

Protecting People

Written by Alex J. Bellamy

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ALEX J. BELLAMY, JAN 15 2017

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The United Nations (UN) was established in 1945 with a charter that set out to ‘save succeeding generations from the scourge of war’ and ‘uphold faith in fundamental human rights’. Three years later, the Universal Declaration of Human Rights was signed at the United Nations, calling for states to work together to ensure that everyone enjoys ‘freedom from fear’ and ‘freedom from want’. Added to the issues of global inequality and poverty addressed in the previous chapter, finding ways of protecting people from harm is a major contemporary debate. While the picture overall might be improving, too often the international community does too little, too late to protect people from atrocities, civil wars, and other human-made ills. In the twentieth century tens of millions of people were killed in wars between states, while an even higher number were killed by their own governments. Facts like these pose a major challenge for the way we think about world politics. Our contemporary international order is based upon a society of states that enjoy exclusive jurisdiction over particular pieces of territory and rights to non-interference and non-intervention that are enshrined in the United Nations charter. This system is in turn prefaced on the assumption that states exist primarily to protect the security of their citizens. In other words, the security of the state is considered important, and worth protecting, because states provide security to individuals. But, as countless examples show, not every state protects the wellbeing of its population. From recent examples like Syria to examples from the past century, threats to individual security have tended to come more from one’s own state than from other states. Facts like this pose a major challenge to international peace and security and raise questions about whether there are circumstances in which the security of individuals should be privileged over the security of states.

Key positions

The debate about human protection hinges on the issue of whether a state’s right to be secure and free from external interference should be conditional on its fulfilment of certain responsibilities to its citizens, most obviously protection from mass violence. We might plot various responses to this question along two axes – the first relating to our conception of whether moral progress is possible in world politics (more optimistic or more pessimistic) and the other relating to which actors should be privileged (states or individuals). The first axis refers to the way we understand the potentiality and limits of world politics. Some approaches are prefaced on an optimistic vision that dialogue between communities makes moral consensus and shared purposes possible (Linklater 1998). The alternative is a fatalistic or ‘tragic’ conception of world politics based on the view that the world is composed of culturally distinct units with different values that pursue their own, distinct goals with limited possibility for cooperation (Lebow 2003). This account is sceptical of progress, doubts that morality does (or should) play a role in world affairs, and predicts that efforts to spread moral values will prove costly and counter-productive. The second axis relates to what sort of actor should be privileged – states or individuals. It is common for theories of International Relations to privilege the state on the grounds that it is the principal actor in world affairs, the main source of order, and the bearer of international rights and responsibilities. An alternative perspective privileges individuals as the only irreducible actor. Individuals cannot be means to an end; they must be seen as ends in themselves. From these two axes, we derive four ethical positions.

Optimistic and state-centred: a rule-governed international society

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This accepts that progress in international affairs is possible, but that in a world characterised by radical difference the basis for progress should be voluntary cooperation between states in a rule-governed international society of states. Perspectives housed in this quadrant hold that the common good is best served by privileging the rules of co-existence found in the UN charter. This focuses especially on the legal ban on the use of force and ensuring that the two exceptions to that ban are not abused (Articles 42 and 51). According to this view, allowing states a free hand to promote human protection in other states would create disorder by allowing wars to protect and impose one state's values on others. Disorder would weaken the international system, undermine human development, and make cooperation between states more difficult. This view dovetails with the commonly held legal view that there is a general prohibition on interference except when authorised by the UN Security Council. This account is unnecessarily pessimistic about the capacity of states to reach consensus about shared moral principles. There is relatively little evidence to suggest that the incremental expansion of collective action into new areas of peace and security, such as human protection, has given rise to greater disorder. This account also overlooks the flexibility built into the Security Council to redefine its role in international peace and security to take account of changing conditions, should it decide to do so.

