavoidable necessity.

In November of the same year, Brazil would circulate a Conceptual Note in the Security Council (UNSC, 2011), through the Brazilian Ambassador to the UN, Maria Luiza Ribeiro Viotti, on the relevance of the responsibility to protect by the international community, with the idea of conflict prevention at international level and the exhaustion of peaceful means before the use of force was even considered, because of the risks to the political stability of the States that could be created, because, as provided in paragraph 10 of the Note,

There is a growing perception that the concept of the responsibility to protect might be misused for purposes other than protecting civilians, such as regime change. This perception may make it even more difficult to attain the protection objectives pursued by the international community.

It was the first time the concept was brought up so extensively, outlining Brazil's Ministry of Foreign Relations ambitions to make Brazil a diplomatic force, at a time when Brazil actively participated in debates on the need for reform in the Security Council composition, hoping for a permanent seat in the organ, which only admits 5 permanent members - Russia, the United States, China, France and the United Kingdom - an institutional architecture that is constantly questioned by South-global countries, due to the lack of

representativeness and the reaffirmation of 5 hegemonic powers worldwide.

Presuming that, under its own interests, States might not always be moved by reason and justice, the idea of “necessity” renders to be debatable – who is supposed to define when and where intervention are “arbitrary and persistently abusive”? (FRANK, 2010) The universability of “international ethics” is

is conditioned by political evaluations, religious beliefs, and symbolic universes that are very different from one another. Moreover, these are normative choices that may be manipulated on the basis of disparate and divergent meta-ethical doctrines, beginning with the Weberian opposition between ethics of intention and ethics of responsibility (ZOLO, 2010).

The pinnacle of the concept would be brought up in a statement by then Foreign Relations Minister Antônio Patriota in February 2012, mentioning the concept established for the Responsibility to Protect at the 2005 World Summit, “through the use of diplomatic, humanitarian and other peaceful means, and that only in cases where peaceful means prove inadequate should coercive measures be considered” (MRE, 2012).

In this sense, Patriota affirms that there was a “collective responsibility” that was not to be confused with the idea of “collective security” inherent in the institutional function of the Security Council: the Responsibility while Protecting. The use of force exists independently of the responsibility of States to ensure the protection of civilians. Whether or not humanitarian intervention will take place, it is up to the Security Council. The need to protect persists, still. Finally, the Minister expressed himself in the sense that “prevention is always the best policy”, a traditional preference of Brazilian diplomacy for the diplomatic solution of controversies.

However, the sophisticated theory about Responsibility while Protecting, a bold exercise of Brazilian normative entrepreneurship - a position that is often seen as *chasse gardée* of the great powers (THORSTEN, 2013) - took place in a context in which Brazil finds itself at a distance of 8,719km to the borders of Libya. The institutional position of the Ministry of Foreign Affairs becomes less emphatic when the distance is of just a few meters, between Nicolás Maduro’s Venezuela and the municipality of Pacaraima, in the state of Roraima.

When Responsibility while Protecting Crosses Borders

Between 2017 and 2018, the migratory flow between Venezuela and Brazil intensified, in substantial numbers, mostly composed of refugees, in flight from the regime of Nicolás Maduro. It is estimated that Maduro’s government, according to data from panelists of the Organization of American States (OAS), has left 131 people killed in protests between 2014 and 2017, carried out 8292 extrajudicial executions since 2015, detained more than 12,000 people in an arbitrary manner and accumulated more than 1,300 political prisoners during the period (OAS, 2018). In the same report, the organization accuses Maduro of committing crimes against humanity since February 2014.

With regard to the seriousness of the accusations made by the OAS, it is sufficient to recall that, as established at the 2005 World Summit, among the hypotheses of humanitarian

intervention based on the R2P principle, there is a possibility of action when crimes against humanity are committed, like Kosovo, 1998-99, Rwanda, 1994, and Somalia, 1992-93, with or without being complimentary to the other three crimes found in the text of the Rome Statute (ICC, 1998).

However, it is true that Brazil opposed the idea of humanitarian intervention without due care when it made the RWP proposal, as it believed that interests other than the well-being of the civilians would be at stake, since only the great powers would be able to travel with substantial military contingents to the affected regions.

