

The Responsibility to Protect

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Revisiting Humanitarian Intervention

The international community in the last decade repeatedly made a mess of handling the many demands that were made for "humanitarian intervention": coercive action against a state to protect people within its borders from suffering grave harm. There were no agreed rules for handling cases such as Somalia, Bosnia, Rwanda, and Kosovo at the start of the 1990s, and there remain none today. Disagreement continues about whether there is a right of intervention, how and when it should be exercised, and under whose authority.

Since September 11, 2001, policy attention has been captured by a different set of problems: the response to global terrorism and the case for "hot preemption" against countries believed to be irresponsibly acquiring weapons of mass destruction. These issues, however, are conceptually and practically distinct. There are indeed common questions, especially concerning the precautionary principles that should apply to any military action anywhere. But what is involved in the debates about intervention in Afghanistan, Iraq, and elsewhere is the scope and limits of countries' rights to act in self-defense -not their right, or obligation, to intervene elsewhere to protect peoples other than their own.

Meanwhile, the debate about intervention for human protection purposes has not gone away. And it will not go away so long as human nature remains as fallible as it is and internal conflict and state failures stay as prevalent as they are. The debate was certainly a lively one throughout the 1990s. Controversy may have been muted in the case of the interventions, by varying casts of actors, in Liberia in 1990, northern Iraq in 1991, Haiti in 1994, Sierra Leone in 1997, and (not strictly coercively) East Timor in 1999. But in Somalia in 1993, Rwanda in 1994, and Bosnia in 1995, the UN action taken (if taken at all) was widely perceived as too little too late, misconceived, poorly resourced, poorly executed, or all of the above. During NATO's 1999 intervention in Kosovo, Security Council members were sharply divided; the legal justification for action without UN authority was asserted but largely unargued; and great misgivings surrounded the means by which the allies waged the war.

It is only a matter of time before reports emerge again from somewhere of massacres, mass starvation, rape, and ethnic cleansing. And then the question will arise again in the Security Council, in political capitals, and in the media: What do we do? This time around the international community must have the answers. 1 Few things have done more harm to its shared ideal that people are all equal in worth and dignity than the inability of the community of states to prevent these horrors. In this new century, there must be no more Rwandas.

Secretary-General Kofi Annan, deeply troubled by the inconsistency of the international response, has repeatedly challenged the General Assembly to find a way through these dilemmas. But in the debates that followed his calls, he was rewarded for the most part by cantankerous exchanges in which fervent supporters of intervention on human rights grounds,

opposed by anxious defenders of state sovereignty, dug themselves deeper and deeper into opposing trenches.

If the international community is to respond to this challenge, the whole debate must be turned on its head. The issue must be reframed not as an argument about the "right to intervene" but about the "responsibility to protect." And it has to be accepted that although this responsibility is owed by all sovereign states to their own citizens in the first instance, it must be picked up by the international community if that first-tier responsibility is abdicated, or if it cannot be exercised.

Sovereignty as Responsibility

Using this alternative language will help shake up the policy debate, getting governments in particular to think afresh about what the real issues are. Changing the terminology from "intervention" to "protection" gets away from the language of "humanitarian intervention." The latter term has always deeply concerned humanitarian relief organizations, which have hated the association of "humanitarian" with military activity. Beyond that, talking about the "responsibility to protect" rather than the "right to intervene" has three other big advantages. First, it implies evaluating the issues from the point of view of those needing support, rather than those who may be considering intervention. The searchlight is back where it should always be: on the duty to protect communities from mass killing, women from systematic rape, and children from starvation. Second, this formulation implies that the primary responsibility rests with the state concerned. Only if that state is unable or unwilling to fulfill its responsibility to protect, or is itself the perpetrator, should the international community take the responsibility to act in its place. Third, the "responsibility to protect" is an umbrella concept, embracing not just the "responsibility to react" but the "responsibility to prevent" and the "responsibility to rebuild" as well. Both of these dimensions have been much neglected in the traditional humanitarian-intervention debate. Bringing them back to center stage should help make the concept of reaction itself more palatable.