Tragic and state-centred: the realities of life in an international state of nature

This perspective espouses a communitarian view about the diversity of communities and the relativity of values, but rejects even basic claims about the capacity of states to agree meaningful rules of co-existence, let alone substantive rules. This account suggests that norms and rules are irrelevant as causes of behaviour when set against material factors such as economic gain, territory and the national interest. To paraphrase a prominent realist, Edward Hallett Carr, international interference for 'protection' would in fact be nothing other than the interests and preferences of the powerful masquerading as universal morality. This account counsels against humanitarian activism. It doubts the capacity of states to be altruistic and thus sees all state action as exercises in the self-interested use of power that undermines world order. Few, if any, states openly subscribe to this approach. Accepting that states tend to do only what they perceive to be in their interests does not get us very far analytically. To understand why states act in certain ways we need to understand variation in the way that states (even similar states) construct their interests and this requires a deeper understanding of the factors that guide national decision-making.

Optimistic and individual-centred: defending humanity and our common values

The third perspective is the one most positively disposed to advancing human protection. It is usually associated with liberalism and a broader cosmopolitan view that all humans belong to a single world community. It holds that states have positive duties to protect foreigners from tyranny as well as a right to do so since human rights are universal rights that ought to be defended everywhere. According to theorists in this tradition, states have agreed certain minimum standards of behaviour. As such, action across borders to support human protection is not about imposing the will of a few powerful states but about protecting and enforcing basic values and/or the collective will of international society. While this view is on strong ground when it comes to the theoretical right of the UN Security Council to mandate enforcement action, when it comes to a more generalised right to intervention the theory is contradicted by strong bodies of legal thought and state practice that counsel against it. Not surprisingly, therefore, liberal cosmopolitans tend to be divided on whether there is such a general right of intervention outside the boundaries of existing international law.

Tragic and people-centred: the distinctiveness of humanitarian action

These accounts tend to privilege traditional forms of humanitarian assistance and exhibit deep scepticism about military intervention on the grounds that it tends to make situations worse and reinforces the militarist ideals that are among the chief underlying causes of humanitarian crises in the first place. Precisely because of this scepticism, however, these accounts help to widen our understanding of the tools that might be used to protect populations. In exposing some of the intrinsic limitations of forcible action to promote human protection, these approaches emphasise that interventions are selective, partial and never solely humanitarian. That said, critics question how suffering can be alleviated let alone prevented without taking a political stance and so there are real limits to the physical protection that can be afforded by humanitarian action alone. This 'individual-centred' approach is

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vulnerable to many of the criticisms levelled against the 'tragic' conception. Notably, its prescriptions often fall well short of what is needed to protect vulnerable populations.

Emerging norms of human protection

Since the end of the Cold War, the practice of human protection has evolved through at least eight interconnected streams of norms, rules, practices and institutional developments. Each of these emerged to address the problem of civilian suffering, especially during war and will be addressed in turn.

International humanitarian law

International humanitarian law had its origins in the nineteenth century with the development of the US Government's 'General Orders No. 100' (better known as the Lieber code), which were military laws designed to limit the conduct of soldiers – and the emergence of the Red Cross movement. After the Second World War, international humanitarian law was developed and codified in a series of international treaties. In 1948, the newly established UN General Assembly approved the Genocide Convention, which prohibited the crime of genocide and assigned all states a legal duty to prevent it and punish the perpetrators. The International Court of Justice (ICJ) was established as the judicial arm of the United Nations and is responsible for adjudicating on disputes between states and other legal matters. It judged that as a result of this convention, all states have a legal responsibility to do what they can, within existing law, to prevent genocide.

The laws of war were further codified in the four Geneva Conventions (1949), two additional protocols (1977), and in a range of protocols covering the use of Certain Conventional Weapons. Of particular importance was Common Article 3 of the 1949 Geneva Conventions, which committed parties to respect the human rights of all non-combatants; and the Convention on the Protection of Civilian Persons, which offered legal protection to non-combatants in occupied territories. The Geneva Protocols (1977) extended the legal protection afforded to non-combatants to situations of non-international armed conflict. They also insisted that armed attacks be strictly limited to military objectives and forbade attacks on non-combatants or their property. These principals provided the legal and moral foundation for subsequent campaigns for conventions banning weapons, such as landmines and cluster munitions, that were considered inherently indiscriminate. International humanitarian law has thus created a normative standard of civilian protection that not only prohibits attacks on non-combatants and restricts the use of certain weapons but also calls for the prevention of particular crimes, such as genocide, and the punishment of perpetrators.