It is important to say that this position has been once supported by Venezuela, which had already advocated against the indiscriminate use of R2P since 2009, in an event on the 10 years of the Millennium Summit, through its Ambassador to the United Nations, Jorge Valero Briceño (UNGA, 2009), in which he stated

Which organ of the United Nations will determine when it is necessary to intervene? What are the parameters to be taken into account when classifying a situation as sufficiently urgent to require military intervention? **Who will ensure that such intervention is not undertaken for political reasons? Will all 192 States Members of this Organization enjoy the same right to participate and to determine whether situations are emergencies? (bold accent intentionally added)**

Nonetheless, Brazil, in spite of the interesting positioning when creating a conceptual extension widely accepted by the international community as being vital to the existence of R2P's, due to the need to limit the action of States when acting in the name of the Responsibility to Protect, has had trouble bringing this theoretical approach to reality. When the problem approaches Brazilian borders, this entrepreneurship sounds like an exquisite and graceful message, used only to validate the strength of Foreign Affairs of the 9th largest economy in the world, but without counterbalance.

This is related, until some extent, to a strengthening of internal institutions - the State is no longer central to its own affairs (MARCH, 2008). The representation of the Brazilian State, as the Federative Republic of Brazil, a legal person governed by public external law, is responsible for decisions on the unfolding of sovereignty, which means that what is a matter of State jurisdiction cannot be interfered with by other institutions or entities of the Federation, since, even constitutionally, such action would be configured as a usurpation of jurisdiction.

Notwithstanding, in the Brazilian context, this institutional behavior persists and, specifically, in the situation proposed in the present study, reflects the influence of the choices of individuals and institutions hierarchically inferior to the State in decisions on matters of exclusive jurisdiction of the sovereign entity, a fairly common kind of dispute over the symbolic power to dictate the course of international relations, despite conventional obligations adopted by Brazil.

In August 2018, the Federal Public Prosecutor's Office (MPF) and the Public Defender's Office filed a Public Civil Suit in order to prevent Decree 26.681-E, dated August 1, 2018, to produce effects (JUSTIÇA FEDERAL, 2018), which would close the state's borders of Roraima

to the entry of Venezuelans. Still, the decree subsisted, contrary to the recommendation of the MPF to revoke said decree.

The Public Civil Suit highlighted conventional obligations assumed by Brazil regarding humanitarian protection, which could not be undone by a state, like Roraima, due to lack of constitutional jurisdiction to do so, and also due to the fact that the Federation holds jurisdiction for policing borders and the internal act on Refugee Law (BRASIL, 1997) does not allow such violations by federative members - disobedience that, according to the text of the 1988 Brazilian Constitution, could lead to federal military intervention.

Howbeit, despite the allegations made in the MPF and Public Defender's Office suit, the judicial decision in first court upheld the text of the decree, closing Brazil's borders to the entry of Venezuelan refugees. Institutions possess the potential, in assuming this symbolic power for themselves³, to say who has got the permission to remain in Brazilian territory and who does not - an attachment for the maintenance of *status quo*, which is shaken with the entry of such big amount of foreigners in the country (WIMMER, 2002).

Such symbolic power, exercised in complicity with the part of the population that does not know to be a part of it (or prefers not to realize that it plays a big role in this power dynamics), also concerns the political position of Brazilian nationals, easily disheartened by the treatment distributed to refugees in Europe, but unaccepting of them here, coming from a neighboring country. And such positioning influences the jurisdictional decisions, being a reflection of the idea of belonging, territorially bound, rooted in Brazilian's thinking. A good refugee is a faraway refugee.

At appeal level, the MPF and the Public Defender's Office recommendation prevailed in order to reiterate Brazil's position regarding its international obligations, in a decision rendered by the Regional Court of Federal Justice of the First Region (TRF-1, 2018), due to the character of international subjects conferred to individuals, taking the protection of human dignity as universal.

