Disasters and ‘Responsibility to Protect’

Should Nations Force Aid on Others?

A Cyclone Is Not Enough

By Alex J. Bellamy

On May 3, 2008, Cyclone Nargis struck Burma, leaving much of the Irrawaddy Delta under water. Early estimates suggested around 12,000 people were killed, quickly revised upward to about 100,000 by independent observers. Ultimately even that number proved optimistic. Although estimates still vary, today about 138,000 are believed dead or missing in the cyclone’s wake (Haacke 2009).

In addition to the outright casualties, 1.5 million people were displaced. Despite the humanitarian catastrophe confronting the country and the government’s obvious inability to respond effectively, Burma’s military regime (the nation is also known as the Union of Myanmar, see page nine) initially blocked access by agencies offering humanitarian relief, inhibiting the delivery of urgently needed supplies and medical assistance.

The disaster occurred shortly before a May 10 constitutional referendum aimed at legitimizing the military government. The regime went ahead with the vote despite the crisis. During the crucial period immediately after the cyclone, the Myanmar military was primarily focused on the referendum rather than delivering assistance.

(See “R2P,” page nine)

Rights and Obligations

By George Kent

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

This article first describes the current legal framework for international humanitarian assistance. Then the troubled concept of humanitarian intervention is reviewed, followed by a brief account of the nature of the right to assist and the right to assistance. 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 circumstances. The United Nations International Strategy for Disaster Reduction is

(See “Rights,” page eighteen)
intervention, see George Kent’s article in this issue of the Observer.)

A Moral Policy?

A major concern about humanitarian interventions—whether they are for relief in a natural disaster like Nargis or prevention of genocide in Kosovo—is that the motivation of the intervenor is self-serving. In fact, it’s probably safe to say that a big difference between liberals and conservatives on this topic is that foreign policy “realists” don’t believe that nations have a moral impulse, while liberals believe that they do—or at least that they should.

In his book Freedom’s Battle: The Origins of Humanitarian Intervention, Princeton University professor Gary J. Bass writes, “The realists correctly remind us that humanitarian intervention is most likely to occur against militarily weak states. In hard cases, it takes power to impose human rights … Realists are also right to point out the frequent hypocrisy of the national security establishment … It is right to be deeply suspicious of any government that claims its wars are for the good of humanity.”

Nonetheless, Bass says, there are also cases where nations have acted on a moral code in apparent opposition to their own self-interest. “Sometimes states are genuinely driven by morality,” he writes. “The prime example is the campaign against the slave trade, and then slavery itself—properly seen as the root of all modern human rights activism. Britain drove hard to stop the African slave trade—even to the point of using military force … This principled commitment cost Britain the lives of some 5,000 troops in various antislavery missions, soured its relations with the United States and France, and badly damaged the British economy by undermining its own sugar industry. Still British leaders backed the policy with remarkable vigor.”

In an age of increasing threat and damage from natural disasters, and with the examples of Burma’s, Zimbabwe’s, and North Korea’s resistance to aid, separating out these motivations of morality and menace will become increasingly important in the international marketplace of ideas.

Rights...

(Continued from page one)

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 (UNISDR 2006).

ISDR makes no distinction between natural and human-caused disasters. Assistance is called for when there is a serious disruption of the community’s functioning, regardless of the underlying cause.

International human rights law does not address the right to protection and relief from disasters, but it’s 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 held at UNESCO—the United Nations Educational, Scientific and Cultural Organization—in Paris in January 1995, one participant proposed seven rules summarizing international law on rights and duties to humanitarian assistance:

- States have a duty to provide humanitarian assistance to victims in their territory or under their control.
- States, IGO’s [intergovernmental organizations such as UN agencies] and non-governmental organizations have a right to offer humanitarian assistance to other states.
- States, IGO’s and NGO’s have a right to provide humanitarian assistance to victims in other states with the consent of these states or, in case of disintegration of governmental authority and of civil war, with the consent of the relevant local authorities.
- 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.

- 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.

- 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.

- Individuals have a right against the state under whose control they are to receive humanitarian assistance or to permit its distribution according to rules 3, 4, and 6. (Schindler 1993)

So currently 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. That agreement established the basic principles of the modern nation-state system. Countries are sovereign, and thus have no formal authority above them. They are not permitted to involve themselves in the internal affairs of another country without that country’s permission. But in the modern era, many now feel that the international community should act to protect those whose human rights are violated, at least when these violations are widespread.

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 (Haas 1994; Lyons 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 intervention in the civil war in Somalia in 1992 and 1993, for example, there was neither approval nor refusal. Civil order there had collapsed to such a degree that there was no government in place to either grant or deny consent. Perhaps intervention in the absence of consent should have different guiding rules than intervention in the face of clear refusal.

The needy are sometimes viewed as having a right to assistance, but only in the limited sense that no third party may interfere with its delivery if it is offered. This is quite different from a full right of the people to assistance in the sense of an entitlement, in which the suppliers of assistance have an obligation to provide it.

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).
Rights... (Continued from page nineteen)

State Sovereignty tried to address the legitimacy issue by advancing a new doctrine on the responsibility to protect—colloquially called R2P—clarifying guidelines for humanitarian intervention. The approach was highlighted in a UN report on A More Secure World (High-level Panel 2004), a 2005 UN declaration, and again in the 2006 G8 Summit. On April 28, 2006, in Resolution 1674, the UN Security Council made similar assertions of 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 the extent of this responsibility was not spelled out.

