

**Testimony by**

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**Hearing on**

**“International Disaster Assistance: Policy Options”**

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Chairman Menendez, Senator Hagel, and Members of the Committee, it is an honor for me to testify on policy options for the international community in the wake of natural disasters, particularly when recalcitrant regimes prevent the delivery of life-saving assistance. This hearing is a timely one, given the abysmal performance of the Burmese junta following Cyclone Nargis and the recent decision by the government of Zimbabwe to shut down the operations of international NGOs that provide food aid to an estimated four million people in that country. Today's discussion is part of a broader debate about the limits of state sovereignty and the responses available to outside actors when governments fail to meet fundamental obligations to their citizens. I commend the Committee for its willingness to grapple with these tough questions, for which there are no easy answers.

If hard and fast rules are elusive, this hearing may nevertheless shed light on certain principles and considerations that should inform U.S. policy, the range of actions available to the United States and its partners, and the dilemmas and trade-offs inherent in each. Our goal should be to expand America's foreign policy toolkit, so that we are left with a wider array of choices than the extremes of standing idly by as innocent civilians die or launching a full-scale invasion of the offending state.

My testimony is divided into three parts. I begin by reviewing the multilateral framework for humanitarian action following natural disasters. I underline the importance of ensuring humanitarian access and the obstacles that dictatorial regimes can place in the way of an effective response. I then ask whether the "Responsibility to Protect" (R2P) doctrine should be extended to natural disasters in which the ruling regime impedes international assistance. I submit that the doctrine should be applied only in exceptional circumstances: when egregious state misconduct threatens massive loss of life; when there is broad international consensus on the norm's application; and when its invocation promises to increase "humanitarian space," by advancing the goal of saving human lives.

I close by offering some practical recommendations for strategies to reduce political obstacles to humanitarian action following natural disasters. Guidelines and priorities for U.S. policy include: (a) sponsoring a new multilateral agreement clarifying UN member state responsibilities; (b) improving U.S. contingency planning to avoid getting caught flat-footed; (c) focusing U.S. efforts on the expansion of "humanitarian space;" (d) empowering regional organizations to take the lead; (e) opening the U.S. diplomatic "toolbox" to expand points of leverage; and (f) developing a realistic U.S. doctrine for the use of military force, as part of a multilateral effort, when all other avenues fail.

## **The Challenge of Humanitarian Access**

Recent natural disasters, from the Indian Ocean tsunami to Cyclone Nargis, have underscored both the impressive scope of global humanitarian action and its vulnerability to political obstruction. Several points stand out from recent experience.

*First, the United Nations possesses a robust multilateral framework and unmatched comparative advantages in launching prompt international responses to natural disasters.*<sup>1</sup> UN disaster response efforts are undertaken under the leadership of the UN Emergency Relief Coordinator (ERC), who heads the Office the Coordinator of Humanitarian Affairs (OCHA). The ERC presides over the UN's Interagency Standing Committee (IASC) for humanitarian affairs, composed of relevant UN system programs

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<sup>1</sup> Following the Indian Ocean tsunami, the Bush administration initially announced the formation of a "core group" of major countries to organize the international response, but quickly abandoned this ill-conceived effort following objections from the international community.

and agencies and representatives of the main private voluntary aid organizations.<sup>2</sup> Beyond directing responses from UN headquarters, OCHA generally coordinates emergency responses within the affected country, in partnership with UN agencies, bilateral donor aid agencies, and non-governmental organization (NGO) partners.

As legal matter, the ERC has sweeping authorities to declare a humanitarian emergency and to lead a global effort to respond to it, without any formal decision by the Security Council or the explicit consent of the government of the affected state. As a practical matter, some basic level of consent from the host government (however incomplete and grudging) is generally required for the UN to organize and deliver humanitarian assistance. Where it is lacking, as Jan Egeland found in Darfur and his successor John Holmes discovered in Burma, the United Nations may be blocked from conducting relief operations.

*Second, most countries in the developing world possess some local humanitarian presence that can be leveraged following natural catastrophes.* This is true even in repressive states. Burma is a case in point. At the time that Cyclone Nargis struck, some 2,600 Burmese were working for U.S.-based NGOs in the Irrawaddy Delta. So although outside agencies could not get supplies and people into Burma, they could in some cases transfer money to national staff to buy local resources. Thus Save the Children delivered 145 tons of relief supplies in the first 48 hours, and international NGOs reached 265,000 people in the first week. I hasten to add that this was only a small fraction of the affected population. But it underlines that even in the most repressive states a local platform often exists upon which an international humanitarian response can build.