At the heart of this conceptual approach is a shift in thinking about the essence of sovereignty, from control to responsibility. In the classic Westphalian system of international relations, the defining characteristic of sovereignty has always been the state's capacity to make authoritative decisions regarding the people and resources within its territory. The principle of sovereign equality of states is enshrined in Article 2, Section 1, of the UN Charter, and the corresponding norm of nonintervention is enshrined in Article 2, Section 7: a sovereign state is empowered by international law to exercise exclusive and total jurisdiction within its territorial borders, and other states have the corresponding duty not to intervene in its internal affairs. But working against this standard has been the increasing impact in recent decades of human rights norms, bringing a shift from a culture of sovereign impunity to one of national and international accountability. The increasing influence of the concept of human security has also played a role: what matters is not just state security but the protection of individuals against threats to life, livelihood, or dignity that can come from within or without. In short, a large and growing gap has been developing between international behavior as articulated in the state-centered UN Charter, which was signed in 1946, and evolving state practice since then, which now emphasizes the limits of sovereignty.

Indeed, even the strongest supporters of state sovereignty will admit today that no state holds unlimited power to do what it wants to its own people. It is now commonly acknowledged that sovereignty implies a dual responsibility: externally, to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state. In international human rights covenants, in UN practice, and in state practice itself, sovereignty is now understood as embracing this dual responsibility. Sovereignty as responsibility has become the minimum content of good international citizenship. Although this new principle cannot be said to be customary international law yet, it is sufficiently accepted in practice to be regarded as a de facto emerging norm: the responsibility to protect.

Military Intervention: Setting the Bar

The responsibility to protect implies a duty to react to situations in which there is compelling need for human protection. If preventive measures fail to resolve or contain such a situation, and when the state in question is unable or unwilling to step in, then intervention by other states may be required. Coercive measures then may include political, economic, or judicial steps. In extreme cases -but only extreme cases -they may also include military action. But what is an extreme case? Where should we draw the line in determining when military intervention is defensible? What other conditions or restraints, if any, should apply in determining whether and how that intervention should proceed? And, most difficult of all, who should have the ultimate authority to determine whether an intrusion into a sovereign state, involving the use of deadly force on a potentially massive scale, should actually go ahead? These questions have generated an enormous literature and much competing terminology, but on the core issues there is a great deal of common ground, most of it derived from "just war" theory. To justify military intervention, six principles have to be satisfied: the "just cause" threshold, four precautionary principles, and the requirement of "right authority."

Operation Just Cause

As for the "just cause" threshold, our starting point is that military intervention for human protection purposes is an extraordinary measure. For it to be warranted, civilians must be faced with the threat of serious and irreparable harm in one of just two exceptional ways. The first is large-scale loss of life, actual or anticipated, with genocidal intent or not, which is the product of deliberate state action, state neglect, inability to act, or state failure. The second is large-scale "ethnic cleansing," actual or anticipated, whether carried out by killing, forced expulsion, acts of terror, or rape.

Why does the bar for just cause need to be set so high? There is the conceptual reason that military intervention must be very exceptional. There is also a practical political rationale: if intervention is to happen when it is most necessary, it cannot be called on too often. In the two situations identified as legitimate triggers, we do not quantify what is "large scale" but make clear our belief that military action can be legitimate as an anticipatory measure in response to clear evidence of likely large-scale killing or ethnic cleansing. Without this possibility, the international community would be placed in the morally untenable position of being required to wait until genocide begins before being able to take action to stop it. The threshold criteria articulated here not only cover the deliberate perpetration of horrors such as in the cases of

Bosnia, Rwanda, and Kosovo. They can also apply to situations of state collapse and the resultant exposure of the population to mass starvation or civil war, as in Somalia. Also potentially covered would be overwhelming natural or environmental catastrophes, in which the state concerned is either unwilling or unable to help and significant loss of life is occurring or threatened. What are not covered by our "just cause" threshold criteria are human rights violations falling short of outright killing or ethnic cleansing (such as systematic racial discrimination or political oppression), the overthrow of democratically elected governments, and the rescue by a state of its own nationals on foreign territory. Although deserving of external action -including in appropriate cases political, economic, or military sanctions -these are not instances that would seem to justify military action for human protection purposes.

Precautionary Principles

Of the precautionary principles needed to justify intervention, the first is "right intention." The primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering. There are a number of ways of helping ensure that this criterion is satisfied. One is to have military intervention always take place on a collective or multilateral basis. Another is to look at the extent to which the intervention is actually supported by the people for whose benefit the intervention is intended. Yet another is to look to what extent the opinion of other countries in the region has been taken into account and is supportive. Complete disinterestedness may be an ideal, but it is not likely always to be a reality: mixed motives, in international relations as everywhere else, are a fact of life. Moreover, the budgetary cost and risk to personnel involved in any military action may make it imperative for the intervening state to be able to claim some degree of self-interest in the intervention, however altruistic its primary motive.

