Intervention for Humanitarian Reasons: Right or Duty?

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1. Confronting the Issues:

For one country to intervene in the internal affairs of another country is a serious problem for ethics and for international law. The situation is compounded when the intervention is uninvited, and when it involves (as it usually does) the exercise of military or police power. Recent decades have seen many interventions around the globe, and well known examples include Libya (2011), Solomon Islands (2003), four interventions by the Economic Community of West African States (ECOWAS) Ceasefire Monitoring Group (ECOMOG), Kosovo (1999). Others will be mentioned in this article. There have been many interventions in the past, and there will be interventions in the future. Already in 2012, there has been a UN military intervention in the Ivory Coast, and the ruler of Qatar has recently called for military intervention in Syria,

Sometimes the term used is "humanitarian intervention" which suggests that the purpose of the intervention is to protect the population from the consequences of dire human events (such as civil war or oppression) or dire natural events (such as tsunamis). But the use of the term "humanitarian" is highly contested. Other terms are also contested. First, "interference" is usually used in a general sense: thus even something as limited as a speech or a broadcast might be construed as interference in the internal affairs of another country. Second, "intervention" is usually used in a more specific sense of implying some sustained physical presence, usually involving the exercise of military or police power. But these terms are not precise, and different participants use them in different ways.

Nor should it be suggested that intervention of any kind is easy. In his *Millennium Report,* then-UN Secretary-General Kofi Annan pointed out: "Our system for launching operations has sometimes been compared to a volunteer fire department, but that description is too generous. Every time there is a fire, we must first find fire engines and the funds to run them before we can start dousing any flames. The present system relies almost entirely on last minute, *ad hoc* arrangements that guarantee delay, with respect to the provision of civilian personnel even more so than military."

2. Natural Disasters and Intervention:

Some disasters are the consequences of human action, but others are natural disasters. If a government or regime fails to help its own people to recover from natural disasters, is there scope for intervention? Certainly were there suggestions of such an option after a catastrophic cyclone hit Myanmar in May 2008, and for a time the government was unwilling to accept available foreign help.

The organisational skills to cope with natural disasters already exist. Geography and technology are only partial issues: the more important issue is ethical. Many countries are now adept at coping with the consequences of natural disasters. And non-government international organisations like the Red Cross or Caritas have the skills and the experience. Funding is available, too. People around the world are astonishingly generous, responding repeatedly to calls for help. From small donations to large donations, and in government aid, funding is

available to meet human needs in the face of drought, tsunamis, earthquakes, floods, and other disasters.

The problem is usually not a problem of nature. It is a problem of political will, where national governments are not willing or able to help their own people, and are not willing or able to let others do the helping.

In one sense, this is an old problem. Natural disasters are as old as our planet, and wars are as old as human history. So is consequential human suffering. But in another sense it is a new problem. For the first time in history, we are truly global. We can raise funds in Hong Kong for a famine in Haiti. We can send tents from Macau to the homeless after floods in Mauritania. We can provide a truly global response to all kinds of disasters. And, importantly, our news services are global. A famine is reported as soon as it occurs. It is very difficult for a war or a pogrom or ethnic cleansing to be carried out in secret. A major tsunami is world news. As Michael Walzer humorously puts it, the camera crews arrive faster than *rigor mortis*.

3. Nation States and Intervention:

Contemporary international law has developed on the basis of legally-equal sovereign states. The precise definition of the nation-state has changed over the centuries, but a key element is that no sovereign state or other entity can interfere in the territorial integrity of another sovereign state. Generally, historians date this development from the Treaty of Westphalia in 1648, which stabilised a number of conflicts in Europe. In the last century or so, the dominance of European experience as the key factor in development of international law has rightly faded, but the emphasis on sovereignty has remained.

Nevertheless, there have been arguments that this element is not absolute. Is "humanitarian intervention" an exception? International law is derived from the legal practice of states, and some states have interfered (even with military force) on the territory of other states, claiming to be acting legitimately because of humanitarian considerations. Commentators have drawn up lists of such "interventions" over the last two hundred years, as examples to support their views. These include the intervention by Vietnam in Khmer Rouge Cambodia, India in East Pakistan (now Bangladesh), and Tanzania in Idi Amin's Uganda. On these arguments, it is permissible to intervene, even militarily, to protect a state's own citizens who are being abused in a foreign country, or to protect the target state's citizens against abuse by their own government. Similar arguments are used when there is no effective government in a state (a failed state), and the intervention is to protect target state's citizens against abuse by non-state actors, or to provide humanitarian relief which the target state cannot provide.

But these so-called "humanitarian interventions" have been hotly disputed by other states. On this contrary view, humanitarian intervention does not exist as an exception to national sovereignty. The claim is often only a cloak for selective interference in the affairs of other states. So-called "humanitarian interventions" turn out to be a cover for achieving other political or military goals, such as regime change, or the creation of a new state with favourable policies towards the intervening state.