Protection of civilians

The UN Security Council's formal engagement with this theme dates back to 1998 when, at Canada's request, it adopted a presidential statement calling for the Secretary-General to submit periodic reports on how the UN might improve the protection of civilians. Since then, it has held a series of open meetings on the protection of civilians, establishing it as one of its major thematic interests. In 1999, the Security Council unanimously adopted Resolution 1265 expressing its 'willingness' to consider 'appropriate measures' in response 'to situations of armed conflict where civilians are being targeted or where humanitarian assistance to civilians is being deliberately obstructed'. In addition, the Security Council expressed its willingness to explore how peacekeeping mandates might be reframed to afford better protection to endangered civilians. In 2006, it adopted Resolution 1674, which built further on this progress by demanding that parties to armed conflict grant unfettered humanitarian access to civilians.

As it has developed its thematic interest in the protection of civilians, the Security Council has also developed and strengthened its practices of protection. In doing so it has broken new ground. In Resolution 1973, passed in 2011, the Security Council authorised the use of force for human protection purposes in Libya. This was the first time in the history of the Security Council that such an action had been passed without the consent of the host state. Through this resolution, and the one that preceded it (Resolution 1970) the Security Council utilised the full range of the collective security powers granted to it by the UN Charter. Three years later, Resolution 2165 authorised the delivery of humanitarian assistance into Syria without the consent of the Syrian government – the first time that the Council

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has done this. Hence, two very important issues of precedent were established, built on a new understanding of the need to protect civilians.

Before the turn of this century, civilian protection was typically not considered a core part of peacekeeping. Starting in 1999 with the UN mission in Sierra Leone, the Security Council has invoked Chapter VII of the UN Charter with increasing regularity to authorise peacekeepers to use all means necessary to protect civilians. Chapter VII of the Charter gives the UN Security Council the authority to authorise whatever means it deems necessary, including the use of force, for the maintenance of international peace and security. By design, it was intended as a key deterrent to international aggression. Today, civilian protection and the authorisation of 'all means necessary' to that end are core aspects of UN peacekeeping and central to many of its new mandates. In the Democratic Republic of the Congo (DRC), the Security Council went even further by tasking a 'Force Intervention Brigade' to take the fight to non-state armed groups that were employing mass violence against civilians. Today, the bulk of the UN's 120,000 peacekeepers are deployed with mandates to use all necessary means to protect civilians from harm.

Addressing specific vulnerabilities

Since the end of the Second World War, international society has periodically recognised groups that are exposed to particular vulnerabilities and has established mechanisms aimed at addressing or reducing those vulnerabilities. Of these, the best developed is the international refugee regime, which is governed by the 1951 Refugee Convention and subsequent 1967 Protocol. It is overseen by the UN High Commissioner for Refugees (UNHCR). This system grants people facing persecution the right to claim asylum and receive resettlement in third countries and mandates the UNHCR to ensure that refugees have access to protection and durable solutions to their displacement. During the 1990s, it became apparent that this system was unable to cope with a new displacement crisis – that of internal displacement. Internal displacement occurs when people are forced from their homes by mass violence and other ills but remain within their host country. As a largely domestic issue there was little appetite for an international convention governing the displaced. Instead, the UNHCR extended its mandate to cover the protection of all displaced persons and United Nations officials developed 'guiding principles' for their treatment.