The second precautionary principle is "last resort": military intervention can be justified only when every nonmilitary option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded. The responsibility to react with military coercion can be justified only when the responsibility to prevent has been fully discharged. This guideline does not necessarily mean that every such option must literally have been tried and failed; often there is simply not enough time for that process to work itself out. But it does mean that there must be reasonable grounds for believing that, given the circumstances, other measures would not have succeeded.

The third principle is "proportional means": the scale, duration, and intensity of the planned military intervention should be the minimum necessary to secure the defined objective of protecting people. The scale of action taken must be commensurate with its stated purpose and with the magnitude of the original provocation. The effect on the political system of the country targeted should be limited to what is strictly necessary to accomplish the intervention's purpose. Although the precise practical implications of these strictures are always open to argument, the principles involved are clear enough.

Finally, there is the principle of "reasonable prospects": there must be a reasonable chance of success in halting or averting the suffering that has justified the intervention; the consequences of action should not be worse than the consequences of inaction. Military action must not risk

triggering a greater conflagration. Applying this precautionary principle would, on purely utilitarian grounds, likely preclude military action against anyone of the five permanent members of the Security Council, even with all other conditions for intervention having been met. Otherwise, it is difficult to imagine a major conflict being avoided or success in the original objective being achieved. The same is true for other major powers that are not permanent members of the Security Council. This raises the familiar question of double standards, to which there is only one answer: The reality that interventions may not be plausibly mounted in every justifiable case is no reason for them not to be mounted in any case.

Whose Authority?

The most difficult and controversial principle to apply is that of 'right authority.' When it comes to authorizing military intervention for human protection purposes, the argument is compelling that the United Nations, and in particular its Security Council, should be the first port of call. The difficult question -starkly raised by the Kosovo war -- is whether it should be the last.

The issue of principle here is unarguable. The UN is unquestionably the principal institution for building, consolidating, and using the authority of the international community. It was set up to be the linchpin of order and stability, the framework within which members of the international system negotiate agreements on the rules of behavior and the legal norms of proper conduct to preserve the society of states. The authority of the UN is underpinned not by coercive power but by its role as the applicator of legitimacy. The concept of legitimacy acts as the connecting link between the exercise of authority and the recourse to power. Attempts to enforce authority can be made only by the legitimate agents of that authority. Nations regard collective intervention blessed by the UN as legitimate because a representative international body duly authorized it, whereas unilateral intervention is seen as illegitimate because it is self-interested. Those who challenge or evade the authority of the UN run the risk of eroding its authority in general and undermining the principle of a world order based on international law and universal norms.

The task is not to find alternatives to the Security Council as a source of authority, but to make the council work better than it has. Security Council authorization should, in all cases, be sought prior to any military intervention being carried out. Those advocates calling for an intervention should formally request such authorization, ask the council to raise the matter on its own initiative, or demand that the secretary-general raise it under Article 99 of the UN Charter. The Security Council should deal promptly with any request for authority to intervene where there are allegations of large- scale loss of life or ethnic cleansing. It should, in this context, also seek adequate verification of facts or conditions on the ground that might support a military intervention. And the council's five permanent members should agree to not exercise their veto power (in matters where their vital state interests are not involved) to block resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support. We know of at least one that will so agree.

If the Security Council is unable or unwilling to act in a case crying out for intervention, two institutional solutions are available. One is for the General Assembly to consider the matter in an emergency special session under the "Uniting for Peace" procedure, used in the cases of Korea in 1950, Egypt in 1956, and Congo in 1960. Had it been used, that approach could well have

delivered a speedy majority recommendation for action in the Rwanda and Kosovo cases. The other is action within an area of jurisdiction by regional or subregional organizations under Chapter VIII of the UN Charter, subject to their seeking subsequent authorization from the Security Council; that is what happened with the West African interventions in Liberia in the early 1990s and in Sierra Leone in 1997. But interventions by ad hoc coalitions (or individual states) acting without the approval of the Security Council, the General Assembly, or a regional or subregional grouping do not find wide international favor. As a matter of political reality, then, it would simply be impossible to build consensus around any set of proposals for military intervention that acknowledged the validity of any intervention not authorized by the Security Council or General Assembly.

There are many reasons to be dissatisfied with the role that the Security Council usually plays: its generally uneven performance, its unrepresentative membership, and its inherent institutional double standards with the permanent-five veto power. But there is no better or more appropriate body than the Security Council to deal with military intervention issues for human protection purposes. The political reality -quite apart from the force of the argument in principle -is that if international consensus is ever to be reached about how military intervention should happen, the Security Council will clearly have to be at the heart of that consensus.

