

Burma/Myanmar: “Facing Up to Our Responsibilities”

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If the intransigence of the Burmese generals continues, it is a very real issue whether in the name of humanity some international action should be taken against their will – like military air drops, or supplies being landed from ships offshore – to get aid to the huge numbers who desperately need it right now, in the inaccessible coastal area in particular.

French Foreign Minister Bernard Kouchner opened up a hornet's nest when he argued last Thursday, as others are now doing, that this is a proper case for coercive intervention under the "responsibility to protect" principle unanimously endorsed by 150 heads of state and government at the 2005 UN World Summit. His proposal that the Security Council pass a resolution which "authorizes the delivery and imposes this on the Burmese government" met with immediate rejection not only from China and Russia, who are always sensitive about external intervention into internal affairs, but from many other quarters as well.

It generated concern from the UK and others, including senior UN officials, that such an "incendiary" approach would be wholly counterproductive in winning any still-possible cooperation from the generals. It also provoked the argument from humanitarian relief agencies – who know what they are talking about – that simply as a practical matter any effort to drop supplies without an effective supporting relief on the ground would be hopelessly inefficient, and maybe even dangerous with the prospect of misuse of medical supplies.

These are strong arguments, and they weigh heavily in the policy balance. But as the days go by, with relief efforts impossibly hindered, only a trickle of the government's own aid getting through, and the prospect of an enormously greater death toll looming acutely within just a few more days, they are sounding less compelling, and at least need revisiting.

My own initial concern, and it remains a serious one, with Bernard Kouchner's invocation of the "responsibility to protect" was that, while wholly understandable as a political rallying cry – and God knows the world needs them in these situations – it had the potential to dramatically undercut international support for another great cause, to which he among others is also passionately committed, that of ending mass atrocity crimes once and for all.

The point about "the responsibility to protect" as it was originally conceived, and eventually embraced at the World Summit – as I well know, as one of the original architects of the doctrine, having co-chaired the international commission that gave it birth – is that it is not about human security generally, or protecting people from the impact of natural disasters, or the ravages of HIV-AIDS or anything of that kind.

Rather, "R2P" is about protecting vulnerable populations from "genocide, war crimes, ethnic cleansing and crimes against humanity" in ways that we have all too miserably often failed to do in the past. That is the language of the 2005 UN General Assembly resolution, and Security Council resolutions that have followed it, and it is only in that context that the question should even arise of coercively intervening in a country against the express will of its government. And even then, the responsibility to protect norm allows the use of military force only with Security Council endorsement, and only as a last resort, after prevention has failed, when it is clear that no less extreme form of reaction could possibly halt or avert the harm in question, that the response is proportional to that harm, and that on balance more good than damage will be done by the intervention.

If it comes to be thought that "R2P", and in particular the sharp military end of the doctrine, is capable of being invoked in anything other than a context of mass atrocity crimes, then such consensus as there is in favour of the new norm will simply evaporate in the global South. And that means that when the next case of genocide or ethnic cleansing comes along we will be back to the same old depressing arguments about the primacy of sovereignty that led us into the horrors of inaction in Rwanda and Srebrenica in the 1990s.

But here's the rub. If what the generals are now doing, in effectively denying relief to hundreds of thousands of people at real and immediate risk of death, can itself be characterised as a crime against humanity, then the responsibility to protect principle does indeed cut in. The Canadian-sponsored commission report that initiated the R2P concept in fact anticipated just this situation, in identifying one possible case for the application of military force as "overwhelming natural or environmental catastrophes, where the state concerned is either unwilling or unable to cope, or call for assistance, and significant loss of life is occurring or threatened".

The UN resolution does not pick up this specific language, but it does refer to "crimes against humanity", and the definition of such crimes (in the Rome Statute establishing the International Criminal Court, as well as in customary international law) embraces, along with widespread or systematic murder, torture, persecution and the like, "Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health".

There is, as always, lots for the lawyers to argue about in all of this, not least on the question of intent. And there will be lots for the Security Council to quarrel about as to whether air drops and the like are justified, legally, morally and practically. But when a government default is as grave as the course on which the Burmese generals now seem to be set, there is at least a prima facie case to answer for their intransigence being a crime against humanity – of a kind which would attract the responsibility to protect principle. And that bears thinking about, fast, both by the Security Council, and the generals.

Gareth Evans is President, International Crisis Group; Co-Chair, International Commission on Intervention and State Sovereignty; Member, UN Secretary-General's Advisory Committee on the Prevention of Genocide.