*Third, effective humanitarian response is not simply about delivering supplies. It is also about access—specifically, about access for international aid workers from UN agencies, donor governments, and non-governmental organizations who are adept at working with local partners and capable of conducting needs assessments, determining where aid should be distributed, organizing the distribution of these supplies, and adapting to new phases of the crisis as it evolves, including ultimately restoring livelihoods.* Few governments and societies in the developing world have the standing capacity to respond to large-scale natural disasters without the help of the international humanitarian system. Outsiders bring indispensable financial resources, logistical capabilities, managerial expertise, and technical skills that rarely exist locally.

*Fourth, authoritarian, corrupt, and criminally negligent regimes can exacerbate humanitarian catastrophes, transforming “natural” disasters into man-made ones.* In the case of Burma, decades of unaccountable and unresponsive governance left the inhabitants of the Irrawaddy Delta particularly vulnerable to a devastating cyclone. The Burmese junta then compounded human suffering through a litany of egregious actions designed to limit humanitarian access while preserving their iron grip on the country. This included denying the entry of international search and rescue teams; refusing to issue visas for foreign aid workers; restricting airborne delivery of foreign assistance; sealing the disaster zone to non-Burmese; and diverting aid to reward regime cronies. Three weeks after the cyclone, the

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<sup>2</sup> Full members of the IASC include OCHA, FAO, UNDP, UNFPA, UNHCR, UNICEF, WFP, and WHO. Standing invitees include IOM, the World Bank, the Office of the High Commissioner for Human Rights, the Secretary-General’s Special Representative on the Human Rights of Internally Displaced Peoples, the International Committee of the Red Cross, the International Committee of Red Cross and Red Crescent Societies, the International Organization for Migration (IOM), the American Council for Voluntary International Action (InterAction), and the International Council of Voluntary Agencies (ICVA).

trickle of emergency assistance had reached only a small fraction of the estimated 2 million affected people. The Burma experience, like that of North Korea and Zimbabwe, underscores that closed societies are both more susceptible to “natural” disasters and demonstrably worse at responding to them than are open societies.<sup>3</sup> (Contrast Burma with neighboring Bangladesh, an equally poor but democratic country, which possesses a sophisticated preparedness and evacuation infrastructure; or with Indonesia, a new democracy that facilitated the construction of a massive international aid pipeline within two days of the Indian Ocean tsunami).

## The “Responsibility to Protect” and Its Relevance to Natural Disasters

Given the political impediments that sovereign governments have placed on the delivery of emergency assistance, it is reasonable to ask whether the international community has any recourse to insist upon, or even enforce, the unencumbered flow of relief in the aftermath of natural disasters. Following Cyclone Nargis, a number of observers have argued that the new UN norm of a “Responsibility to Protect” provides sufficient legal and moral basis for overriding national sovereignty in such circumstances. While this argument has merit in extreme cases, it remains highly controversial globally and provides no silver bullet for improving humanitarian access following natural disasters.

The United Nations’ General Assembly endorsed the concept of a “Responsibility to Protect” in September 2005, as part of the Outcome Document of the UN High Level Summit. The concept recognizes that sovereignty is in effect *contingent*, dependent on the state’s fulfillment of fundamental obligations. Specifically, when a government makes war on its citizens—or fails to prevent atrocities from being committed against them—the “responsibility to protect” transfers to the international community. To enforce this new norm, the Outcome Document envisions a set of graduated responses, beginning with “diplomatic, humanitarian, and other peaceful means” under Chapters VI and VIII, but including the potential use of armed force under Chapter VII of the UN Charter.<sup>4</sup>

The underlying motivation behind the “Responsibility to Protect” concept was to help prevent new Rwandas, Srebrenicas, and Kosovos—instances in which murderous regimes or their proxies slaughtered thousands of unarmed civilians. To date, the international community has found it easier to enunciate this new norm than to enforce it. As the ongoing violence in Darfur illustrates, it is one thing to declare a *responsibility* to protect; it is quite another to marshal the political *will* and the practical *capacity* required to implement it. Nevertheless, the new “doctrine” represents a profound normative evolution within the context of the United Nations, an organization founded in 1945 on the bedrock principles of state sovereignty and non-intervention.

