

R2P: A concept that hasn't materialized

Lamia Rahman Tammi¹



Source- UNIFIL

Introduction:

The international community has a responsibility under the "responsibility to protect" (R2P) to use force to save lives in situations involving genocide, war crimes, ethnic cleansing, and crimes against humanity. The devastating cyclone hit in May 2008 in Myanmar. After that, the military junta's delayed response to the humanitarian crisis sparked international outrage and reignited discussions on the application of R2P. This article suggests that it is about time that the application of R2P needs to be investigated, and its characteristics must be extended. Besides, it also shows

¹ Lamia Rahman Tammi is currently a Project and Event Coordinator at the Bangladesh Institute of Peace and Security Studies.

the absence of international consensus on the R2P on the one hand and the necessity to act to offer humanitarian relief and protection on the other.

Responsibility to Protect (R2P) under International Law:

The Canadian Government and various entities originally proposed the Responsibility to Protect (R2P) in 2000². They established the International Commission on Intervention and State Sovereignty (ICISS) to address the international community's responsibility to act when grave human rights violations occur while protecting the state's sovereignty. This concept was addressed at the 2001 International Commission on Intervention and State Sovereignty. The goal of ICISS was to provide a framework that would eventually justify external humanitarian interventions when civilians suffered severe damage and the national Government was either unwilling or unable to prevent it. They created a framework to direct forthcoming humanitarian interventions in response. This concept was addressed at the 2001 International Commission on Intervention and State Sovereignty. They initially planned to include environmental or natural disasters, but they eventually scrapped that plan out of concern for intervention.

At the 2005 UN World Summit, the Responsibility to Protect was officially recognized as a principle for all state relations³. R2P refers to protecting vulnerable groups against crimes against humanity, such as ethnic cleansing, genocide, and war crimes. The founding principle was that a nation's responsibility as a sovereign must include the responsibility to defend its citizens.

The Security Council Resolution upheld R2P in 2006. The determination of the community to safeguard people is mentioned in paragraph 139 of the United Nations General Assembly, 2005.⁴ According to this principle, the international community should defend citizens peacefully. If those efforts are unlikely to succeed, the UN Security Council may use its power conferred by Chapter VII of the UN Charter to act immediately.⁵

Case of Cyclone Nargis in Myanmar:

² Marie Lamensch, 'Canada and the Responsibility to Protect (R2P)' (The Canadian Encyclopedia, July 24, 2020) <<<https://www.thecanadianencyclopedia.ca/en/article/canada-and-the-responsibility-to-protect-r2p>>>

³ 'Responsibility to Protect', (United Nations) <<<https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>>>

⁴ 'World Summit, 14-16 September, 2005, New York', (United Nations) <<<https://www.un.org/en/conferences/environment/newyork2005>>>

⁵ The Charter of the United Nations, 1945

In the history of Myanmar, Nargis was one of the worst tropical cyclones ever experienced. It struck the delta region to the south, destroying a large portion of the area on May 3rd, 2008. The cyclone impacted around 1.5 million people, and the reported death toll was closer to 100,000⁶. It had a long-lasting effect on Myanmar's population, infrastructure, and economy. The response from the Myanmar authorities was quite unexpected.



Source- National Geographic Channel, Asia

The catastrophic event occurred when the dictatorship scheduled a constitutional referendum for May 10th.⁷ The delta region's constitutional referendum was what the military in Burma was concentrating on. Even though there was a tremendous humanitarian calamity, the military regime in the nation only permitted limited humanitarian assistance.

The Junta blocked all international humanitarian aid because they feared it might interfere with their domestic issues. They acted decisively and blocked any prospective foreign aid. As a result of this action, the cyclone's effects worsened, and more people died. The international community addressed concerns regarding its responsibility to the cyclone victims.

⁶ Louis Charbonneau, 'U.N. says 1.5 million people affected by Myanmar storm' (Reuters, May 8, 2008) <<<https://www.reuters.com/article/idINIndia-33480920080508>>>

⁷ 'Cyclone Nargis and Burma's Constitutional Referendum' <<<https://crsreports.congress.gov/product/pdf/RL/RL34481/7>>>

Due to their concern about covering the disaster's impact, the military ordered foreign journalists to leave the country. Only *Médecins Sans Frontières (MSF)* and *Save the Children* were allowed entry to assist the storm victims under strong restrictions⁸. Following that, the Junta made an official announcement rejecting any foreign presence in the country. Additionally, they restricted access to visas for all representatives of NGOs and foreign organizations. Moreover, it is claimed that foreign aid and supplies were stored by the military and sold on the black market.

The UN Security Council was requested by the French Foreign Minister and the head of state Bernard Kouchner to use its authority to approve the intervention under the principle of R2P to protect the victims with or without the Junta's permission.

The French ambassador to the UN expressed the idea. Still the Chinese Government rejected it because the R2P principle should not apply to natural disasters since the Government was not directly responsible for the deaths of its citizens. The British ambassador to the UN, ASEAN representatives, Indonesia and Vietnam supported the Chinese point of view. Britain afterwards declared that they would welcome the R2P conversation.

Finally, ASEAN, especially Thailand and Singapore, helped to change the Junta's mind to allow international aid in cooperation with the UN. But the Myanmar government did not give visas to foreign journalists and humanitarian personnel.⁹

Analysis of the applicability of R2P after Cyclone Nargis:

Crime against humanity is the most significant offense in disasters. Any of the following acts that are performed with knowledge of the attack and as part of a planned attack against a civilian population are considered human rights violations according to Article 7, Paragraph 1 of The Rome Statute. Those acts are- murder, enslavement, torture, rape and so on.