Another longstanding facet of mass violence that gained political prominence only in the 1990s was sexual and gender-based violence. The use of rape as a weapon of war in various cases pushed the UN Security Council to establish the protection of women and girls as one of the principal elements of its 'Women, Peace and Security' agenda adopted in the year 2000 via Resolution 1325. Since then, the United Nations has created the post of Special Representative of the Secretary-General to give permanent focus to the issue, and has instituted a series of annual reports that identify where these crimes are committed and advocate for steps to be taken in response. The United Nations has also begun to 'mainstream' the protection of women and girls through, for example, the deployment of women's protection advisers. Beyond the United Nations, the British government launched its Preventing Sexual Violence in Conflict Initiative which, amongst other things, has helped persuade two-thirds of the world's states to support a 'Declaration of Commitment to End Sexual Violence in Conflict'. These developments have been paralleled by a range of initiatives focused on protecting children in armed conflict. Also led by the Security Council, the United Nations has appointed a Special Representative for the protection of children, which reports on the unique protection challenges facing children and related issues such as the recruitment of child soldiers. In 2014, the UN's ambassador for the promotion of education, former UK prime minister Gordon Brown, launched a global initiative to establish a contingency fund to support the provision of education to children during humanitarian crises, be they caused by natural disasters or mass violence.

Human rights

While human rights as a whole are subject to a great deal of questioning, their higher profile has undoubtedly made an important contribution to human protection. Two aspects in particular stand out, but they are illustrative rather than definitive since the overlap is extensive and complex. First, emerging principles and practices of peer-to-peer review, where states evaluate and comment on each other's performance (mainly through the compulsory review process of the UN's Human Rights Council), create expectations about the type of steps that states ought to take in order to protect their populations from various forms of abuse, including mass violence. While the most intransigent states

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remain largely unmoved, there is increasing evidence that peer review activities are influencing many states and pushing them towards greater compliance with their human rights obligations due to the pressure that being 'watched' places on them. Second, over the past two decades, international society has made increasing use of permanent and ad hoc arrangements for human rights monitoring and reporting in its decision-making on mass violence. Through a variety of different mechanisms, such as independent commissions and inquiries, special rapporteurs and fact-finding missions, international society is increasingly utilising human rights mechanisms to monitor and prevent mass violence. Most obviously, this reporting helps support decision-making on mass violence by furnishing key institutions with reliable information. It also encourages states to respect human rights by raising international awareness of domestic human rights practices.

International criminal justice

The idea that some crimes are so serious that the prosecution of perpetrators should be universal has advanced significantly in the past two decades through the activities of the International Criminal Court and a series of special tribunals. These institutions have proliferated since the mid-1990s and contribute to individual perpetrators being held accountable for their actions. Proponents argue that by ending impunity such institutions help deter would-be perpetrators and also give some legal protection to the victims. The first tentative steps were taken in the mid-1990s when the Security Council established tribunals to prosecute the perpetrators of grave crimes in Bosnia and Rwanda. The Rome Statute establishing the International Criminal Court in 1998 held that the Court's jurisdiction could be invoked when a state party proved unwilling or unable to investigate evidence pointing to the commission of widespread and systematic war crimes, crimes against humanity and genocide. The Court's prosecutor can initiate proceedings in cases where s/he or she is able to persuade a panel of judges that a case fell under the Court's jurisdiction, where a complaint was made by a signatory state, or when a case was referred to the prosecutor by the Security Council. To date, the Court has indicted 39 individuals and counts 124 states as members – though importantly the United States, Russia and China have yet to join. While it is important to state that developments like the International Criminal Court are still embryonic, the evidence suggests that transitional justice measures make reoccurrence less likely and improve general human rights within states. It also has a deterrent effect that spills over into other countries, including those that are not (yet) members of the International Criminal Court.

Humanitarian action

The notion that civilians ought to receive humanitarian assistance in wartime dates back to the nineteenth century and was integral to the development of the humanitarian idea of providing lifesaving assistance to whomever needed it. Those rights and expectations were incorporated into international humanitarian law but their applicability gradually expanded during the 1990s. The UN Security Council began authorising peacekeeping missions to support the delivery of humanitarian aid and, in the cases of Somalia and Bosnia, authorised the use of force to achieve this end. Since then, the Security Council has regularly authorised force for these purposes. What is more, however, in successive resolutions on the protection of civilians and in substantive resolutions on crises, the Security Council has demanded that parties to armed conflict grant unfettered access to humanitarian agencies.