An additional factor is the role of the United Nations. After the Second World War, an international system was put in place in order to make the United Nations the medium for achieving peace and security. Should intervention be limited to the United Nations? Critics would say that the United Nations is in practice dis-united, and has not carried out its duties. So

individual states or coalitions of states are acting in lieu of the United Nations. In the three examples given above (intervention by Vietnam, India, and Tanzania) the individual states acted unilaterally.

These are not simply legal arguments, they are also moral arguments. Is it moral to sit by, and watch a regime butcher a racial or religious minority within its power? Is it moral to sit by, and watch a regime which allows millions of its own people to starve? or remain homeless and prey to disease after floods? Perhaps there is not simply moral right to intervene, but actually a moral duty to intervene, with whatever means (including military force) are available. And if there are moral arguments in favour of intervention, there must also be safeguards, which impose criteria like those for a just war. These criteria could include the following: an intervention would have to be conducted by a state as an official act (and not by private forces), must be limited to the goals of the intervention, must be proportional to the problem, must have a reasonable chance of success, and must not cause more problems than it solves.

Late in the twentieth century, a series of interventions brought the legal and moral arguments into stark relief. In 1993 and 1994, the United Nations Assistance Mission in Rwanda had been notably unsuccessful in its mission to stop conflict between Hutus and Tutsis, and to enforce adherence to the Arusha accords. The United Nations was severely criticised for the way in which it managed or mis-managed this intervention, which led to suggestions that, since the United Nations was unwilling or unable to carry out its responsibilities, then others could legally act. In Africa, combined forces authorised by the Economic Community of West African States (ECOWAS) had been intervening in Liberia in 1992 and again in 1998 and Guinea Bissau in 1997 and Sierra Leone in 1998, and authorising United Nations resolutions came after the interventions had begun.

Early in 1999 NATO undertook military intervention in Kosovo, including well-publicised bombing, and this was presented as a response to fears of genocide. The intervention has been the subject of considerable debate, both as to its original intention and its manner of execution. Later in 1999, the United Nations endorsed the use of military force in East Timor (INTERFET) which has been widely cited as a successful intervention, forestalling the damage which could be caused by rival militias.

By the end of the millennium, the concept of humanitarian intervention was at best unclear, and certainly was the subject of severe criticism on political, legal, and ethical grounds. Yet the problems would not go away. As Kofi Annan said at the UN Millennium summit: "(…) if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?"

4. A New Initiative: Responsibility to Protect

Kofi Annan, in his report to the 2000 General Assembly, challenged the international community to try to forge consensus, once and for all, around the basic questions of principle and process involved: when should intervention occur, under whose authority, and how. The independent International Commission on Intervention and State Sovereignty was established by the Government of Canada in September 2000 to respond to that challenge. The Commissioners abandoned the language of humanitarian intervention, which they felt had become too difficult to use. Their proposal was for a "Responsibility to Protect".

The Commissioners provided a well-researched and sophisticated proposal. In content, it goes beyond the former contested concept of humanitarian intervention, but the question of intervention, including intervention with the use of military force (as a last resort), is at the heart of the new proposal. A basic view of the new doctrine is that international order is best maintained by non-intervention in the internal affairs of other states. But this view of sovereignty is not absolute: if a state is unwilling or unable to protect its citizens from actual or anticipated large scale loss of life (including genocide) or large scale ethnic cleansing, then sovereignty yields to the international Responsibility to Protect.

The international responsibility to protect includes three elements: the responsibility to prevent, the responsibility to react, and the responsibility to rebuild. And there are six criteria to guide the international community in practice: five are just cause, right intention, last resort, proportional means, and reasonable prospects, but to these must be added the question of the right authority. For the Commission, the right authority is the United Nations (Security Council and General Assembly) but the Commission notes that in the past regional organisations have acted when the United Nations has failed to act.

What will happen in practice? Eve Massingham warns: "The Responsibility to Protect effectively makes a promise to the world's most vulnerable people: a promise that when their own governments fail them, the international community will intervene to protect them. The question that therefore needs answering is whether the Responsibility to Protect can deliver on this promise." Past experience is not encouraging. There have been many situations where the international community has simply failed to act. And sometimes the international community has not been able to act because of obstruction by the individual state.

5. A New Doctrine?

There has been widespread adoption of the language of Responsibility to Protect. The United Nations General Assembly has endorsed the concept in one form or another. Even the Security Council, in Resolution 1674 (28 April 2006) unanimously adopted Resolution 1674 on the Protection of Civilians in Armed Conflict, which referred to the Responsibility to Protect. The current United Nations Secretary-General, Ban Ki-Moon, has actively promoted the concept. Special Advisors for the Prevention of Genocide and the Responsibility to Protect have been appointed in the United Nations administration. Along the way, the original proposal may have been diluted. Nevertheless, it is clearly an influential concept.

But widespread verbal usage does not make law. International law has no legislature, and the law is made by the practice (or custom) of states. So far, there are insufficient events or materials to suggest that states have actually adopted the Responsibility to Protect in such detail as to make it a custom of states. A new international concept may be emerging, but it is too early to suggest that it has quickly become an established part of international law.