In the judgment, Judge Kassio Marques cites excerpts from the vote of Minister Rosa Weber of the Federal Supreme Court over the dismissal of Common Civil Suit (ACO) No. 3121, filed by the state of Roraima, on the grounds of the allegation by the local government that there is an undeniable burden of responsibility on the federative member, which lacks the necessary resources to deal with the crisis, asking the Supreme Court to authorize the closure of borders, to which Weber (STF, 2018) stated

The closure of international borders not only bears a typically Federal nature, but it is also a true exercise of sovereignty of the Brazilian State itself, consubstantiating, as such, an act reserved to the head of State. (...) It is not justified, on grounds of the difficulties that refugee accommodation naturally brings, closing doors, as the easiest solution, as it would also be equivalent, in the hypothesis, to close our eyes and cross our arms (to the situation).

³By symbolic power we take the "invisible power, which can only be exercised with the complicity of those who do not want to know that they are subject to it or even who exercise it", In: BOURDIEU, Pierre, *O poder simbólico*. Rio de Janeiro: Bertrand Brasil S.A, 1989, pp.7.

Only in 2021 ACO No. 3121 would meet its conclusion. Thus, there was at the time the proceeding were initiated, in 2018, an evidence of a mismatch regarding Brazil's actions concerning responsibility while protecting and its discourse. Accordingly, the Supreme Court would affirm (STF, 2021) that the shared responsibility among the Brazilian Federation and its Federal units should be the better solution in the case presented (including an important decision on the continuity of the humanitarian operations in Roraima, in 2020), in which it was agreed that Roraima did not bear the operational structure to deal with an impressive number of migrants and that the Brazilian Federation should also take responsibility and help Roraima with the influx of displaced persons (STF, 2020).

The 2020 and 2021 rulings underscored the imperative of shared responsibility, urging the Brazilian Federation to not only actively engage in alleviating the immediate pressures and logistical challenges Roraima faced but also to work towards formulating a comprehensive and humane approach to the migrant crisis and financially support the small Northern state.

Welcoming refugees from a country that has established a regime that has been promoting widespread human rights violations, as it is the case of Venezuela, according to the OAS report on the perpetration of crimes against humanity in the country, is an extremely effective mechanism to protect civilians, regardless of political position, so as to avoid the need for humanitarian intervention, based on the responsibility to protect, to protect these civilians, precisely.

In addition, Venezuela, due to the character of its political regime, even before Maduro assumed power, did not have good relations with some of the major hegemonic powers that could have their own private interests on an intervention, a concern pointed out by late President Hugo Chávez in many situations, affirming that violence and terrorism should be tackled globally, but that this should not in any way lead to unjustified military aggression incompatible with International Law (UNGA, 2005).

And while Brazil has orchestrated a commendable response to manage the repercussions of the migrant crisis, a critical evaluation reveals a considerable gap in its preventative approach. The prevailing stance has been somewhat passive, with the Brazilian State seemingly caught on its back foot, responding to the crisis rather than preemptively addressing the underlying causes that could potentially have forestalled the escalation of the issue.

What preceded the migrant influx itself was the passivity on the part of the Brazilian State, allowing the international community to question the real position of the Ministry of Foreign Relations regarding the responsibility while protecting - an institute of indisputable normative brilliance by Brazilian foreign relations, but which, however, is ineffective when the problem occurs at such a close border, as is the case of the frontiers between Venezuela and the municipality of Pacaraima, in Roraima.

In fact, a state of the Federation does not have all the resources needed to deal with a crisis of this magnitude - which shows that the Federation's action has somehow rendered ineffective. This does not mean that refugees should not be welcomed, since there are a number of conventional obligations to which Brazil is subordinated in this regard.

And if the Supreme Court did not have ruled in favor of helping Roraima, especially in the municipality of Pacaraima, a major local issue would have transcended local concerns, posing a severe humanitarian challenge in the Northern region. The ruling, therefore, not only upheld the principles of humanitarianism and international obligations but also safeguarded Brazil's image globally, accentuating the pressing need for a holistic, preemptive, and integrative approach to avoid such crises in the future.

