The Responsibility to Protect Human Rights

David Miller
Nuffield College, Oxford

Memo for the workshop on Global Governance, Princeton University,
16-18 February 2006

It is a truth widely if not yet universally acknowledged that the protection of human
rights is one of the main aims of global governance – not the only aim, for sure, but
one of the main reasons for thinking that governance must exist on a global and not
merely a national level. When states are unable to protect the human rights of their
citizens, or indeed are actively involved in violating those rights on a significant scale,
then ‘the world community’ has a responsibility to step in and ensure that these rights
are protected. One of the best-known formulations of this idea is as The
Responsibility to Protect, the title of a report issued by the International Commission
on Intervention and State Sovereignty in 2001 in response to the debate over
humanitarian intervention sparked by interventions that had happened in the previous
decade, such as NATO’s intervention in Kosovo, and others that had failed to happen,
such as, notoriously, in Rwanda.¹

The Commission’s Report interprets intervention in quite a broad way, covering
aspects of humanitarian action that go well beyond the military intervention that
might halt a civil war or a genocide. Nevertheless its central focus is on cases of

military intervention by outside bodies in the internal affairs of sovereign states, and for this reason the questions that chiefly concern it are questions of international law: first, under what circumstances may the normal presumption of the integrity of sovereign states be set aside by virtue of the human rights violations that are taking place within their borders, and, second, who is authorised to intervene? Is it a necessary condition that the intervention has been approved by the UN Security Council, for instance? These, one might say, are questions about the legitimacy of intervention. There is, however, another question that seems to me equally if not more important, and that prompts this memo, namely who has the responsibility to intervene. It is one thing to say that when large-scale violations of human rights are taking place, there is a diffused responsibility on the part of humanity as a whole to protect the victims; it is another to say more precisely where this responsibility falls and how it can be made effective. Such discussion of this question as the Report contains tends to focus on the question whether states should be disqualified from intervening when they have some material interest in the outcome – on which it takes the realistic view that mixed motives are inevitable in international relations as elsewhere, and that it may be necessary for domestic reasons for intervening states to highlight the national interests served by their intervention. Elsewhere it laments the Security Council’s past inability to mobilise UN member states to act in circumstances where intervention was clearly both legitimate and essential.

One might, however, think that this problem of assigning responsibilities is central to establishing an effective international human rights regime. Intervening to protect human rights is typically costly, in material resources in every case, in human resources in many cases (when soldiers, peace-keepers or aid workers are killed or
taken hostage), in political capital (when intervention is interpreted in sinister terms by third parties). So states have good reasons to avoid becoming involved if at all possible, particularly democratic states where the government will come under heavy domestic fire if the intervention goes wrong. The fact that there are often many agencies – states, coalitions of states, or other bodies – that might in principle discharge the responsibility to protect makes the problem worse. We might draw an analogy here with instances in which individuals are confronted with a situation in which they would have to perform a Good Samaritan act – say going to the rescue of somebody who collapses in the street. Empirical studies of situations like this reveal that the more potential rescuers are present, the less likely any one of them is to intervene – so the victim stands a better chance of being picked up if there is only one passer-by at the time he collapses than if there are, say, six people nearby. Two factors may combine to produce this outcome: people interpret other people’s inaction as a sign that the problem is less serious than it might appear; there is a parallel normative effect whereby each person takes the others’ behaviour as defining what is expected or right under the circumstances; but perhaps most importantly, responsibility is diffused among the potential helpers: if the victim were to die, no-one in particular could be held responsible for the death.

This problem of diffused responsibility leading to inaction can potentially be solved in two ways. One is the appearance of an authority that can then single out agents and assign them particular tasks. In the street collapse case we might imagine a policeman arriving on the scene and asking bystanders to do specific things to help

\[2\] I have considered these studies, and their normative implications, in ‘“Are they my poor?”: the problem of altruism in a world of strangers’, Critical Review of International Social Philosophy and Policy, 5 (2002), 106-127.
the victim. Obviously this can only work where the authoritative status of the assigner is commonly recognized. The second is the emergence of shared norms that identify one person in particular as having the responsibility to take the lead. These norms do not have to carry all of the justificatory load needed to support the intervention. After all we can probably assume that all of the bystanders looking at the victim would agree that ‘somebody should help that man’. What is needed is an additional norm that can tell us who that somebody is. If we return to the case of the international protection of human rights, we can again assume widespread agreement on the principle that where widespread violations of human rights are taking place, some agency should step in to prevent them. The problem is to identify the particular agency.