Whether the Responsibility to Protect extends to disasters that are “natural” in origin but exacerbated by state incapacity or malevolence is a subject of vigorous debate. The International Commission on Intervention and State Sovereignty (ICISS), which first developed the concept,

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<sup>3</sup> Beyond fearing a loss of control to—and being shown up by—international actors, dictatorial regimes are aware that massive humanitarian responses can have profound political consequences. In Indonesia, for example, the influx of post-tsunami aid and humanitarian actors helped to create a political opening to advance the peace process in Aceh.

<sup>4</sup> The official U.S. position, as outlined by UN Representative John R. Bolton in a letter of August 30, 2005, is that the international obligation to take collective action under Chapter VII is an ethical rather than legal one, and, moreover, any such action will remain the purview of the UN Security Council, where the United States and other Permanent Members wield a veto. [http://www.responsibilitytoprotect.org/index.php/government\\_statements/](http://www.responsibilitytoprotect.org/index.php/government_statements/)

envisioned that it would apply not only to mass atrocities but also when states are unable or unwilling to provide relief in humanitarian emergencies.<sup>5</sup> The 2005 Outcome Document took a narrower approach, however, restricting the norm's application to four specific situations: "genocide, war crimes, ethnic cleansing, and crimes against humanity."<sup>6</sup>

Although this would appear to exclude natural disasters from the doctrine's purview, things are less clear-cut if the regime's conduct can be said to constitute a "crime against humanity." In May 2008, French Foreign Minister, Bernard Kouchner ignited a diplomatic firestorm by invoking the doctrine in the case of Burma, arguing that the junta's failure to provide access to outside relief agencies would condemn tens of thousands of Burmese to death from exposure, hunger, and disease.<sup>7</sup> Other prominent European diplomats, as well as independent commentators, have adopted a similar line of argument.<sup>8</sup>

This reasoning has met with equally fierce resistance. Critics raise several weighty objections: First, the effort to expand the doctrine to natural disasters could undermine the painstakingly negotiated (but already fragile) consensus on the concept's application to situations of mass atrocity crimes, particularly among developing countries with a neuralgic fear of outside intervention. Second, determining the precise threshold at which a state's obstruction of humanitarian access becomes a "crime against humanity" remains elusive. Third, the invocation of the doctrine could lead a recalcitrant regime to close off entirely what humanitarian access (however imperfect) currently exists. Finally, the doctrine implies, at least in principle, a willingness to consider the use of military force to ensure the delivery of aid,<sup>9</sup> raising both the specter of armed resistance and the likelihood of casualties among the intervening force. Such military action could exacerbate rather than ameliorate the humanitarian catastrophe, and it could be tough to sustain domestically.

These concerns are not easily dismissed. They suggest that prior to extending the doctrine to any natural disaster, the United States and other would-be interveners must be able to answer three questions in the affirmative.

- First, does the doctrine apply in the current case?
- Second, are there decent prospects for securing consensus, or at least acquiescence, within the Security Council?
- Third, is the invocation of the doctrine, and its practical implementation, likely to make any tangible difference on the ground, or instead worsen the humanitarian situation?

Answering these questions will require a judicious assessment of nature of the crisis, the spectrum of possible international responses—including but by no means limited to military force—and the likely consequences of any course of action for the flow of life-saving assistance.

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<sup>5</sup> International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* <http://www.iciss.ca/pdf/Commission-Report.pdf>

<sup>6</sup> United Nations General Assembly, *World Outcome Summit Document*, September 15, 2005, <http://www.who.int/hiv/universalaccess2010/worldsummit.pdf>

<sup>7</sup> "UN Action Argued over Burma Cyclone," *Reuters*, May 8, 2008. "International Pressure on Myanmar Junta Is Building," *New York Times*, May 18, 2008.

<sup>8</sup> Gareth Evans, "Facing up to our Responsibilities," *The Guardian*, May 12, 2008. Ivo Daalder and Paul Stares, "The United Nations Can Save Burma," *Boston Globe*, May 13, 2008; Stewart Patrick, "Open the Door To Aid," *Baltimore Sun*, May 15, 2008.