When the crisis takes on proportions such as this one, without the Federation acting effectively and strengthening itself institutionally in the face of the symbolic power struggle between the powers, there is room for situations in which a preliminary ruling as first court decision, although without success, seeks to close national borders, confronting obligations that Brazil has with the protection of human rights at the international level and breaking with the premise that the entities of the Federation cannot refrain from complying with federal laws, as it is the case with two Brazilian norms: the Refugee Statute and the newly edited Migration Statute.

In addition, by allowing a judicial secondary organ to assert at first court judgment the usurpation of non-existent constitutional jurisdiction to legislate on an exclusive matter of State sovereignty, the international protagonism about the importance of protecting civilians in an imminent conflict becomes fragile - whatever the nature of such conflict is - and it also demonstrates that, in practice, the positioning of Foreign Relations is that this responsibility while protecting is relative, when there are other infrastructure problems in the host country and that perhaps there may be a postponement in the search for peaceful solutions, until the situation reaches a point where it is no longer possible to speak of nonintervention.

Final considerations

The need for conceptual changing when it comes to the hypothesis of Brazil's action guided by the principle of Responsibility to Protect could put Brazil in a prominent position, due to it being a developing country exercising normative entrepreneurship internationally to guarantee that military interventions do not become mandatory, unless all the resources to avoid conflict have been exhausted, creating the concept of responsibility while protecting - an important synthesis, after all the unsuccessful intervention initiatives that occurred in the previous decades.

Be that as it may, the gap between the position of the country's foreign policy and its actions on the same issues at the domestic level appears overwhelming when there is an opportunity to use the responsibility while protecting to the welfare of civilian population in flight of regimes that are restrictive in rights, as it happens now with more than 60,000 Venezuelans crossing Brazilian borders (UNITED NATIONS, 2020), until 2018, through the state of Roraima.

There is no question that the ability of a state to welcome refugees in such large numbers is immensely shorter than that of Brazil itself, but the attempts by organs that do not hold the jurisdiction to assign states exclusive powers of the sovereign body reflect not only a cultural

setting which favors a break with international obligations concerning the protection of human rights, but allows us to reflect on the extent of the dispute for symbolic power among the institutions internally.

Moreover, the passivity of the Federation in these situations denotes a discrepancy of position between what is held by the Ministry of Foreign Relations globally, in which it exercises its sophisticated rhetoric of protection of civilians and exhaustion of hypotheses of non-intervention, but does not thrive internally: if the federative entities consider to usurp the jurisdiction of the Federation to legislate on certain subjects, perhaps it is because of the absence of efficient action by the Federation itself.

In the intricate scenario emerging from the Venezuelan humanitarian crisis, it has become apparent that the Brazilian state has adopted a largely distanced stance, focusing more on addressing the consequences of the crisis rather than establishing preventative measures to curb its escalation through diplomatic actions, a strategy that would be more aligned with its proclaimed 'Responsibility while Protecting' (RwP) concept. The RwP, which has prevention at its core, was only partially reflected in the Supreme Court's ruling on ACO 3121.

Though the court did take a step in upholding Brazil's international and humanitarian obligations by rejecting the proposed border closure and advocating for the sharing of responsibilities in accommodating refugees, this essentially came as a consequence of the inability of the federation to pre-emptively manage the emerging crisis, leading to a judicial intervention to assure Roraima received the necessary support.

In this context, the case brings to the foreground a critical reflection on the effectiveness of Brazil's application of the RwP doctrine in its domestic policies. While the judiciary has played a role in mitigating the crisis by imposing measures to manage the ramifications better, it underlines a deeper issue - the burden placed on the judiciary to step in where federal foresight and preventative actions were lacking, when the country's international discourse remains different.

If the concept behind the responsibility while protecting is precisely to give the affected population the possibility of reestablishing *before* it is even considered a humanitarian intervention, and also, if the intention of the Brazilian State is to engage normatively in this sense - or to what Ambassador Viotti has defined in the Conceptual Note to the Security Council as a necessity to avoid the use of force, except when it is the last possible resource for peacekeeping, in which case the *droit d'ingérence* must be implemented - it may be important to start demonstrating the effectiveness of the institute when the responsibility while protecting crosses the border.

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