Can we envisage an authority that might perform this role? In theory we might look to the UN Security Council or some other executive body established by the UN for this purpose. However we know that it has proved difficult to reach agreement even on the question whether a particular proposed intervention is legitimate under international law, so to resolve the further question of which agency in particular should be entrusted with undertaking the intervention would be fraught with difficulty. And at best a body such as the UN could invite or encourage member states to contribute to an intervention to protect human rights; it could not require them to do this.

So might a set of norms emerge that could break the deadlock? Here the problem is that if we ask the general question what features of agents might single them out as having a special responsibility to come to the aid of particular victims, there are a
number of plausible answers which do not, unfortunately, all point in the same direction. In the international case we might think, for example, of geographical proximity – states, or groups of states, should have a special responsibility for protecting human rights in their own region; cultural similarity – Islamic states, say, should have a special responsibility for rights violations in other Islamic states; historic connection – states should have a special responsibility towards countries they have interacted with over time, for example their ex-colonies; and special capacity – states that have a particular kind of expertise or resources should assume responsibility when that expertise or those resources are needed. We can observe cases where each of these norms has come into play. But clearly their reach is going to be patchy, they will point in different directions in some cases, and following them would distribute the burden of intervention in arbitrary ways – some states being called on to intervene more often and at much greater cost than others.

This reminds us that besides the question who has the responsibility to protect human rights in particular cases, there is also the question what costs is it reasonable to expect the intervening party to bear. This takes us into an area where we have very little to go on by way of existing normative theory. There seem to be two extreme positions one might take up: a) one should protect human rights whenever doing so does not involve sacrificing anything of comparable moral significance; b) one should protect human rights only when doing so does not require any morally significant sacrifice. Position a) looks far too demanding, because it would imply, for example, that to prevent a genocide one should be prepared to sacrifice one’s own troops in

---

numbers that fall not far short of the total of lives that will be saved. Position b) on
the other hand is far too permissive, because any intervention in which human rights
are at stake is likely to involve morally significant costs – resource costs if not human
costs. In practice, democratic states have adopted an intermediate position that falls
closer to the b) end of the spectrum than the a) end – being willing, in particular, to
sacrifice only small numbers of their own people’s lives in interventions that might
save very large numbers of potential victims. However it is not clear that a simple
calculus approach – one should be willing to sacrifice one person to save ten others,
or a hundred, or a thousand - will give us an adequate answer here. It is also relevant
to consider how the threat to human rights has arisen, and who bears the responsibility
for that.

Here it may be helpful to survey the range of cases in which the responsibility to
protect human rights can be expected to cut in, because it turns out that these are quite
varied. So without claiming to have produced an exhaustive catalogue, let me
distinguish:

a) Natural disasters – earthquakes, floods, droughts etc – that leave people
without food, shelter and other necessities of life.

b) Deprivation that arises as the unintended consequence of government policies,
for example disastrous economic policies that leave many people destitute.
c) Systematic rights violations on the part of governments, for example the
incarceration of political opponents, punishment of their supporters,
widespread denials of elementary freedoms of speech, movement etc.

d) Rights violations resulting from wars between states, of civilians caught up in
the fighting, displaced by it, or unable to satisfy basic needs on account of it.

e) Rights violations arising in circumstances of state breakdown or civil war –
massacres, ethnic cleansing, and so forth.

These cases are distinguished not so much by the severity of the rights-violations
involved – in each category one can imagine a spectrum of more and less severe
instances – as by their underlying causes, which then have implications for the kind of
intervention required, and the kind of agency that should undertake it. Let me
comment briefly on each case, mainly to show that ‘governance’ must take on a very
different meaning as we move between them.

