



SHORT PAPER

Rights and obligations in international humanitarian assistance

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Abstract

Purpose – The purpose of this paper is to propose a framework for understanding the rights and obligations of different parties in relation to international humanitarian assistance.

Design/methodology/approach – Past discourse on rights and obligations of the parties in various types of humanitarian emergencies is critically reviewed. Various moral and legal principles are used to assess that discourse.

Findings – Many governments emphasize their right to provide international humanitarian assistance, but appear reluctant to acknowledge any obligation to provide such assistance. Claims regarding the right to provide assistance under some conditions should be accompanied by acknowledgment of obligations to provide assistance under some conditions.

Originality/value – This analysis encourages national governments and international agencies to go beyond asserting their rights to assist to also recognize obligations to assist under some conditions.

Keywords Disaster, Humanitarian assistance, Rights, Humanitarian intervention, Obligations

Paper type Conceptual paper

Rights and obligations of different parties in relation to international humanitarian assistance need to be clarified. There are many different issues, in relation to disaster and non-disaster situations, conflict, and non-conflict situations, and many other contingencies. There is confusion regarding the rights of those who provide assistance and the rights of the needy to receive assistance.

The following section describes the current framework regarding international humanitarian assistance, and then the troubled status of the concept of humanitarian intervention is reviewed. That is followed by a brief account of the right to assist and the right to assistance. Then a framework is suggested in which rights and obligations of providers and receivers can be related to one another. The conclusion calls for more systematic formulation of rights and obligations regarding international humanitarian assistance, to be worked out through agreements among all countries, strong and weak.

Framework

International humanitarian assistance may be needed in many different kinds of circumstances. The United Nations International Strategy for Disaster Reduction (ISDR) is the focal point in the UN System to “promote links and synergies between, and the



coordination of, disaster reduction activities in the socio-economic, humanitarian and development fields, as well as to support policy integration.” ISDR’s definition of disaster is:

A serious disruption of the functioning of a community or a society causing widespread human, material, economic or environmental losses which exceed the ability of the affected community or society to cope using its own resources (United Nations. International Strategy for Disaster Reduction, 2006).

There is no distinction here between so-called natural and human-made disasters. Assistance is called for when there is a serious disruption of the community’s functioning, regardless of the underlying cause of that disruption.

International human rights law does not explicitly address the right to protection and relief from disasters, but this is clearly implied. Article 3 of the Universal Declaration of Human Rights says, “Everyone has the right to life, liberty, and security of person.” Article 25 says, “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, or old age or other lack of livelihood in circumstances beyond his control.” These rights are further elaborated in subsequent human rights agreements, particularly the International Covenant on Economic, Social and Cultural Rights.

At an international colloquium on rights to humanitarian assistance held at UNESCO in Paris, one participant proposed seven rules that summarize international law relating to rights and duties to humanitarian assistance:

- (1) States have a duty to provide humanitarian assistance to victims in their territory or under their control.
- (2) States, intergovernmental organizations (IGO’s such as UN agencies) and non-governmental organizations (NGO’s) have a right to offer humanitarian assistance to other States.
- (3) States, IGO’s and NGO’s have a right to provide humanitarian assistance to victims in other States with the consent of these States – in case of disintegration of governmental authority and of civil war – with the consent of the relevant local authorities.
- (4) States have no duty to provide humanitarian assistance to victims in other States but they have a duty to facilitate humanitarian assistance lent by other States, IGO’s or NGO’s. If measures of coercion are taken against a particular State, supplies for essential humanitarian needs have to be exempted from them.
- (5) The Security Council, by virtue of Chapter VII of the Charter, may determine that the magnitude of a human tragedy constitutes a threat to international peace and security and authorize States or UN forces to take all measures necessary to bring humanitarian assistance to the victims.
- (6) States have a duty to admit humanitarian assistance furnished by other States, IGO’s or NGO’s in accordance with international law. They may not arbitrarily refuse their consent.
- (7) Individuals have a right against the State under who control they are to receive humanitarian assistance insofar as this State has a duty to provide humanitarian assistance or to permit its distribution according to rules 3, 4, and 6 (Schindler, 1993).

Thus, states have a right but not a duty to provide international humanitarian assistance. The central argument of this essay is that states should have a duty to provide international humanitarian assistance under some circumstances.

Humanitarian intervention

The idea of inviolable national sovereignty, based on the Peace of Westphalia of 1648, served the international system well from the seventeenth century into the twentieth century. That agreement established the basic principles of the modern nation-state system: countries are sovereign, and thus have no formal authority above them, and they are not permitted to involve themselves in the internal affairs of other countries without their permission. Now, however, we see massive violations of human rights. Many now feel that the international community should act to protect those whose rights are violated, at least when there are massive violations.

