Redefining the dilemmas of humanitarian intervention

AMITAV ACHARYA

Nothing in the UN Charter precludes a recognition that there are rights beyond borders. What the Charter does say is that ‘armed force shall not be used, save in the common interest’. But what is that common interest? Who shall define it? Who shall defend it? Under whose authority? And with what means of intervention?

Kofi Annan (1999).

The Responsibility to Protect: The Report of the International Commission on Humanitarian Intervention and State Sovereignty, makes a major contribution towards fulfilling the international community’s quest for common answers to the questions posed by Kofi Annan in 1999. The Commission, announced in September 2000, was partly a response to the controversies surrounding interventions in Kosovo (not authorised by the UN Security Council and undertaken by NATO) and East Timor (authorised by the Council, but undertaken by a ‘coalition of the willing’). These controversies were preceded by debates about post-Cold War interventions in northern Iraq, Somalia, and Bosnia and the failure to intervene in Rwanda. The questions about humanitarian intervention (raised by Kofi Annan and aptly summarised by Stanley Hoffmann as ‘when, who, what for, and how’), (Hoffmann 1995–6) form the basis of the Report’s analysis and recommendations. In addressing them, The Responsibility to Protect significantly advances the debate over humanitarian intervention and commands a place alongside other path-breaking efforts at shifting the paradigms of global security, such as the Palme Commission on Common Security, and the Bruntland Commission Report on Sustainable Development. It deserves the attention of anyone interested in promoting multilateral approaches to global peace.

The Report’s primary goal is to establish clear rules, procedures and criteria of humanitarian intervention, especially those related to the decision to intervene, its timing and its modalities. The Report thus aims to make humanitarian intervention not only legitimate, but also more efficient. Last but not least, the Report seeks to address the root causes of conflict and advance the prospects for long-term peace.

Although not short of concrete policy proposals, the Report’s most significant contribution, in the view of this author, is in the conceptual domain. The Responsibility to Protect redefines humanitarian intervention as a responsibility (first, of the
state concerned, and failing that, of the international community), and not a right (of outsiders, however may they represent the international community at large). In the aftermath of the 1991 Gulf War, for example, French Foreign Minister Roland Dumas asserted that the international community had a ‘right to intervene’ to alleviate human suffering caused by repression, civil disorder, inter-state conflict or natural disasters (Weiss and Campbell 1991). *The Responsibility to Protect* finds the phrase ‘right to intervene’ unhelpful, because it stresses ‘the claims, rights and prerogatives of the potentially intervening states’ over the ‘the urgent needs of the potential beneficiaries of action’, and because it fails to capture the broader tasks of prevention and follow-up peacebuilding that must accompany intervention (p. 16). Under the new framework, the decision to intervene is made from the point of view of those needing support and not those providing it. And protection would carry a broader meaning than intervention; implying not just an obligation to react, but also equally important and parallel obligations to prevent and rebuild.

Another key feature of the Report is its firm insistence that humanitarian intervention is to be ‘an exceptional and extraordinary’ measure. Two kinds of event are specified as triggers for intervention: large scale loss of life and ethnic cleansing. Going by this criterion, natural disasters, democratic breakdowns, or conflicts that do not produce ‘serious and irreparable harm’ to human beings do not justify the violation of sovereignty by the international community.

This Report does not argue against the salience of state sovereignty as the basic organising principle of international relations. (It helps greatly to inform the reader on the debate over sovereignty, however, thanks to an excellent overview of the concept and challenges to it that appears in the research essays that accompanies the Report in a CD-ROM). Instead, it finds that the presumed tension between state sovereignty and humanitarian intervention is often exaggerated. Sovereignty ‘does still matter’ (p. 7); however sovereignty is not to be taken as a right, but a responsibility. The ‘primary responsibility for the protection of its people lies with the state itself’. But when states are incapable of living up to that responsibility, or are willingly causing grave harm to their own people, the responsibility to protect shifts to the international community. Since the primary responsibility of ‘protecting’ people lies with their governments, ‘Responsibility to Protect’ implicates their unwillingness and/or inability to offer such protection as a legitimate trigger for international intervention.

