

Dear Colleagues,

In response to French Foreign Minister Bernard Kouchner's remarks earlier in the week, we have been reflecting on how the responsibility to protect relates to the current situation in Burma. We had drafted the response below, but we are eager to engage in further discussions to hear additional supporting or dissenting views. Please be in touch with any comments.

Many thanks,

R2PCS Project

The Responsibility to Protect and its application to the situation in Burma

The **R2PCS** program has been following the situation in Burma as it relates to the Responsibility to Protect for the past year. The government of Burma's systematic commission of violations such as forced labor, forced displacement, rape of ethnic minority women and recruitment of child soldiers are a few of the many crimes that fit within the four crimes stipulated under the Responsibility to Protect: genocide, war crimes, crimes against humanity and ethnic cleansing. (for more on this, please see <http://www.responsibilitytoprotect.org/index.php/pages/1182>). This week, following Cyclone Nargis on 3 May and the resulting humanitarian emergency, French Foreign Minister Bernard Kouchner called for the use of the Responsibility to Protect. We believe, however, that the current humanitarian situation requires, first and foremost, attention to measures that can help the millions of people affected. Further, the current situation does not warrant the application of the Responsibility to Protect doctrine and in all likelihood application could be counterproductive to alleviating the suffering of those affected by the cyclone.

On Tuesday May 7, 2008, Kouchner said, "We are seeing at the United Nations whether we can implement the Responsibility to Protect, given that food, boats and relief teams are there, and obtain a United Nations' resolution which authorizes the delivery (of aid) and imposes this on the Burmese government." His comment has aroused concern both because it does not adhere to what governments agreed at the 2005 World Summit and because it equates the responsibility to forceful military intervention. We do not advocate using the Responsibility to Protect at the current time with respect to the humanitarian disaster following Cyclone Nargis, for two reasons.

First, we take this view because of the difficulty of establishing that the regime's actions before and after Cyclone Nargis constitute one of the four crimes to which R2P is meant to apply: genocide, war crimes, crimes against humanity and ethnic cleansing.

Under Paragraphs 138 and 139 of the World Summit Outcome Document from 2005, governments and world leaders agreed that they have a responsibility to protect civilians from genocide, war crimes, crimes against humanity, and ethnic cleansing. When a government is unable or unwilling to protect its civilians from these crimes, the responsibility to protect falls upon the international community to encourage and help the state to exercise its responsibility. If the State manifestly fails to protect civilians, the international community can act, first with peaceful measures (using economic, political, diplomatic, and legal tools) and with collective use of force through the UN Security Council under Chapter VII of the UN Charter, only as a last resort.

While the impulse behind Kouchner's suggestion is likely shared by those who first articulated the Responsibility to Protect – and by civil society groups concerned for the welfare of the affected people in Burma – governments agreed only to take action through the Security Council (and on a case-by-case basis) in the cases of genocide, war crimes, crimes against humanity and ethnic cleansing. Governments did not agree to take forcible action when governments refuse to assist or allow others to assist victims of humanitarian or natural disasters. Britain's UN envoy, John Sawers, clarified on May 8, 2008 the 2005 agreement "relates to acts of genocide, war crimes, crimes against humanity and so forth, rather than government responses to natural disasters" and

according to the BCC, Edward Luck, the Secretary General's Special Adviser, has argued that "linking the 'responsibility to protect' to the situation in Burma is a misapplication of the doctrine".

Although reports indicate that the regime has failed to protect its populations and is actually obstructing aid, the Responsibility to Protect as adopted in 2005 does not provide for the Security Council to act on the basis of neglect and obstruction. There could be a case that the government's failure to accept assistance will result in mass loss of life and crimes against humanity, but it will be difficult to meaningfully demonstrate "intent" of the government to commit these crimes, especially given reports that the government is now accepting limited and conditional support from the UN and several donor governments.

Second, Kouchner equated the Responsibility to Protect with forced military intervention, which is more likely to close than open doors for cooperation with the authorities in Burma. There is a deep misunderstanding about the responsibility to protect in the international community, as many governments misinterpret the emerging norm as a Western or colonialist intervener's charter. China, Russia and many countries in the Non-aligned Movement are fierce opponents of the Responsibility to Protect, and last year vetoed a Security Council resolution on Burma at a time when crimes committed by the regime could have been deemed crimes against humanity. In this political climate, applying the norm in Burma in order to force humanitarian assistance could be perceived as a ploy to bring about regime change. This most likely will not open doors for the delivery of aid, but instead might make the regime more fearful and more paranoid about cooperating with the UN and other countries. Urging military intervention as an application of the Responsibility to Protect is a counterproductive strategy that would not be in the best humanitarian interests of the people directly affected by the cyclone in Burma.

Many humanitarian organizations, including the UN Office for Coordination of Humanitarian Affairs, have criticized Kouchner's interpretation of the Responsibility to Protect. The doctrine/norm, in its true application to the four crimes listed above, requires that peaceful means be exhausted prior to any use of force. As United Nations Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator John Holmes said on 7 May 2008, "I'm not sure that invading them would be a very sensible option at this particular moment. I'm not sure it would be helpful to the people we are actually trying to help."

Rather than seeking Security Council action to forcefully intervene, which is likely to exacerbate the problems, urgent efforts should be made bilaterally so that humanitarian relief arrives unhindered.

WFM-Institute for Global Policy's R2PCS Project welcomes the thoughts and reactions of others in addressing this difficult situation.

For more articles on the Responsibility to Protect and the situation in Burma:

Editorial, Boston Globe, "To Protect or Neglect in Burma":

http://www.boston.com/bostonglobe/editorial_opinion/editorials/articles/2008/05/09/to_protect_or_neglect_in_burma/

Editorial, Concord Monitor: "Preventing a second tidal wave of deaths":

<http://www.cmonitor.com/apps/pbcs.dll/article?AID=/20080509/OPINION/805090355/1027/OPINION01>

Reuters, China, "Indonesia reject France's Myanmar push":

<http://www.reuters.com/article/asiaCrisis/idUSN08518240>

Ramesh Thakur, Globe and Mail, "Should the UN invoke the 'responsibility to protect'?"
<http://www.theglobeandmail.com/servlet/story/RTGAM.20080508.wcoprotect08/BNStory/specialComment/home>

Axworthy, Lloyd and Alan Rock, Globe and Mail, Letter to the Editor, "Responsibility to protect? Yes"

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