

## Burma and the responsibility to protect: first, do more good than harm

Written by Ramesh Thakur

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RAMESH THAKUR, JUN 20 2008

Paranoid and mistrustful of the outside world, Burma's generals were criminally tardy in permitting emergency humanitarian supplies and personnel to come into the country after a devastating cyclone in early May. More than 100,000 may have been killed and over two million displaced and made homeless by the cyclone. Casualty figures should always be treated with caution in such contexts as they are easily inflated or downsized for partisan purposes, and already the indications are that the consequences were less grim than initially feared.

In the immediate aftermath, the rising tide of anger, outrage and frustration led France's Foreign Minister Bernard Kouchner to suggest invoking the "responsibility to protect" (R2P) in the UN Security Council as the legal means to pry open Burma's borders to outside help. The call, later retracted by Kouchner as being inappropriate in a non-conflict situation, generated an intense debate in policy, advocacy and media circles that is worth parsing into moral, conceptual, legal, political and practical components.

R2P was a creative and innovative reformulation of the old "humanitarian intervention" debate by a Canadian-sponsored but independent international commission. With singularly bad timing, we published our report at the end of 2001. Yet less than four years later – a uniquely rapid timeframe for such a landmark normative shift – it was adopted without a dissenting vote by world leaders at the UN summit. In paragraphs 138 and 139 of the summit's outcome document, the prime ministers and presidents of the world affirmed that every state bears the responsibility to protect its population. They further declared that they were "prepared to take collective action, in timely and decisive manner, through the Security Council and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations".

There is no *morally* significant difference between large numbers of people being killed by soldiers firing into crowds or the government blocking help being delivered to the victims of natural disasters.

*Conceptually*, the shift from the crime of mass killings by acts of commission like shooting people and acts of omission like preventing them from getting food and medical attention is a difference of degree, not kind.

*Legally*, the four categories where R2P apply are genocide, war crimes, ethnic cleansing, and crimes against humanity. In our original report, we had explicitly included "overwhelming natural or environmental catastrophes" causing significant loss of life as triggering R2P if the state was unable or unwilling to cope, or rebuffed assistance. This was dropped by 2005. But "crimes against humanity" was included and *prima facie* would seem to apply to the Burmese generals' actions in blocking outside aid.

*Politically*, however, we cannot ignore the significance of the exclusion of natural and environmental disasters in 2005. Clearly, the normative consensus on the new global norm did not extend beyond the acts of commission of atrocity crimes by delinquent governments. To attempt to reintroduce it by the back door today would strengthen suspicion of Western motivations and reinforce cynicism of Western tactics. The UN must base its decisions on the collectively expressed will of its member states, not on that of an independent commission or individual member states. Unlike previous decades, the new unity of the global South, led by Brazil, China, India and South Africa, is

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based in a position of strength, not weakness. The West can no longer set or control the agenda of international policy discourse and action.

*Practically*, there is no humanitarian crisis so grave that it cannot be made worse by military intervention. Unappealing as they might be, the generals are in effective control of Burma. The only way to get aid quickly to where it is most needed is with the cooperation of the authorities. If they refuse, the notion of fighting one's way through to the victims is ludicrous. The militarily overstretched Western powers have neither the capacity nor the will to start another war in the jungles of Southeast Asia. If foreign soldiers are involved, it does not take long for a war of liberation or humanitarian assistance to morph into a war of foreign occupation in the eyes of the local populace. It's interesting that the further away countries are from Burma geographically and the less they know about it, the more of a macho stance they were willing to embrace.

Asians forcefully reject any Western right to set the moral compass for the West's and everyone else's behaviour. It's easy for those who have no interests engaged there to accuse China and India of standing shoulder to shoulder with the butchers of Burma. Their protestations and censure would carry more moral weight if their conduct showed a consistent privileging of principles over national strategic or commercial interests in their own dealings around the world. Asians today are better educated and better informed on world affairs. Gross double standards, that give the lie to beliefs of the virtuous West fighting the evil rest, can no longer be hidden from them. Any effort to invoke R2P formally in the Security Council would have the counter-productive effect of damaging R2P permanently across Asia and more widely in developing countries.

Diplomatic pressure was better exerted on the basis of humanitarian principles enshrined in a number of UN General Assembly resolutions than on the coercive language of military intervention for which no one had the stomach and few had the capacity. These include the Guiding Principles for humanitarian assistance of Resolution 46/182 in 1991, the 2005 world summit outcome document, Resolution A/RES/61/134 of December 2006 and, most recently, Resolution A/RES/62/93 of December 2007. There are also the agreed norms and guiding principles in relation to internally displaced persons. All of these recognise and reaffirm the norm of state sovereignty and the principle of state consent. But they also do call on the afflicted states to facilitate the work of humanitarian actors providing relief and assistance and provide safe and unhindered access to humanitarian personnel. In the end, Secretary-General Ban Ki-moon's use of the bully pulpit, good offices and personal on-the-spot diplomacy did make a difference that may not have been enough to satisfy the habitual UN critics but was nonetheless critical in helping many in distress through relaxing some curbs on international relief efforts.

Still, it would be short-sighted to rule out the relevance and application of R2P should the situation not improve and people start dying in large numbers from the after-effects of Cyclone Nargis. Victims have the right to receive all available assistance; governments, host as well as foreign, have a duty to provide and facilitate it. We should not rule out laying charges of crimes against humanity against the top leaders in due course after the emergency has passed.

In the meantime, though, it bears emphasizing that R2P is much more fundamentally about building state capacity than undermining state sovereignty. The scope for military intervention under its provenance is narrow and tight. The instruments for implementing its prevention and reconstruction responsibilities on a broad front are plentiful. While the reconstruction agenda for Burma is self-evident, it is worth returning to the tsunami of Boxing Day 2004 to illustrate the prevention agenda. The responsibility to prevent would have meant, firstly, installing an early detection and warning system for earthquakes and tsunamis around the Indian Ocean along the lines of that already in place around the Pacific. Second, it would have required such preventive measures as strengthening instead of eroding natural barriers like mangrove swamps that absorb and dilute the destructive power of tsunamis. And third, it would have meant advance training and stockpiling of supplies for effective civil defence measures like food, medicines and paramedical personnel. In other words, capacity, capacity and capacity that strengthen sovereignty and help state authorities to exercise it more responsibly.

Finally, there is also the question of which is more damaging to R2P in the longer term: invoking or ignoring it in the context of natural disasters like Cyclone Nargis. If the invocation does not help in the immediate emergency and may indeed cause even more determined opposition; and if it causes the growing backlash against R2P to gather pace;

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then the painfully forged consensus on the R2P norm will fracture without any material help being provided to the displaced and distressed. And that means that help will be less forthcoming to the next group of victims of large-scale killings. The correct equation thus is that invoking R2P in Burma would have endangered lives elsewhere tomorrow without saving any and possibly even delaying help for the Nargis victims today. Feeling good about one's own moral superiority by accusing others of privileging a norm over saving lives is a peculiar form of self-indulgence that perpetuates the killing fields without alleviating anyone's suffering.

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**Ramesh Thakur**, a former United Nations Assistant Secretary-General, is emeritus professor at the Australian National University. His most recent book is *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect*, 2<sup>nd</sup> ed. (Cambridge University Press, 2017).