R2P has been viewed mainly as the duty of national governments on the receiving end of an intervention. The R2P terminology may suggest intervening countries have specific obligations to intervene when necessary for humanitarian purposes, but a close reading of the discussions indicates that the international community really uses the R2P principle 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 proclaims, 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 humanity.”

The assertion of a right to intervene with no counterpart obligation to intervene invites the politicization of intervention decisions. My view is that those who intervene within nations on humanitarian grounds should not be free to choose whom to help and when. Interventions 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 (2006a) 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” (2006b). Their call for recognition of obligations, in addition to rights, 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 should also have an obligation to assist under some conditions (Kent 2008).

Right to Assist Versus 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. 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.

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. 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. U.S. law is characterized by “the missing language of responsibility” (Glendon 1991). In 1964, Kitty Genovese was murdered in New York City while 38 people watched without helping or calling for help. They were not under any legal obligation to help. 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.

In contrast to the United States, “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 obligate the government to protect the health and safety of citizens” (Glendon 1991).

There is a well-established international duty to come to the assistance of the needy in the case of ships in distress on the high seas. 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 nations to their own people, not to people elsewhere. Those instruments do call for international cooperation in their implementation. For example, the International Covenant on Economic, Social and Cultural Rights requires states “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.

A clear distinction should be made between (1) rights of providers to provide assistance to the needy without interference, and (2) rights of the needy to receive assistance. The latter implies that there are obligations of others to assist, i.e., receivers have an entitlement. Figure 1 may help in sorting out the concepts.

Figure 1. Rights and Obligations of Providers and Receivers

Humanitarian intervention is about the right of providers to provide assistance, cell A in the figure. Where that right to assist 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. However, 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 receivers might have a right to receive assistance (cell C). This relationship is in the B-C diagonal.

While people of poor countries would be the primary beneficiaries of assistance, their governments sometimes resist because of concerns about 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.

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.

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 the rights of outsiders to provide assistance, are rarely discussed. Where the rights of the needy are considered, it seems mainly to clarify the conditions under which intervention may be undertaken (Guiding Principles 1993). In 1988, France proposed a UN General Assembly resolution on disaster relief based on an explicit recognition of the rights of the needy to receive assistance, yet those rights are completely missing from the final text of Resolution 43/131 (Beigbeder 1991).

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, the combatants often give consent and assurances of safe passage to the International Committee of 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 not only be a right but also an obligation to provide international humanitarian assistance under some circumstances. More precisely, 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 make the system more effective and more just, and thus contribute to the steady strengthening of overall global governance.

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References


(Please see “Rights,” page twenty-two)
Below are brief descriptions of some of the resources on hazards and disasters that have recently come to the attention of the Natural Hazards Center. Web links are provided for items that are available free online. Other materials can be purchased through the publisher or local and online booksellers.

All of the material listed here is available at the Natural Hazards Center Library. For more information contact librarian Wanda Headley at wanda.headley@colorado.edu

All Hazards


This small book packs a large punch for those interested in early warning systems. It starts with basics and moves on to particulars of letting a community know about impending hazards. “Because what one person sees as a warning may not be viewed as a warning by others, several basic questions must be addressed while an EWS (early warning system) is being developed or when its effectiveness is being evaluated. Do people agree on what is meant by ‘early’? What constitutes a ‘warning,’ exactly? Who is to be warned? Does everyone (e.g., the government, the media, the public, the military) need to be warned at the same time, in the same way and by the same warning system?”

Good questions all. The book explores warnings through many natural hazards, primarily those related to climate systems, but also tsunamis and volcanoes. It is nicely illustrated with color photos and graphs.


In his preface, Thomas Drabek says that he never felt he had the right textbook during the 30 years he taught the class on “Community Responses to Natural Disasters” at the University of Denver. So, after retiring, then being called back to teach again, he wrote this one. It’s an entertaining case-based look at human response to disaster—puncturing myths, pointing out truths, and exploring the progress of disaster from warnings to “why me?”

A more careful narrative style could have helped tell the stories, though. The footnote on page one says, “The events described in this chapter are real. The stories, actions, and names used are fictional.” This makes it difficult to figure out how much of what follows is true. If the stories and actions are fictional, what’s left?


Environmental and climate problems, including the displacement of populations, represents one the greatest threats to society. But the limitations of existing international law regarding environmental refugees exacerbate these. In light of this new diaspora, Westra asks what legal instruments and regulatory regimes might extend protections to these forced migrants. This book offers an ideal introduction to the questions about the status of eco-refugees in the framework of international law.

This book concludes a series by Westra that began with Ecoviolence and the Law and continued through an in-depth examination of the legal implications and application to the “most powerless individuals.” Here she presents a series of extended case studies resulting from eco-crimes. The seven chapters build her argument for the rights of ecological refugees. Westra divides her discussion into three main parts to examine existing refugee laws and provisions, defining ecological refugee, and the steps to move forward within the boundaries of the existing legal system. She also suggests new provisions to the international community. Each chapter contributes to the understanding that international law and the rights of refugees fail to protect those fleeing ecological degradation.

Resources

[www.nytimes.com/2006/10/30/opinion/30havel.html?_r=3&oref=slogin&page_wanted=print](http://www.nytimes.com/2006/10/30/opinion/30havel.html?_r=3&oref=slogin&page_wanted=print)