One response has been the emergence of the doctrine of humanitarian intervention. Under this doctrine, the traditional Westphalian principle of immunity from outside interference remains in place, but with the qualification that under some extreme circumstances and with appropriate legal processes, the international community may forcibly intervene to protect human rights.

In international law, intervention generally refers to forcible intrusion, usually with military force, into the affairs of nations by outsiders (Haass, 1994; Lyons and Mastanduno, 1994). Despite extensive debate, the doctrine of humanitarian intervention remains ill-formed. Some writers equate humanitarian intervention with any sort of humanitarian assistance in armed conflict. Some use the term to refer to military action to free civilians from situations in which there are serious violations of human rights. Perhaps humanitarian intervention is best understood as humanitarian assistance provided to people within a nation by outsiders without the consent of the national government.

Humanitarian intervention occurs when there is a claimed right to deliver humanitarian assistance despite the absence of consent from the government of the receiving nation. A distinction should be made between the simple absence of consent to the delivery of assistance, and the clear refusal of such assistance. In the case of the US-led intervention into Somalia in October 1993, for example, there was neither approval nor refusal. Rather, civil order had collapsed to such a degree that there was no Somali national government in place to grant or deny consent to the delivery of assistance. Perhaps intervention in the absence of consent should have different guiding rules than intervention in the face of clear refusal of consent.

While many define humanitarian intervention as armed intervention into states for humanitarian purposes, it has been argued that this historical understanding "has no place in the system established by the UN." In the legal framework based on the UN Charter, unilateral state intervention is allowed solely for protecting national independence (Sandoz, 1992, pp. 217-218).

The International Commission on Intervention and State Sovereignty tried to address the legitimacy issue by advancing a new doctrine on The Responsibility to Protect, clarifying guidelines for humanitarian intervention. The approach was highlighted in a UN report on *A More Secure World* (High-level Panel on Threats, Challenges and Change, 2004), a UN declaration in 2005, and again in the G8 Summit in 2006. On April 28, 2006, in Resolution 1674, the UN Security Council asserted the right of the international community to provide protection to people whose human rights were being violated. It acknowledged that under some circumstances the international

community has a responsibility to provide such protection, but this responsibility was not spelled out.

The responsibility to protect has been viewed mainly as the duty of governments of the countries on the receiving end of the intervention. The terminology could suggest that the countries that do the intervening have specific obligations to intervene when necessary for humanitarian purposes, but a close reading of the discussions indicates that the international community really uses this doctrine to assert its right to intervene. The *Guardian* recognized this when it referred to “the UN declaration of a right to protect people from their governments (Williams, 2005).” Similarly, the African Union proclaimed, in its Constitutive Act, “the right of the Union to intervene in a Member State [...] in respect of grave circumstances, namely war crimes, genocide and crimes against human humanity.” It did not speak of a duty to intervene in such circumstances.

The assertion of a right to assist under some circumstances, with no counterpart obligation to assist under any circumstances, implicitly invites the politicization of assistance decisions. The view taken here is that those who provide assistance on humanitarian grounds should not be entirely free to choose who and when they help. Assistance in situations like the genocide in Darfur or the widespread malnutrition in North Korea or Zimbabwe should not be optional, at least so long as they can be undertaken with reasonable safety.

In October 2006, Vaclav Havel, Kjell Magne Bondevik, and Elie Wiesel issued a report arguing that because of the widespread malnutrition and other humanitarian problems in North Korea, “the international community now has an obligation to intervene through regional bodies and the United Nations, up to and including the Security Council (Havel *et al.*, 2006a, b).” Their call for recognition of obligations, and not only rights, on the part of those who would intervene was not well received.

It is not surprising that the providers of assistance tend to emphasize their rights rather than their obligations. However, one would think that if the powerful are going to claim a right to assist under some conditions, they also should have an obligation to assist under some conditions (Kent, 2008, pp. 1-31).

Right to assist vs right to assistance

A right to assistance means that people meeting criteria specified in the law are entitled to receive services specified in the law. For example, in some countries women with children whose incomes fall below a particular level are entitled to monthly stipends calculated according to an established formula. Or children in a particular age bracket and meeting certain residency requirements might be entitled to free immunizations. Entitlements of this form are the basis for human services (welfare) programs in many countries.