<sup>9</sup> Robert D. Kaplan, "Aid at the Point of a Gun," *New York Times*, May 14, 2008.

## Practical Steps to Improve Humanitarian Access following Natural Disasters

There is ample scope for lawyers to debate the boundaries of the Responsibility to Protect, including the threshold at which the doctrine kicks in. These debates should not however distract us from considering practical approaches to improving humanitarian access in the aftermath of natural disasters that fall well short of full-fledged military invasion.

A few sensible goals and principles should guide U.S. policy. The United States should seek to:

- (1) *Clarify state obligations to provide humanitarian access.* A recurrent limitation of today's global humanitarian system is the absence of standing protocols governing access that could avoid delays, uncertainties and obstructionism in the aftermath of natural disasters. Many developing, particularly African, countries have resisted negotiating any new multilateral agreements, on non-interventionist grounds. The United States should work behind the scenes to encourage such governments to adopt standing protocols for humanitarian aid. The longer term goal should be to establish an international treaty regime (or at a minimum regional frameworks) enumerating state responsibilities regarding humanitarian access.
- (2) *Plan ahead.* To avoid being caught flat-footed when disaster strikes, the United States needs a more robust framework for contingency planning. This would help U.S. officials better anticipate where such emergencies may arise; what political obstacles may emerge in particular countries; what range of policy options is likely to be available; what assets and pressure points the United States has at its disposal; and what regional bodies and foreign power wielders might have leverage over difficult regimes. Outside of the U.S. military, the U.S. government currently devotes few resources and little time to such "over the horizon" planning. A first step should be to revive the Contingency Planning Policy Coordination Committee (PCC) within the National Security Council, which met regularly from 2001-2002 but was abandoned in the run up to the invasion of Iraq.
- (3) *Keep the focus on "humanitarian space."* When a major natural disaster strikes, the overriding consideration for U.S. policymaking should be whether the proposed suite of actions promises to expand or shrink the opportunity to save human lives. Other policy goals, including as regime change, should be placed on the back burner unless there is no other prospect of gaining humanitarian access.
- (4) *Give any intervention a humanitarian face, a multilateral imprimatur, and a regional dimension.* All things being equal, an authoritarian regime will be more likely to support (or at least acquiesce to) requests for humanitarian access if the effort appears to be more humanitarian than military in nature; if the insistence on access is endorsed by the UN Security Council; and if the relevant regional and sub-regional organizations play a prominent role in designing, coordinating and implementing assistance. In the case of Burma, the United States hoped to use naval assets to deliver relief directly (as in the aftermath of the Indian Ocean tsunami). Unfortunately, what the United States viewed as a promising platform for emergency relief appeared to the paranoid junta as a potential instrument of regime change.
- (5) *Empower others to lead, particularly through regional organizations.* Where the United States has unfriendly relations with the relevant state, efforts to assert U.S. leadership can be

counterproductive. In such circumstances, there is a strong case for adopting a low profile, while encouraging relevant regional and sub-regional organizations to help the UN organize and deliver humanitarian aid. Unfortunately, outside NATO and the European Union, few regional bodies are currently prepared to discharge this responsibility.<sup>10</sup> Thus a priority for U.S. action should be to help bolster both the will and capacity of organizations like ASEAN, the AU and the OAS to coordinate and deliver humanitarian assistance in their neighborhoods, including through joint training and exercises, stockpiling of supplies, development of emergency logistical infrastructure and interoperable communications, and joint standby arrangements to deploy previously earmarked civil and military assets.

