

Briefing on
“International Disaster Assistance: Policy Options”

**Subcommittee on International Development, Foreign Assistance,
Economic Affairs and International Environmental Protection
Committee on Foreign Relations
of the United States Senate**

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**Statement
by
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Thank you, Mr. Chairman, for the opportunity to brief this distinguished Subcommittee on the concepts, principles, norms, and practices that have guided the response of the United Nations to the immense human tragedy that has unfolded since Cyclone Nargis struck Myanmar on the 2nd and 3rd of May. At the outset, let me express the standard caveat of an international civil servant briefing a Member State parliament. In accordance with past practice, my attendance today before the Subcommittee is on a purely informal basis, and nothing in my oral remarks and written briefing statement should be understood to be a waiver, express or implied, of the privileges and immunities of the United Nations or its subsidiary organs under the 1946 Convention on the Privileges and Immunities of the United Nations.

Today I will address three issues that have generated widespread public interest and media commentary along with no little confusion and misunderstanding: one, the evolving

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notion of the responsibility to protect and why it does not appear to apply to this particular situation; two, other principles, practices, and norms that do seem to be highly relevant to this case; and three, why the UN was able to respond vigorously and decisively to these events without explicit action by the Security Council.

Responsibility to Protect

As adopted unanimously by the 2005 World Summit and by subsequent resolutions of the General Assembly and the Security Council, the responsibility to protect (RtoP) rests on three pillars:

- First, an affirmation of the primary and continuing legal obligations of states to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, and from their incitement;
- Second, a commitment by the international community to assist states in meeting these obligations; and
- Third, an acceptance by Member States of their responsibility to respond in a timely and decisive manner, in accordance with the UN Charter, to help protect populations from the four listed crimes and violations. “Populations” includes all persons on a state’s territory.

The emphasis, therefore, is on state responsibility, to be bolstered by international assistance.

The concept of RtoP, moreover, is not intended to detract in any way from the much broader range of obligations existing under existing international humanitarian and human rights law, refugee law, and international criminal law.

As defined by the Summit – and the UN must be guided by the collective decisions of its Member States, not by the pronouncements of independent commissions or commentators or the views of individual Member States – RtoP does not encompass other dire threats to populations, such as climate change, HIV/AIDs, or the effects of natural disasters. These need to be, and are

being, addressed in other ways. To be conceptually coherent, operationally sound, and politically sustainable, the scope of RtoP should remain narrow and closely tied to the four listed crimes and violations unless and until the Member States decide otherwise. To help prevent such mass atrocities would be a cardinal achievement in the evolution of human rights. We should take care not to undermine the historic but fragile international consensus behind the responsibility to protect by succumbing to the temptation to stretch it beyond what was intended by the heads of state and government assembled at the UN almost three years ago.

While the scope of RtoP should remain narrow, the range of tools for implementing it – whether by the UN, its regional, sub-regional, and civil society partners, or Member States – runs deep. Its programmatic dimensions include 1) capacity building and rebuilding, 2) early warning and assessment, 3) timely and decisive response, and 4) collaboration with regional and sub-regional arrangements. The stress is on prevention and building the capacity of states to resist turning to the path of genocide, war crimes, ethnic cleansing, and crimes against humanity.

RtoP's conceptual foundation is "sovereignty as responsibility," a far broader, richer, and more pragmatic notion than coercive humanitarian intervention. RtoP seeks to help states succeed, not just to react when they fail. It makes no sense, either morally or politically, to limit one's policy options to standing by or sending the marines. The first is unacceptable and the second unlikely. As the Summit's Outcome Document acknowledged, there may be times when the only way to protect hundreds of thousands of people at risk is through enforcement measures – whether economic, military, or political – under Chapter VII of the UN Charter. In such cases, RtoP does not alter, indeed it reinforces, the legal obligation of Member States not to use force except in conformity with the Charter. Absent agreement on the use of coercive measures, there are a range of non-coercive instruments available to the UN under Chapters VI and VIII of the

Charter to advance prevention and protection goals, as stressed in the Summit's Outcome Document.

In my view, a government's unwillingness to facilitate the delivery of international humanitarian assistance to its people in the aftermath of a major natural calamity may be reprehensible, morally repugnant, and contrary to a number of well-established international principles, standards, and norms. How to respond to such a situation deserves further discussion. However, a state's recalcitrance is unlikely to constitute one of the four crimes and violations agreed at the 2005 Summit to fall under the responsibility to protect umbrella. There has been some speculation in the press about whether such action or inaction could be considered to be a crime against humanity. That would require, however, crimes such as murder or extermination committed as part of "a widespread or systematic attack" against the civilian population.²

Other Principles, Practices, and Norms

The international community, it should be underscored, need not invoke RtoP to justify a vigorous response to such a large-scale loss of life due to a state's indifference or incapacity. There are other sets of relevant principles, practices, and norms, including those concerning humanitarian assistance, internally displaced persons, and human rights. The Guiding Principles for humanitarian assistance were laid out in an annex to a 1991 General Assembly resolution (46/182). Under them, the sovereignty, territorial integrity, and national unity of states are to be fully respected and assistance is to be provided with the consent of the affected country. The importance of international cooperation to address emergency situations, however, is stressed and affected states are "to facilitate the work of these organizations in implementing

² See, for example, Article 7 of the Rome Statute of the International Criminal Court.

humanitarian assistance, in particular the supply of food, medicines, shelter and health care, for which access to victims is essential.”