If there is a right of those in need to receive assistance under specified conditions, then there must also be an obligation for others to render assistance. These obligations are specific responsibilities for action. Typically, in the area of human rights, individuals have specific rights, and the government has specific obligations to fulfill those rights. When rights are described in the law, the counterpart obligations of government, and the specific agencies responsible for their implementation, ought to be described as well. The rights/obligations nexus can be understood as a kind of contract, explicit or implicit, that establishes who is to do what under what conditions.

Whether within nations or internationally, the challenge is to determine the nature of the contract: who should be entitled to what sort of assistance from whom under

what conditions at whose expense? Different sorts of answers would be appropriate for different kinds of situations or needs: poverty, armed conflict, refugees, famine, chronic malnutrition, floods, droughts, terrorism, and so on. Some general principles would apply across broad categories of cases.

Many would agree that there are some extreme situations in which needy people should have a clear right to receive help. In any decent social order, if a child falls down a well, there should be a requirement that the child will be rescued. But the idea of the right to assistance has a very checkered history. The law in the USA is characterized by “the missing language of responsibility (Glendon, 1991, pp. 76-108).” Under the no-duty-to-rescue principle, bystanders are not required to come to the assistance of strangers in peril if they did not cause that peril.

This principle of no-duty-to-rescue is peculiarly American. In contrast, “most European countries do impose a legal duty on individuals to come to the aid of an imperiled person where that can be done without risk of harm to the rescuer. And the constitutions of many other liberal democracies do obligate government to protect the health and safety of citizens (Glendon, 1991, p. 77).”

In the case of ships in distress on the high seas, there is a well-established international duty to come to the assistance of the needy. Captains failing to meet this obligation have been prosecuted. However, there is no general duty of nations to respond to distress in other nations. The major international human rights instruments are concerned primarily with the responsibilities of States Parties to their own people, not to people elsewhere. They do call for international cooperation in working toward the realization of human rights. For example, the International Covenant on Economic, Social, and Cultural Rights requires States Parties “individually and through international cooperation to take the measures needed” to implement the agreement. In practice, however, there is no clear hard duty to provide humanitarian assistance internationally. There is no history of case law with respect to international humanitarian assistance.

The needy are sometimes viewed as having a right to assistance in the limited sense that no third party may interfere with its delivery. This is different from a right to assistance as an entitlement, in which the providers of assistance have an obligation to provide it. Figure 1 may help in sorting out the concepts.

Providers of humanitarian assistance generally emphasize their right to provide assistance, cell A in the figure. Where that right is claimed under the right to protect doctrine, it is implied that governments of receiving countries have an obligation to accept assistance, cell D. This relationship is in the A-D diagonal of the matrix. Little attention has been given to the idea that under some conditions providers might be obligated to give assistance (cell B), because under some conditions others might have a right to receive assistance (cell C). This relationship is in the B-C diagonal.

	Rights	Obligations
Providers	A. right to provide	B. obligation to provide
Receivers	C. right to receive	D. obligation to receive

Figure 1.
Rights and obligations of
providers and receivers

If a party has a right to receive assistance under some conditions, arguably that party also should accept an obligation to receive assistance under some conditions. And if a party has a right to provide assistance under some conditions, perhaps that party also ought to have the obligation to provide assistance under some conditions. These relationships are in the rows of the matrix, A-B and C-D.

It can be argued that parties receiving assistance should also recognize obligations to monitor and report on the distribution and impact of that assistance, or at least allow such monitoring and reporting. There have been cases in which countries receiving assistance did not allow any tracking of it after it arrived in national ports, thus raising suspicions about its possible misuse.

While people of poor countries would be the primary beneficiaries of rights-based international assistance, their governments sometimes resist because of their concern with guarding their sovereignty. They fear that humanitarian intervention might be used against them for political purposes. The governments of weak countries do not want powerful countries, which might have ulterior political motives, intervening without their consent under the pretense of providing assistance.

Why should weak countries accept the idea that outsiders can intervene when they see fit, but not be under any obligation to assist when it is not politically convenient for them? There should be more symmetry in the doctrine. If the international community is to have the right to intervene to provide assistance in some circumstances, there also should be some circumstances in which the international community has an obligation to provide assistance.

Rights of the needy to receive international assistance, as distinguished from rights of outsiders to provide assistance, are rarely discussed. Where the rights of the needy are considered it seems it is mainly to clarify the conditions under which intervention may be undertaken (International Institute of Humanitarian Law, 1993). In 1988 France proposed a General Assembly resolution for disaster relief based on explicit recognition of the rights of the needy to receive assistance, but that aspect disappeared by the time Resolution 43/131 of December 8, 1988 was finalized (Beigbeder, 1991, pp. 354, 380-383).