a) Where human rights are put at risk by natural disasters, there is likely to be a
considerable degree of consensus about the need for and nature of the intervention
required. This will include the state or states within which the disasters have
occurred. Thus the problem is essentially one of co-ordination: bringing together all
the various teams of rescuers, food and clothing suppliers, etc. So an administrative
rather than political agency is needed. Underneath, however, there is a burden-
sharing problem: what part of the cost of the relief effort should be borne by each
contributing state? Should it depend simply on capacity (as measured by GNP for
instance) or should it take account of existing historical, geographical, etc connections between the donor state and the disaster area? In these circumstances there seems a strong argument for the creation of a global disaster relief fund into which states would routinely pay and draw out from as necessary: in other words a collective insurance scheme. Conceived as such, the political costs ought to be relatively low. This, then, is the most straightforward case in which the responsibility to protect can be discharged by international institutions of a predominantly administrative character.

b) Where human rights are violated unintentionally by state policies (for example failed attempts to collectivise agriculture that take food production below subsistence level), what is needed is first of all emergency relief along the lines of a), and then the application of pressure to the state in question to change policy direction. This might involve, in particular, economic and other sanctions. Co-ordination here is made difficult by two factors: first, ideological disagreement about the nature of the changes that are needed (is a free-market economic policy the solution?) and second, the incentive that states may have to defect from the sanctions regime for reasons of national advantage. Thus the problems here are primarily political, but it is hard to see how an authority could emerge with sufficient power to overcome the co-ordination problem and impose an effective sanctions regime: national interests and national ideologies are too divergent. So here global governance is going to be problematic.

b) The third case involves strong states systematically and deliberately violating the human rights of their own citizens. Direct intervention here is not only ruled out by
existing norms of state sovereignty, but likely to be so costly that no state or group of states will contemplate it (no one is rushing to enforce human rights in China). So the only realistic possibility here is a strengthening of the system of international law, that is an attempt to put into practice the various human rights charters that almost all states have already signed up to in theory. The problem, as everyone knows, is how to make international law effective in the absence of a powerful enforcing body, which ex hypothesi does not exist in this case. But perhaps international law might first be given normative force, in the form of rulings about acceptable and unacceptable human rights practices, even though such rulings could not in the immediate future be enforced. As bodies such as the International Criminal Court become better established, the effect would be to serve notice on the rulers of rights-violating states that they might in the future find themselves liable to prosecution. The main point I want to make, however, is that in case c) global governance should be seen as a matter of creating the appropriate legal institutions to protect human rights.

d) Although legal norms may have some part to play in protecting the victims of war between states, the main human rights issue here is how to offer immediate protection to the victims while the war is taking place. And here it seems that the primary problem is the problem of neutrality. An intervening agent has to be able to demonstrate that the intervention is neutral as between the contending parties, otherwise it will be seen as illegitimate by outside states as well, and no doubt will be resisted by whichever side sees the intervention as hampering its war efforts. And this in general will make it very difficult for particular states to intervene, because states will be seen as ‘natural’ allies of one or other side (think of the Balkans conflict). This may apply even when troops are sent in under the auspices of the UN.
For that reason it may turn out that voluntary agencies have the biggest role to play in responding to cases of military conflict. They too, of course, face neutrality problems: the Red Cross cannot operate everywhere. But the problems may be less severe than for states.

e) Cases of civil war and state breakdown impose the heaviest responsibility to protect human rights and the hardest of all to discharge. For what is needed may be nothing less than the wholesale recreation of political authority. Neighbouring states, which may have the capacity to provide this, are also likely to be disqualified on grounds of neutrality (they have vested interests in creating a puppet government, or they are going to be biased in favour of co-ethnics who were living under the collapsed state). So what is needed is genuinely international trusteeship until legitimate local authority can be re-established. But the costs of providing this are likely to be very high, in resources and manpower, so we face the diffused responsibility problem that I identified earlier in its strongest form. In an ideal world we might envisage the UN developing a political-cum-military arm for trusteeship purposes. Realistically it is regional alliances such as the EU and the OAU that are more likely to develop into this role.

I have run rather rapidly over terrain that others in the workshop will know far better than I. The main conclusion I want to draw is that there can be no single solution to the question ‘by what institutional means is the responsibility to protect human rights to be discharged?’ The feasible solutions vary dramatically as we move through cases a) – e). In that sense global governance cannot be one thing, but must take on different forms – administrative, political, legal – as the problems it addresses mutate.
And in some cases we cannot expect governance in the sense of authoritative co-
ordination at all, but must continue to rely on the emergence of informal norms that
can designate particular agents, whether states or voluntary bodies, as bearing the
responsibility to protect the rights of particular groups of victims.