No other policy document has gone further in specifying the criteria for humanitarian intervention. The Report sets down six specific and important conditions: right authority, just cause, right intention, last resort, proportional means and reasonable prospects.

The first two of these stipulations are notable not so much because of what they include as grounds for intervention as because of what they purposely exclude. In defining ‘just cause’ the Report excludes intervention to restore democracy or to stop human rights abuses that do not entail large-scale killing and ethnic cleansing, or intervention by states to protect their nationals in foreign territory. ‘Right intention’ is similarly limited to alleviation of acute human suffering rather than
alteration of boundaries or even supporting claims of self-determination. Outright overthrow of oppressive regimes is not justified, while destroying their ability to cause harm to their own people is justified. This in my view is an important distinction. As with just cause, this criterion, along with the stipulation of multilateralism as a key indicator of right intention, would make humanitarian intervention less ideological and hence controversial. For example, humanitarian intervention thus defined can be usefully separated from the West’s ideologically-charged democratic ‘enlargement’ campaign. Going by the right intention criteria, a unilateral US military intervention in Iraq would be unjustified, even if the Bush administration advances a moral purpose (‘axis of evil’) behind this move. Countries such as China would have less justification in opposing humanitarian intervention as a US ploy to advance its ideological interests.

The Report does not set any figures as to what constitutes ‘large-scale’ casualties. It would be unfair to cite this as a failing of the Report; but this means that the ‘one cold blooded question … how many dead and dying are enough to require intervention?’ (Newsweek 1992) remains unresolved. While the just cause and right intention criteria would reduce the controversy about humanitarian intervention by sharply distinguishing it from political motives, drawing such distinctions in real life is not going to be easy. What about democratic breakdowns which are accompanied by a large-scale loss of life? In such complex situations, intervention might be justified, but the Report’s efforts to separate the humanitarian rationale from political ones would be compromised. The Report acknowledges the possibility of ‘mixed motives’ behind intervention decisions (p. 36). Demands for self-determination can still be ground for intervention if suppression of such demand by a government entails large-scale loss of life and ethnic cleansing. In such a situation, however, can the intervening members of the international community limit themselves to saving lives without getting implicated in the political aspirations of the victims?

The ‘last resort’ principle is described as a point marked by the failure of negotiations to achieve compromise due to intransigence of one or both parties accompanied by the prospects for imminent violence. ‘Proportional means’ implies a minimalism in terms of the scale, intensity and duration of military action, all of which must be commensurate with the provocation. This entails ensuring a minimal impact on the target country’s political system and strict observance of international humanitarian law. ‘Reasonable prospects’ here is defined not in terms of the defeat of a state, but of a tangible chance of success in stopping or avoiding atrocities and suffering that acted as a trigger for the intervention. This criterion is a reminder of the so-called ‘do-ability’ principle, a corollary of the ‘Powell Doctrine’ of the early 1990s, which contributed to the US decision to avoid intervention in Bosnia. As the columnist Charles Krauthamer, put it then: ‘Principle 1 of humanitarian intervention is: It must be doable’ (Krauthamer 1992). Actions that stand no chance of offering protection or which could aggravate an existing crisis, are to be avoided.

One key issue remains unresolved here: how is one to assess the chances of success or failure of humanitarian intervention or its potential to be counter-productive? Without a clear sense of this, ‘Armed intervention, even for simple
humanitarian purposes, will always be carried out selectively, because in some places it will stand no chance of success’ (The Economist 1992).

The ‘right authority’ criterion, key to the legitimacy of humanitarian intervention, is deemed to be important enough to deserve treatment in a separate chapter. The UN is designated as the most appropriate authority, the chief ‘applicator of legitimacy’ in humanitarian interventions. While acknowledging its limitations and imperfections, the Report leaves ‘absolutely no doubt’ that the Security Council remains the best place for authorising humanitarian intervention. The task of the Report is not to seek alternatives to the Council, but to make that mechanism work better. The Report mandates Council approval in all cases of intervention while urging it to act promptly to such requests. The document makes a plea for a ‘code of conduct’ for the Permanent Five (P-5) to govern the use of the veto in intervention decisions, calling on the P-5 not to resort to the veto where their vital national interests are not involved (e.g. China in relation to the renewal of the UN force in Macedonia), and to resort to ‘constructive abstention’.