If it were agreed that the international community had an obligation to assist under some circumstances, the obligation would have to be mitigated in the face of extreme danger, as in armed conflict situations. However, in such situations, consent is often given by the combatants, together with assurances of safe passage, to the International Committee for the Red Cross, UNICEF, and other humanitarian agencies. Indeed, ICRC specializes in obtaining such consent. The key problem in providing international humanitarian assistance in conflict situations is not so much the presence of the conflict as the absence of consent.

There is now no hard duty to provide international assistance based on explicit rights of the needy to receive assistance. There should be not only a right but also an obligation to provide international humanitarian assistance under some circumstances. There should be an obligation on the part of the international community to provide assistance at least when such assistance is welcomed by the receiving nation. The international community could recognize an obligation to offer assistance even in conflict situations or other situations in which there are doubts about whether it would be accepted. There would then be an obligation to deliver that assistance if the parties controlling the situation consented and safe passage was assured.

There is a need to create a new global regime of clear rights and obligations for those who provide humanitarian assistance and those who receive it. This would be

likely to make the system more effective and more just, and thus contribute to the steady strengthening of overall global governance.

Summary

Currently states have a right but not a duty to provide international humanitarian assistance. It is argued here that states should have a duty to provide international humanitarian assistance under some circumstances.

The doctrine of the responsibility to protect has been used by the international community to assert its right to assist, not as the recognition of a duty to assist, in certain circumstances. The assertion of such a right with no counterpart obligation implicitly invites the politicization of decisions to assist. As in the case of domestic emergency services, the provision of assistance should not always be optional. There should be an obligation on the part of the international community to provide assistance at least in some circumstances.

A clear system of rights and obligations for those who provide humanitarian assistance and those who receive it would be likely to make international humanitarian assistance more effective and more just, and thus contribute to the steady strengthening of overall global governance.

References

- Beigbeder, Y. (1991), *The Role and Status of International Humanitarian Volunteers and Organizations: The Right and Duty to Humanitarian Assistance*, Martinus Nijhoff, Dordrecht.
- Glendon, M. (1991), *Rights Talk: The Impoverishment of Political Discourse*, Free Press, New York, NY.
- Haass, R.N. (1994), *Intervention: The Use of American Military Force in the Post-Cold War World*, Carnegie Endowment for International Peace, Washington, DC.
- Havel, V., Bondevik, K.M. and Wiesel, E. (2006a), "Turn North Korea into a human rights issue", *New York Times*, Editorial, October 30, available at: www.nytimes.com/2006/10/30/opinion/30havel.html?_r=3&oref=slogin&pagewanted=print (accessed July 19, 2013).
- Havel, V., Bondevik, K.M. and Wiesel, E. (2006b), *Failure to Protect: A Call for the UN Security Council to Act in North Korea*, DLA Piper/US Committee for Human Rights in North Korea, Washington, DC, available at: www.dlapiper.com/files/upload/North%20Korea%20Report.pdf (accessed July 19, 2013).
- High-level Panel on Threats, Challenges and Change (2004), *A More Secure World: Our Shared Responsibility*, United Nations, New York, NY, available at: www.un.org/secureworld/ (accessed July 19, 2013).
- International Institute of Humanitarian Law (1993), "Guiding principles on the right to humanitarian assistance", *International Review of the Red Cross*, Vol. 33 No. 297, pp. 519-525.
- Kent, G. (Ed.) (2008), *Global Obligations for the Right to Food*, Lanham, Rowman & Littlefield, Lanham, MD.
- Lyons, G.M. and Mastanduno, M. (Eds) (1994), *Beyond Westphalia? National Sovereignty and International Intervention*, Johns Hopkins University Press, Baltimore, MD.
- Sandoz, Y. (1992), "'Droit' or 'Devoir d'Ingerence' and the right to assistance: the issues involved", *International Review of the Red Cross*, Vol. 32 No. 288, pp. 215-227, available at: www.icrc.org/eng/resources/documents/article/other/57jmaq.htm
- Schindler, D. (1993), "Humanitarian assistance, humanitarian interference and international law", in Macdonald, R. St. J. (Ed.), *Essays in Honour of Wang Tieya*, Kluwer Academic Publishers, London, pp. 689-701.

United Nations. International Strategy for Disaster Reduction (2006), *Terminology: Basic Terms of Disaster Risk Reduction*, ISDR, Geneva, available at: www.unisdr.org/eng/library/lib-terminology-eng-p.htm; www.unisdr.org/we/inform/publications/7817

Williams, I. (2005), "Annan has paid his dues: the UN declaration of a right to protect people from their governments is a millennial change", *Guardian*, September 20, available at: www.guardian.co.uk/news/2005/sep/20/mainsection.commentanddebate2

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