More recently, the 2005 Summit called for “upholding and respecting the humanitarian principles of humanity, neutrality, impartiality and independence and ensuring that humanitarian actors have safe and unhindered access to populations in need in conformity with the relevant provisions of international law and national laws.”³ In December 2006, the General Assembly called upon states “to cooperate fully with the United Nations and other humanitarian agencies and organizations and to ensure the safe and unhindered access of humanitarian personnel as well as delivery of supplies and equipment in order to allow them to perform efficiently their task of assisting the affected civilian population” (A/RES/61/134). And most recently, a December 2007 Assembly resolution reaffirmed the 1991 Guiding Principles for humanitarian assistance, emphasizing the responsibility of the state in facilitating “the work of humanitarian organizations in mitigating the consequences of natural disasters” (A/RES/62/93). While resolutions of the Summit and Assembly do not constitute binding international norms, they do reflect generally accepted standards and expectations.

According to the UN’s Office for the Coordination of Humanitarian Affairs (OCHA), an estimated 2.4 million people have been affected by Cyclone Nargis and many of them have been uprooted from their homes and villages.⁴ The Guiding Principles on Internal Displacement, first articulated in 1998, are thus particularly relevant. Principle 24(2) stipulates that “humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military purposes.” Under Principle 25, international humanitarian organizations “have the right to offer their services in support of the internally displaced” and “consent thereto shall not be

³ Paragraph 169, of the Outcome Document, UN Doc. A/RES/60/1.

⁴ The estimate of affected comes from OCHA Situation Report No. 29, 9 June 2008.

arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.” Moreover, “all authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.” These principles have been reaffirmed in a number of General Assembly resolutions and in December 2007 the Assembly called upon governments to further improve access to internally displaced persons (A/RES/62/153).

Ultimately, it is the fundamental human rights of the disaster victims that are at stake. These derive from a number of instruments, including the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. As UN High Commissioner for Human Rights Louise Arbour put it, referring to international aid following such devastating natural disasters, “it is the right of victims to expect such assistance and it is the duty of governments and the international community to do everything in their power to facilitate it. In the case of Myanmar, the obstruction of the deployment of such assistance illustrates the invidious effects of long-standing international tolerance for human rights violations that made such obstruction possible.”⁵

The UN Response

Some commentators have suggested that the UN is powerless when facing such obstruction unless the Security Council, including its veto-bearing five permanent members, can agree on forceful action. The response to Cyclone Nargis, however, suggests otherwise. The world body responded rapidly to the crisis on several levels and in several ways. Secretary-General Ban Ki-moon employed his bully pulpit, his good offices, and, finally, his personal

⁵ Address to the 8th Session of the Human Rights Council, 2 June 2008.

diplomacy to help persuade the authorities in Myanmar to take a more open approach to international efforts to aid the cyclone victims. Sir John Holmes, the UN's Emergency Relief Coordinator, was on the ground in the region early and for an extended period, pressing the authorities to change their attitudes, helping to organize the international aid effort at both the field and headquarters levels, and keeping the world informed and the regime under global public scrutiny. A range of UN agencies and their national and civil society partners marshalled and delivered aid and technical assistance to the extent that the Myanmar authorities would permit. While much, much more needs to be done and the pressure needs to be sustained, it is estimated that 1.3 million victims have now been reached by the international aid effort and the Red Cross/Red Crescent movement, in addition to those reached by national efforts. Notably, some reports suggest that UN assistance has been more readily accepted than that from most other sources, perhaps because of the world body's political impartiality and reputation for technical expertise in disaster relief. As the Secretary-General stressed on 12 May, "this is not about politics. It is about saving people's lives. There is absolutely no time to lose."⁶ The United Nations was able, in addition, to partner with ASEAN in organizing the pledging conference in Yangon on 25 May for international cyclone relief and with the government and ASEAN to conduct a major new assessment. The latter, which is underway as I speak, matters given the lack of reliable statistics to guide the relief effort.

Despite all these efforts, this remains a tragic situation in which the enormous human costs of a natural calamity have been compounded by human error and intense political suspicion. As Secretary-General Ban Ki-moon commented in Yangon on 25 May, "we have a chance for a new beginning, today. I ask all of us to keep our eye firmly on the immediate

⁶ United Nations, Secretary-General's Opening Remarks at His Press Conference on Myanmar, 12 May 2008.

objective – saving lives – guided by the principles of neutrality, impartiality and our common humanity.”⁷ Some day, historians and policy analysts will ask whether armed intervention would have been a better course. My guess is that they will note that the application of coercive measures by definition is not impartial, that turning a humanitarian disaster into a military confrontation does nothing to save lives, and, that, despite some tough talk, none of the military powers was prepared this time to use its forces for such a mission in any case. In the end, however, they may well acknowledge that, in its quiet ways, the UN did indeed make a positive difference in Myanmar, as it has in so many other places over so many years.

⁷ UN Doc. SG/SM/11597, 27 May 2008.