This is a crucial issue. The prospects of a global consensus on humanitarian intervention is critically dependent on the kind of reform to the Security Council veto that the Report itself advocates. It might have been helpful for the Report to have spelled out the principles and modalities that could be included in the proposed ‘code of conduct’. But its decision not to do so reflects a pragmatic realisation that there existed no imminent prospects of gaining the consent of the P-5 in reforming the Charter to prevent the capricious use of the veto.

What happens if the Security Council fails to act? The Report recommends going to the General Assembly under the ‘Uniting for Peace’ procedures. (The extreme rarity of resort to this procedure raises questions about how practical this suggestion would be in the event of strong opposition from one or more members of the P-5). Action by regional or sub-regional organisations seem to find less favour. Regional bodies may have a better understanding of the conflict and a greater stake in their neighbourhoods returning to peace (although this has not always been true). But their interest in, and capacity for, intervention is limited. Sovereignty concerns, and fear of being subjected to similar intervention in the future once a precedent had been set, is a major inhibiting factor. Most regional organisations—NATO is the clear exception—have lacked the resources to undertake collective military action even in the most urgent provocation. The problems encountered by the Organisation of African Unity in Chad and ASEAN’s more recent failure to intervene in East Timor offer good examples of such resource constraints.

Intervention by a regional organisation in a non-member state is a far more controversial enterprise, as demonstrated in NATO’s intervention in Kosovo. The Report acknowledges the problematic nature of this intervention. But its language carries enough ambiguity to lend justification to the questionable US view that the intervention was justified in view of the possibility of a spill-over of the Kosovo conflict to neighbouring NATO member states.

In general, the Report takes an ambiguous stand on the role of ad hoc coalitions—the so-called ‘coalitions of the willing’—in undertaking humanitarian intervention. It endorses intervention by ad hoc coalitions with the approval of the
Security Council: duly authorised by the Council, ‘a multinational coalition of allies can offer a more credible and efficient military force when robust action is needed and warranted’ (p. 52). But even here, speed and efficiency of intervention do not guarantee its legitimacy. And what of interventions by ad hoc coalitions undertaken without Security Council authorisation? The Responsibility to Protect argues that a coalition of the willing approach is better than inaction by the Security Council, especially in the face of acute humanitarian crises. It acknowledges that such interventions ‘do not … find wide favour’ (p. 54) in the international community. The parties to the Kosovo intervention were willing to ‘acknowledge its highly exceptional character’ (p. 54) and would have preferred Security Council authorisation. If so, then the tepid discussion of the Commission against such interventions, reflecting perhaps sharp divisions within the panel over this issue, is one of the main failings of the Report. Even those who strongly believe in the cause of humanitarian intervention, including this author, find the coalition of the willing approach undesirably controversial because of its questionable basis in international law, and because such interventions are usually dominated by powerful states. By not insisting on severe qualifications on such approaches, the Report undermines the commission’s seemingly genuine desire to separate humanitarian intervention from the ideological and geopolitical interests of the great powers. Can the international community be reasonably assured that P-5 members would not manipulate the process of Security Council authorisation so as to make a coalition of the willing approach dominated by one or more among them more likely, especially where the latter might serve their geopolitical interests?

The final part of The Responsibility to Protect devotes itself to operational principles that would enhance the efficiency of humanitarian intervention and reduce the chances of mistakes and mishaps that might be politically costly. Here, the focus is on the importance of clear objectives, the need for an unambiguous mandate and the availability of adequate resources. An important aspect of the Report’s recommendation is that the intervening authorities should not be guided by force protection as their principal objective, and that they should accept limitations on the use of force and proportionality of retaliation against threats. Unity of command, interoperability among multinational forces, and good communications among them, are stressed as being key to success of humanitarian intervention.