The UN Security Council, in its resolution 1973 on Libya, referred to the protection of civilians as a key point in its selection of measures (including enforcement of a no-fly zone) to persuade the warring parties to switch to peaceful means to resolve Libya's future. But this was not a direct citation of the Responsibility to Protect doctrine. Certainly, the Responsibility to Protect doctrine is being cited by influential commentators such as Gareth Evans (the Chair of the Commission which drafted the Report) as the only possible support for external intervention in Libya. Critics of the European-led intervention in Libya suggest that the intervention does not have clear objectives or a clear programme, and is subject to 'mission creep'. 'Mission creep' is

a phrase which summarises the way in which the original objectives may prove insufficient or unattainable, and the military mission gradually expands its role to achieve other objectives.

6. The Uncertain Future:

The legal status of humanitarian intervention is contested, and the doctrine of Responsibility to Protect is too novel to have yet become law. Nevertheless both will continue to be important elements in debate. Responsibility to Protect will need to be clarified, probably through the experience of present and future interventions, before it becomes part of the law of nations. It seems likely that this area of international law will continue to be disputed, lacking in clarity, and confused by self-serving or ambiguous arguments.

In practice, interventions have been a part of power politics in the past, and are likely to be in the future. Interventions on behalf of the citizens of one's own state will continue, and some will be successful, while others will fail (as in the abortive attempt by a Dutch military unit to evacuate their own citizens from Libya). Interventions on behalf of others, including the citizens of the target state, are also likely to occur again. Sometimes, these interventions may be consensual. But contested interventions, where the target state is unwilling or unable to give protection – or is itself the perpetrator – are likely to continue. Such interventions have become almost commonplace.

Unless the United Nations is able to improve its response to situations of grave necessity, it is unlikely to be able to gain a monopoly on the use of force in interventions. The debacle of Rwanda is not forgotten, and the United Nations does not have a good track record for timely and successful action. There are continuing problems for the involvement over nearly a decade of African Union and United Nations forces in the Darfur region of Sudan, where thousands of civilians have died and hundreds of thousands have been displaced. The United Nations, for a variety of reasons, has been unable to bring its intervention to a successful conclusion. Thus unilateral interventions by a neighbouring state or by regional organisations are likely to continue.

Most of the interventions which have been discussed here have been responses to armed conflict, even at a very low level. But in the second section, I have referred to the possibility that a government might fail to provide adequate protection to its population (or part of its population) to the consequences of natural disaster. Accusations were made against the Myanmar (Burma) regime in 2008 that it failed to protect its population from the consequences of Cyclone Nargis, even when assistance was available from abroad. If such accusations are well founded, is there a responsibility for the international community to protect the citizens of a state which is unwilling or unable to provide protection? The International Commission on Intervention and State Sovereignty has suggested that such non-military cases could be included, where the threshold is large-scale loss of life.

7. Support for 'Responsibility to Protect'?

International relations scholars Luo Yanhua and Zhang Junhao have classified countries in three groups. The first group is those who strongly support the doctrine, including medium-level developed countries and more stable countries in Africa. The second group is those who have reservations about the doctrine, including the United States, Japan, China, Brazil and Indonesia. These scholars note that China is clearly opposed to extending the doctrine to cases of natural

disasters. The third group is of countries opposed to the doctrine. This small group includes a number of states which have seriously suffered from intervention. From their study, we can see that the proposed Responsibility to Protect doctrine has not gained a clear level of support.

The lack of clear support for the Responsibility to Protect doctrine throws a moral burden on nations and their leaders. If these leaders are unable to support the Responsibility to Protect doctrine in its present form, then they must take the initiative in seeking harmonious modification to the doctrine, or in proposing a viable alternative. The thousands who die in civil wars, who flee in their millions as refugees, or who receive no relief in times of natural disaster deserve better than delay and confusion.

7. Conclusion:

The norms of international law and the prescriptions of international ethics both indicate that doctrines of sovereignty based solely on the principle of non-interference in the internal affairs of a sovereign state are likely to continue to be contested. Non-interference is certainly a valid principle. But protection of human rights is also a competing principle in international law and in ethics. Yet there is unlikely to be agreement on the degree to which doctrines of sovereignty are not absolute. Limitations to doctrines of sovereignty which can legitimise international intervention are bound to be viewed with suspicion by nation states. However, with cases like Rwanda in mind, our international community needs an agreed workable response to the question: when is intervention justified? The new proposal for the Responsibility to Protect has certainly opened up a possibility for further elaboration. Perhaps it will become the basis for further common action by the international community, especially by the United Nations and regional agencies. Is this a right, or a duty, or a responsibility? We need to know.

Some further reading:
CAJ (Tony) Coady: *The Ethics of Armed Humanitarian Intervention,* United States Institute of Peace 2002 (Peaceworks 45)

Eve Massingham: "Military Intervention for humanitarian purposes: does the Responsibility to Protect doctrine advance the legality of the use of force for humanitarian ends?" *International Review of the Red Cross* (December 2009) vol 91 no 876, pp 803-831.

Ivan Shearer: "A Revival of the Just War Theory?" in M N Schmitt and J Pejic (eds): *International Law and Armed Conflict: Exploring the Faultlines*, Brill, 2007 pp.1-20.

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