- (6) *Open the diplomatic toolbox.* Military force is not the only, much less the most desirable, way to change the incentives of bad actors. The United States needs to hone a wider array of policy instruments to persuade recalcitrant countries to expand humanitarian access following natural disasters, beyond showing up off the country's coast with warships loaded with troops and supplies. Comprehensive strategies of "coerced consent" should include:
- a. *Enhanced diplomatic pressure*, particularly within the Security Council, UN General Assembly and relevant regional organizations. Past experience may suggest creative ways to leverage multilateral bodies. When violence erupted in East Timor following the referendum of 1999, the Security Council placed great pressure on Jakarta to "invite" a UN peacekeeping operation in what remained then a province of Indonesia, including by flying to Dili to hold Council meetings. In the more recent case of Burma, the proposal by France to pursue a Council resolution under the R2P doctrine may have had some instrumental value, in encouraging the Burmese regime to accept an alternative, ASEAN-led humanitarian initiative.
  - b. *Targeted incentives* to change the regime's behavior, including through positive inducements (e.g., hints of aid or trade concessions, debt relief, removal of sanctions) and punitive steps (e.g., trade restrictions, financial freezes, travel bans, and threats of indictment against senior officials.) Given that repressive regimes like Burma and Zimbabwe tend to be heavily sanctioned already, positive inducements may well be more promising avenues to secure behavioral change.
  - c. *Cultivation of regional players with leverage.* Even isolated dictatorships like Burma, North Korea or Zimbabwe have close ties with one or more large regional players (e.g., China and South Africa). While these traditional protectors may resist interventionist strategies that threaten the stability or nature of friendly client regimes, they may be enlisted quietly to ease restrictions on humanitarian assistance, in return for particular incentives or to burnish their image as responsible global stakeholders.
  - d. *Military steps short of war.* Options include declaring a "no-fly zone" over the disaster area, as well as engaging in preventive deployments in nearby countries.
- (7) *When considering military action to ensure humanitarian access following natural disasters*, the United States should adopt the following guidelines:

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<sup>10</sup> ASEAN in 2005 approved a framework for Disaster Management and Emergency Response and has recently begun joint disaster response training exercises. The Organization of American States (OAS) in 2007 established an Inter-American Network for Disaster Management. The African Union is beginning to develop an implementation plan for a disaster risk reduction strategy approved in 2004. All of these initiatives remain in their infancy, however.

- a. *Be realistic.* To put the matter bluntly, there is a world of difference between intervening militarily in a small country with weak state capacity, such as in Rwanda, Burundi, or East Timor, and attempting to do so in a massive country like Sudan or one with a large military like Burma (with 500,000 soldiers under arms). Given the requirements and implications of forcible intervention against such countries, policymakers may need to accept inconsistencies in their responses to the obstruction of humanitarian aid.
- b. *Treat the use of force as a last resort.* The trigger for armed intervention must be set high, limited to the most egregious cases, when peaceful alternatives have been exhausted and the death of massive numbers of people is imminent. It should be undertaken only after sober calculation of the likely lives saved versus lost in any invasion, as well as the perceived stakes for the United States and the implications for a variety of U.S. interests.<sup>11</sup> Any such action should be consistent with “precautionary” principles outlined by the ICISS. That is, military action should be undertaken only if “diplomatic, humanitarian, and other peaceful means” have been exhausted; if it is directed to saving lives; if it is proportional to the severity of the crisis; and if it has reasonable prospects of success.
- c. *Don’t go it alone.* Particularly when armed force is required, prudence dictates acting with partners to maximize perceived legitimacy and share military burdens. When a storm is brewing, the UN Security Council should be the first port of call. The major challenge will arise (as it did in the case of Burma) when the Council is unable to agree on a resolution insisting on humanitarian access and when the relevant regional organization fails for a protracted period to step up to the plate, whether out of weak capacity or fear of alienating one of its member states. In such circumstances the United States should hold out the possibility of acting through an ad hoc coalition of interested states.
- d. *Be prepared to own the aftermath of any armed intervention.* Experiences of the last twenty years suggest that “impartial” intervention is a delusion. Armed intervention for human protection purposes invariably involves not only delivering life-saving aid but also taking sides. It is also likely to unleash unpredictable consequences (which may include regime change) and may require a significant, long term international presence. The “responsibility to protect” involves not only a responsibility to respond, but also a “responsibility to rebuild” once the shooting stops.
- e. *Be honest.* Finally, domestic U.S. support for any military action can be sustained only if the President is honest with Congress and the American people from the outset, explaining the mission clearly, speaking frankly about the costs and risks, and preparing the country for potential sacrifices. From Somalia to Iraq, such candor has often been conspicuously absent.

Thank you.

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<sup>11</sup> Stewart Patrick, Policy Planning Staff, US Department of State, “The Role of the U.S. Government in Humanitarian Intervention,” Remarks to the 43rd Annual International Affairs Symposium, “The Suffering of Strangers: Global Humanitarian Intervention in a Turbulent World,” Lewis and Clark College, Portland, Oregon, April 5, 2004