Regional initiatives

The foundations for Europe's engagement with civilian protection were laid in the 1970s with the Helsinki Accords. Over time, these provided the basis for a Conference on Security and Cooperation in Europe mechanism that by the 1990s incorporated specific references to protection issues, including the protection of children and protection against torture. When this was transformed into the Organisation for Security and Cooperation in Europe in 1995, it was given additional responsibility and capacities to protect human rights including the post of High Commissioner for National Minorities.

As part of its common foreign and security policy the European Union also started to develop a civilian protection role, exemplified by the French-led multinational force in the Democratic Republic of the Congo in 2003 and a range of other operations. The African Union has established a comprehensive regional system for crisis management and response that includes a specific focus on the protection of civilians from mass violence. Article 4(h) of the Union's

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Constitutive Act enshrines its right to intervene in the affairs of its member states in issues relating to genocide and mass atrocities. Although this article has not been formally acted upon, owing to African leaders' continuing commitment to sovereignty, the African Union's peacekeeping operation in Darfur included a civilian protection mandate and its missions in Mali, the Central African Republic and Somalia have also supported civilian protection. In Latin America, states have established a comprehensive regional human rights mechanism. Even the Southeast Asian region, which is formally committed to the principle of non-interference in the domestic affairs of states, has begun to develop its own mechanisms for promoting human rights and protection through the ASEAN Intergovernmental Commission on Human Rights. These mechanisms might not understand or pursue 'rights' in precisely the same fashion, but they do rest on a shared understanding of atrocity crimes as grave human wrongs and a commitment to the prevention of these crimes.

Responsibility to Protect

In late 2005, world leaders unanimously adopted the Responsibility to Protect (R2P) in paragraphs 138–140 of the UN World Summit Outcome Document. This commitment was subsequently reaffirmed by both the UN Security Council and the UN General Assembly, which also committed to ongoing consideration of its implementation. The Responsibility to Protect rests on three pillars. The first is the responsibility of each state to use appropriate and necessary means to protect its own populations from genocide, war crimes, ethnic cleansing and crimes against humanity (hereafter referred to collectively as 'atrocity crimes'). The second pillar refers to the commitment of the international community to encourage and help states exercise this responsibility. The third pillar refers to the international responsibility to respond through the United Nations in a timely and decisive manner when national authorities are manifestly failing to protect their populations from the four atrocity crimes. The principle was initially considered to be controversial, as it countenanced the potential use of force and other transgressions of sovereignty. Over time, however, international consensus on the principle has widened and deepened.

More tellingly, the Responsibility to Protect has become part of the working language that frames international engagement with political crises and the Security Council has referred to it in more than forty resolutions. It has reminded governments of their protection responsibilities (e.g. Resolution 2014 on Yemen); demanded active steps to protect civilians (e.g. Resolution 2139 on Syria); tasked peacekeepers with assisting governments to protect their own populations (e.g. Resolution 2085 on Mali) and demanded that perpetrators of mass violence be held legally accountable (e.g. Resolution 2211 on the Democratic Republic of the Congo). The Security Council has also connected its work on the Responsibility to Protect with its international efforts focused on preventive diplomacy and conflict prevention through such measures as the control of small arms and light weapons, the prevention of genocide, counter-terrorism and international policing. With this changing focus, debate amongst states turned to focus less on the principle of the Responsibility to Protect and more on its implementation.

Problems and challenges

The world is more likely to respond to human protection crises today than it once was, but as Syria shows we are nowhere close to solving the problem of human insecurity. Even when the normative and political context allows for it, the effective protection of populations from atrocity crimes confronts significant practical challenges. It is important to be upfront about what these challenges are.