Implications for Asia

As in many other parts of the developing world, the idea of humanitarian intervention has received a generally hostile response in Asia. In the words of Malaysia’s foreign minister Syed Hamid Albar: ‘We have to be wary all the time of new concepts and new philosophies that will compromise sovereignty in the name of humanitarian intervention, in the name of globalisation which is another form of trying to interfere in the domestic affairs of another country’ (AFP 1999). While the Report does much to reassure the sceptics of humanitarian intervention
in the developing world, the shift from ‘right to intervene’ to ‘responsibility to protect’ is unlikely to entirely override the developing world’s concerns about sovereignty. Compared to other parts of the developing world, Asia remains a tightly sovereignty-oriented region. In Latin America, for example, military take-over of a civilian government could trigger its suspension from the Organisation of the American States, which then is mandated to seek the restoration of civilian rule. In Asia, no regional organisation espouses such intrusive measures. In adopting a concept paper on preventive diplomacy, the ASEAN Regional Forum has expressly limited the scope of multilateral diplomacy to inter-state conflicts only.

Initial reactions\(^3\) to the Report in Asia suggest several areas of regional concern. Some observers in that part of the world remain unconvinced that the Report would change a basic reality: that the developing countries would still have precious little say over the Security Council decisions on intervention\(^4\). Humanitarian intervention will remain the prerogative of the strong against the weak; it can never be attempted against powerful states.

The Report recognises this problem but dismisses it: ‘the reality that interventions may not be able to be mounted in every case where there is justification for doing so, is no reason for them not to be mounted in the first place’ (p. 37). This echoes Kofi Annan’s view: the fact that you cannot act everywhere is no reason for not acting when you can (Annan 1999). But without adequate Security Council reform, especially relating to the veto, it might be difficult to separate the responsibility to protect from traditional great power politics.

Asia has seen a debate over sovereignty and non-interference in the post-Cold War era. Initially, the debate focused on the international community’s response to authoritarian rule in Myanmar and the breakdown of democracy in Cambodia (1997) (Acharya 1997). Soft interventionist concepts, such as ‘constructive intervention’ proposed by the then Deputy Prime Minister of Malaysia, Anwar Ibrahim, in 1997 and the idea of ‘flexible engagement’ proposed by the then Thai Foreign Minister Surin Pitsuwan in 1998, marked the first serious attempt in the region to go beyond the traditional notion of sovereignty and non-interference (Acharya 2001). ‘Flexible engagement’ was not however, strictly addressed to political and humanitarian issues; it was a broad call for collective regional action in dealing with the aftershocks of the Asian financial meltdown and transnational challenges such as forest fires and drug trafficking. As such, it attracted considerable opposition, and was consequently diluted.

Because the very specific nature of the ‘just cause’ criterion and the high threshold of intervention, the ‘responsibility to protect’ might be reassuring to Asian governments who have strongly championed the virtues of state sovereignty and non-interference in the internal political affairs of states, especially those related to regime survival. For this reason, the Report will be disappointing to those who have advocated a more intrusive form of regional action against authoritarian regimes (Acharya 1998).

The situation in Myanmar, where the international community has sought the removal of a military junta that had usurped power from an elected party, would not qualify for the Report’s ‘just cause’ criterion unless there is clear proof of the
military government’s complicity in large-scale loss of life and ethnic cleansing. But in the face of inconclusive and conflicting evidence on the nature and extent of humanitarian crisis and political violence in Myanmar, diplomatic debates about intervention there would remain highly controversial. The Report justifies sanctions to diminish the capacity of regimes to perpetrate human rights abuses short of large-scale loss of life and ethnic cleansing even though it opposes outright intervention against them. But this is unlikely to persuade Myanmar’s neighbours who have opposed isolating the regimes out of deference to sovereignty and non-interference. In short, accepting The Responsibility to Protect might prevent a future East Timor, but not necessarily a future Myanmar.