But what if the Security Council fails to discharge its own responsibility to protect in a conscience-shocking situation crying out for action, as was the case with Kosovo? A real question arises as to which of two evils is the worse: the damage to international order if the Security Council is bypassed, or the damage to that order if human beings are slaughtered while the Security Council stands by. The answer to this dilemma is twofold, and these messages have to be delivered loud and clear. First, if the Security Council does fail to discharge its responsibility in such a case, then concerned individual states simply may not rule out other means to address the gravity and urgency of the situation. It follows that there will be a risk that such interventions, without the discipline and constraints of UN authorization, will not be conducted for the right reasons or with the right commitment to the necessary precautionary principles. Second, if the council does fail to act and a military intervention by an ad hoc coalition or individual state follows and respects all the necessary threshold and precautionary criteria -and if that intervention succeeds and is seen by the world to have succeeded -this outcome may have enduringly serious consequences for the stature of the UN itself. This is essentially what happened with the NATO intervention in Kosovo. The UN cannot afford to drop the ball too many times on that scale.

The Problem of Political Will

As important as it is to reach consensus on the principles that should govern intervention for human protection purposes, unless the political will is mustered to act when necessary, the debate will be largely academic. As events during the 1990s too often demonstrated, even a decision by the Security Council to authorize international action in humanitarian cases has been no guarantee that any action would be taken, or taken effectively. The most compelling task now is to work to ensure that when the call for action goes out to the community of states, it will be answered.

Part of the problem is that there are few countries in the global community who have the assets most in demand in implementing intervention mandates. There are real constraints on how much spare capacity exists to take on additional burdens. United Nations peacekeeping peaked in 1993 at 78,000 personnel; today, if NATO and other multinational force operations (e.g., in Afghanistan) are included along with UN missions, the number of soldiers in international peace operations has grown by about 45 percent, to 113,000. Even states willing in principle to look at new foreign military commitments need to make choices about how to use limited and strained military capabilities.

If the right choices are to be made in the right situations, there is no alternative but to generate the necessary political will in the relevant constituencies. Too often more time is spent lamenting the absence of political will than on analyzing its ingredients and how to mobilize them. The key to mobilizing international support for intervention is to mobilize domestic support, or at least to neutralize domestic opposition. It is usually helpful to press three buttons in particular.

Moral appeals inspire and legitimize in almost any political environment: political leaders often underestimate the sheer sense of decency and compassion that prevails among their electorates. Financial arguments also have their place: preventive strategies are likely to be far cheaper than responding after the event through military action, humanitarian relief assistance, postconflict reconstruction, or all three. If coercive action is required, however, earlier is always cheaper than later. National interest appeals are the most comfortable and effective of all and can be made at many different levels. A voiding the disintegration of a neighbor, given the refugee outflows and general regional security destabilization associated with it, can be a compelling motive in many contexts. National economic interests often can be equally well served by keeping resource supply lines, trade routes, and markets undisrupted. And whatever may have been the case in the past, nowadays peace is generally regarded as much better for business than is war.

For those domestic constituencies who may actually demand that their governments not be moved by altruistic "right intention," the best short answer may be that these days good international citizenship is a matter of national self-interest. With the world as interdependent as it now is, and with crises as capable as they now are of generating major problems elsewhere (such as terrorism, refugee outflows, health pandemics, narcotics trafficking, and organized crime), it is in every country's interest to help resolve such problems, quite apart from the humanitarian imperative.

It is the responsibility of the whole international community to ensure that when the next case of threatened mass killing or ethnic cleansing invariably comes along, the mistakes of the 1990s will not be repeated. A good place to start would be agreement by the Security Council, at least informally, to systematically apply the principles set out here to any such case. So too would be a declaratory UN General Assembly resolution giving weight to those principles and to the whole idea of the "responsibility to protect" as an emerging international norm. There is a developing consensus around the idea that sovereignty must be qualified by the responsibility to protect. But until there is general acceptance of the practical commitments this involves, more tragedies such as Rwanda will be all too likely.

In September 2000, the government of Canada established the ICISS. Our colleagues were Gisele Cote-Harper, Lee Hamilton, Michael Ignatieff, Vladimir Lukin, Klaus Naumann, Cyril Ramaphosa, Fidel Ramos, Cornelio Sornnaruga, Eduardo Stein, and Ramesh Thakur. We met as a commission in Africa, Asia, Europe, and North America and consulted comprehensively in Latin America, the Middle East, Russia, and China. This article is a distillation of the report.

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