The first point is to recognise that there are significant limits to what outsiders can do to protect people in foreign countries. Many internal conflicts are not readily susceptible to outside mediation as they are so complex and fraught with danger that they can defy easy resolution. Concerted international action can sometimes protect populations or prevent mass atrocities, but the primary determinants of violence or peace typically rest within the country itself and the disposition of its leaders. From the United Nations' perspective, this problem is compounded by the fact that it tends to be confronted only by the world's most difficult cases. Situations usually reach the UN Security Council only when others have tried, and failed, to resolve them. As a rule of thumb, where conflicts have an easy remedy, solutions tend to be found at the local, national or regional level. The world body tends to assume the lead only on those crises for which others have found no solution. In such circumstances, a modest success rate might partly reflect the sheer difficulty of the cases presented to the United Nations system.

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A second challenge is that human protection operates in a world of finite global capacity and competes with other cherished norms and values for attention and resources. This problem of limited resources is compounded by a climate of financial austerity arising out of the 2008 global financial crisis. Many major donors have cut their own national budgets and have imposed austerity measures on their own populations, putting pressure on their support for the protection of people in other countries. The harsh reality, therefore, is that in the near-term, the cause of human protection will not be able to call upon significant new resources.

A third challenge is to recognise that the pursuit of human protection is politically sensitive. Human protection is both enabled and constrained by politics and can generate acute controversies and disputes by, for instance, requiring that some states be identified as being at risk of a crisis and demanding actions that some governments might object to. Often, even long-term preventive measures entail a significant degree of intrusion into the domestic affairs of states, which is not likely to be always welcome. States jealously guard their sovereignty and are sensitive to perceived incursions on their rights or criticisms of their conduct or domestic conditions. As such, they rarely invite assistance or look kindly upon external efforts to prevent atrocities within their jurisdiction. It is important to remember that the United Nations' activities are overseen by political (as opposed to judicial) organs comprised of sovereignty-wielding member states. One facet of the problem is that states sometimes judge that their own interests are best served by *not* preventing atrocity crimes. This can be seen over a wide range of cases, but perhaps none have been as striking as the Syrian example, where from 2011 the Security Council failed to act decisively as hundreds of thousands were killed and millions displaced. Historically, the United Nations has struggled to assert its primacy in such situations where the interests of powerful states, especially permanent members of the Security Council, are engaged with competing aims.

Another facet of the problem of 'political will' is that states are self-interested actors that prioritise the wellbeing of their own citizens. As such, they are generally reluctant to commit extensive resources to prevent atrocity crimes in other countries. The issue here is not whether governments support atrocity prevention as a goal, but the depth of their support relative to their other goals – including cherished domestic objectives such as healthcare and social welfare. Political and diplomatic capital is also a finite resource. Sometimes, states may judge that trade-offs have to be made to achieve the greatest good or least harm overall. For example, at the outset of the crisis in Darfur in 2003, several states decided not to press the government of Sudan too hard, fearing that this might jeopardise negotiations to end the government's war with rebels in the south – who eventually seceded and founded their own state in 2011 with the creation of South Sudan.

Conclusion

Whichever position one holds on the virtue and practicality of international action to protect humans from imminent peril, it is indisputable that the past few decades have seen a proliferation of mechanisms, institutions and practices aimed at improving protection. This has gone hand in hand with a global decline in both armed conflict and mass atrocities. Through at least eight distinct but connected streams of practice, we have seen the codification of norms of acceptable behaviour, the establishment of responsibilities for third party states and international institutions, and the emergence of a range of practices aimed towards the protection of vulnerable populations. As a result, mass violence today is typically met with complex – if not always entirely effective – responses from a range of different types of actors. Nevertheless, international practices of protection have improved markedly over the past few decades, contributing to an overall decline in both the incidence and lethality of atrocity crimes. The most important point is that this all remains unfinished business. Not only are there a number of political issues left to address, we have barely begun to scratch the surface of the practical issues connected to implementation. Questions of which strategies offer most protection in what kinds of circumstances will need to be addressed if the promise of protecting people globally is to be turned into a lasting reality.

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