The case of East Timor constitutes a recent example in Asia where the specific issue of multilateral action to protect lives endangered by the action of their own government has been debated. Here, the sub-regional grouping comprising Indonesia’s immediate neighbours, ASEAN, was both unwilling and unable to intervene owing to lack of resources as well as its adherence to the outmoded (in my view) regional doctrine of non-interference. The mechanisms implemented for generating peacekeeping and conflict resolution in that crisis evolved from the Heads of State summit of Asia Pacific Economic Cooperation (APEC), a wider regional economic grouping, convened in Auckland. But APEC itself lacked the framework for undertaking security measures, and the intervention itself was carried out by a coalition of the willing led by Australia. The East Timor crisis thus exposed the deficiencies both of the UN system and of Asian regional groupings. But this itself did not make the coalition of the willing approach, despite the relative promptness with which it can be carried out, entirely legitimate. When President Habibie of Indonesia finally accepted an international force for East Timor, his first preference was intervention by forces from, or led by, his neighbouring ASEAN states. When told by the then Thai Foreign Minister, Surin Pitsuwan that ASEAN members, including his own country, lacked the resources and readiness for such a role, Habibie was reported to have asked for a Scandinavian commander. Evidently, the Indonesian president was not keen on an Australian commanded multinational force. The East Timor experience thus suggests that the question of whether or how to exercise the ‘responsibility to protect’ cannot be separated from the question of leadership and identity. The answer to this problem would lie in developing the UN’s own mechanism for rapid action, and in making such action by the UN Security Council mandatory in the event of acute human suffering.

The Responsibility to Protect correctly notes that most governments in the world, including Asian governments, would accept the UN as the primary agent of protection. A regional capacity for military intervention would be difficult to operationalise due to concerns about sovereignty. For Asian regional institutions, the key task would thus be to engage in conflict prevention, or responsibility to prevent, while leaving it to the UN to undertake military protection. The emerging role of the ASEAN Regional Forum in preventive diplomacy (including its recent decision to enhance the role of the ARF chair in undertaking preventive missions) assumes significance in this respect, provided it can be extended to cover both intra-state and inter-state conflicts.
Conclusion

The Responsibility to Protect Refines, but does not resolve, the dilemmas of humanitarian intervention. By changing its vocabulary and strictly delimiting its scope, the Report goes a long way towards making humanitarian intervention an acceptable norm and practice in international society. It does not entirely succeed in separating the humanitarian imperative from the political and geopolitical constraints of a UN system that will remain dominated by the P-5. But its sincere and brave attempt to lay down the criteria should render the abuse of humanitarian intervention less likely. The Report will not entirely remove the international community’s misgivings about intervention by powerful regional organisations (NATO) or ad hoc coalitions led by the major powers or their ‘deputy sheriffs’ (i.e., middle powers closely allied to the West. The Report’s position on such issues has to be seen in the context of an understandable desire to strike a compromising tone and not to offend key UN members which might doom the prospects of the Report receiving serious attention. It is now the responsibility of the international community to take the Report as the basis of a wider debate and refinement that could result in an official consensus on the principles and practice of humanitarian intervention.

While it would be too much to expect the Report to resolve the dilemmas of humanitarian intervention, it makes another timely contribution to the debate about intervention which the commissioners would have foreseen when they began their deliberations well before the collapse of the World Trade Centre on September 11, 2001. It comes at a time when the post-Cold War intervention debate has turned full circle. In the wake of Iraq and Somalia, the concept of intervention was said to have shifted from being geopolitically-motivated to being principle-based. We were told to expect an era in which the humanitarian impulse, rather than national interest, would form the chief initial rationale for intervention.

Now, in the post-post-Cold War Era (after 11 September), the US is reverting unabashedly to a renewed geopolitical interventionism that includes pre-emptive intervention against states accused of sponsoring terrorism and proliferation of weapons of mass destruction. The Responsibility to Protect adds weight to arguments against the expanded scope of US interventionism geared to its unilateral strategic objectives. If intervention aimed at preventing large-scale loss of life and ethnic cleansing and undertaken through a legitimate multilateral framework is to be accepted only as an ‘extreme’, ‘extraordinary’ and ‘exceptional’ measure, shouldn’t there be even less justification for the self-interested intervention by a single nation, no matter however powerful, motivated by its strategic and geopolitical objectives?

Notes

1. The author would like to thank Andrew Mack for comments on an earlier draft.
3. These observations are based on the author’s impressions of a panel discussion on *The Responsibility to Protect* held at the 16th Asia Pacific Roundtable Kuala Lumpur, Malaysia, 2–6 June 2002.

4. As one participant in the Malaysian meeting (note 3) put it: ‘Those engaging in humanitarian intervention are most likely to be advanced countries, and those who are its target are most likely to be developing countries.’

References


Agence France Presse (AFP) 1999, ‘Malaysia opposes UN probe of East Timor atrocities’, 7 October.