The criteria do not expressly cover the incapacity or refusal to adequately respond to a humanitarian situation, such as a disaster. However, this does seem to open a conversation for violations that can happen throughout a disaster response—or lack thereof. The R2P principle does indeed come into force, even though the environmental catastrophes had been eliminated as a

⁸ Voravit Suwanvanichkij, Mahn Mahn, Cynthia Maung, Brock Daniels, Noriyuki Murakami, Andrea Wirtz, Chris Beyrer, *After the Storm: Voices from the Delta* (Center for Public Health and Human Rights at Johns Hopkins Bloomberg School of Public Health, March 2009)

⁹ *ibid*

reason for intervention at the 2005 World Summit, if what the Myanmar Junta did, in blocking aid from hundreds of thousands of people who were in danger of dying, may be considered a violation against humanity. Myanmar would have been an excellent practical example of the right to protect principle. Although it was a natural tragedy, it eventually became clear that the human-made consequences made it worse. The death toll would not have increased thus much if the Junta Government had taken the appropriate actions or distributed the relief effectively. Military intervention is not the only way to apply R2P. The use of R2P during emergencies, such as natural disasters and other emergencies, may have been mentioned in a specific resolution passed by the UN. Although the R2P principle would not apply to all-natural disasters, the UN may have implemented it in the Nargis.

Nonetheless, doing an act that is recognized by international law as a crime against humanity is insufficient for an actor to be found guilty. An act must meet certain requirements to be considered a crime against humanity. The international community had to make that claim to prove that the Junta had the motivation and desire to perpetrate such a crime in Burma.

If there is the necessary criminal intent—which might be either direct or indirect—in killing civilians by omission, it is considered murder. There are three requirements for indirect intent. One of the characteristics is- the actors must be aware that their actions or inactions can result in death. This characteristic was present in the action of the Junta Government.

Although the Junta likely did not want to let the people die, it is apparent that they did intend to prevent access to humanitarian assistance, which probably would have saved many lives.

According to Article 7, paragraph 2a of the Rome Statute, these actions must take place as part of a "course of conduct involving multiple commissions of acts referred to in paragraph 1 against any civilian population."¹⁰ However, it was not necessary to commit a crime to establish that the Junta Government's actions violated human rights because they must have been aware of their actions and consequences. They were aware that by refusing to accept humanitarian supplies, their action would have impacted their population. The Junta's acts thus fulfilled requirements for crimes against humanity.

Some observers have suggested that the R2P discussion may have done more harm than good.

There's a good chance that the survivors suffered even more due to these lengthy debates.

¹⁰ The Rome Statute, 2002

Throughout the procedure, the US, Britain, and France stationed naval ships near Burma's southern coast and illegally entered the nation with cargo planes. Due to their aggressive actions, SPDC commanders became paranoid about an impending invasion, and as a result, they deployed troops along the coast, as previously mentioned. By diverting troops from relief and rescue efforts, the SPDC's decision to put them on alert severely hampered the state's ability to react. The regime may have become even more rigid due to the R2P talks, making it less likely that it will collaborate with the UN and INGOs on relief efforts.

Conclusion and Recommendation:

The Junta in Myanmar rejected requests for humanitarian supplies, claiming that doing so equated to humanitarian intervention. Humanitarian access and the current highly politicized nature of humanitarian action are always raised when the topic of whether the international community has a responsibility to provide humanitarian help is raised. After natural calamities, a few Asian nations are willing to grant access.

International leaders were extremely grateful for China's exceptional leadership. For example, when the Indian Ocean tsunami struck Indonesia's Aceh Province in 2004, the country permitted international help to enter and drafted a peace pact that resulted in the election of a former secessionist leader as the province's governor.¹¹ The Chinese Government, which has previously rejected foreign aid, most recently accepted aid following the Sichuan earthquake in May 2008. Also, China loosened media restrictions and created a hotline for the US military to communicate more with their Chinese counterparts.¹²

The World Summit document referred to the function of regional organizations, and in Myanmar, ASEAN has been instrumental in mediating access. Within a week, it had reacted and then sent experts to the nation. Just two days after Nargis, it also provided official humanitarian aid. Also, the organization concentrated on narrowing the gap between the international community and the Burmese Government. Discussions regarding whether the international community has the right or obligation to act when a national government is unable or unwilling to provide humanitarian

¹¹ C. Bryson Hull, Bill Tarrant, 'Tale of war and peace in the 2004 tsunami' (Reuters, December 18, 2009) <<<https://www.reuters.com/article/us-tsunami-anniversary-conflict-idUSTRE5BH01O20091218>>>

¹² 'Death Toll Rises' (VW, 13th May, 2008) <<<https://www.dw.com/en/china-welcomes-foreign-offers-of-quake-relief/a-3332306>>>

aid to its citizens have been sparked by Myanmar's response to Cyclone Nargis. This problem brings up the conflicting applicability of national sovereignty and human rights principles. It is also controversial because when the international community enters, there is frequent local resistance, which leaves local authorities feeling pressured. It is beneficial to gather a small team of professionals from the legal and humanitarian policy-making fields to address this issue. This idea needs more clarification. In addition, the implementation to enlist support from abroad needs to be explored. A novel concept with no obvious applications is useless. It is necessary to talk about inflated assumptions regarding its application and misconceptions regarding its significance.