

Governments Have Duty to Aid Citizens Caught in a Nightmare

The Japan Times Ramesh Thakur 5 April 2010 Australian businessman Stern Hu has been convicted of taking bribes and stealing state secrets and sentenced to 10 years jail in China. International standards of a free and fair trial do not seem to have been met. Did the Rudd government do all within its powers to help him? Did the Howard government do enough, and early enough, to help Australian citizen David Hicks who was caught up in the nightmare of Guantanamo? Canadians too have been caught up in nightmarish situations overseas — from being trapped in Lebanon during the 2006 war to being renditioned to Syria, sent to Guantanamo, imprisoned in Mexico and detained in Kenya. Seventeen Indians have just been sentenced to death in the United Arab Emirates for the murder of one man. What is the limit of assistance that the Indian government should provide them? Last Tuesday, Delhi announced that it would help the 17 to file an appeal in a superior court.

Occasionally some Japanese individuals or nongovernment organization worker gets caught in life-threatening situations while overseas, sometimes as a consequence of their own irresponsible or reckless behavior. Does this absolve the Japanese government of all responsibility for their welfare? Given the numbers of people who travel internationally, it is easier for most of us to think "There but for the grace of God" for these types of problems than to empathize with foreign victims of atrocity crimes. The

responsibility to protect

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R2P

) doctrine was developed to help the latter. Does the notion of responsibility as sovereignty have anything to contribute to helping fellow-citizens trapped in difficulties abroad?

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The idea of sovereignty as responsibility to people within and the world community without — rather than as a shield for internal abuses against external scrutiny — has been around for some time. Popularized by a Canadian-sponsored but independent international commission, it was adopted unanimously by world leaders at the U.N. summit in 2005 and reaffirmed by the U.N. General Assembly last year. Sovereignty confers domestic and international responsibility as well as rights on a state. When a state cannot honor this responsibility, for whatever reason, the

responsibility to protect

at-risk populations from mass atrocities trips upward to the international community acting through the United Nations.

But responsible sovereignty cannot be restricted just to one function. In an age when travel is increasingly commonplace, does not a government have a corresponding duty to protect citizens on foreign soil? If Israeli Jews are taken hostage and face being killed in a foreign land, does Israel have a right but not the duty to use all means necessary to save them?

There are five critical differences between

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as we outlined it in our original commission and the duty to protect as argued here. First,

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is about the responsibility of a state for actions within its own territory, whereas the duty to protect is about its responsibility in foreign jurisdictions. Second,

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applies to everyone physically present in a state: citizens, immigrants, tourists, students, etc. The duty to protect would be limited to citizens when overseas. Third,

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concerns mass atrocities (war crimes, genocide, crimes against humanity and ethnic cleansing). The duty to protect can be activated when crimes and injustices are committed against individuals.

Fourth, it is the large numbers and the gravity of the crimes (atrocities) that together would shock the international community's conscience and activate the international

responsibility to protect

if and when the host government is unwilling or unable to do so.

But where the numbers affected are just one or a few, and in cases where the harm falls short of atrocity crimes, for example being falsely charged and imprisoned but not tortured or killed, there is no international or global remedy available today. This becomes a matter for the country in whose jurisdiction the breach occurs and for the country whose national is being harmed.

Fifth,

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was carefully chosen to emphasize the moral dimension without stepping over into a legal obligation as exists, for example, under the Genocide Convention (which is one reason why the United States was so resistant to calling the Rwanda killings in 1994 genocide). The duty to protect, on the other hand, does impose a legal obligation.

Therein lies the problem. Leaving it as a state prerogative would, from a government's perspective, permit it a welcome degree of discretionary latitude. It could choose to come to the assistance of citizens caught in nightmare situations in unpleasant or rogue regimes but stay away from cases in friendly countries. It could provide maximum help to "good" Australians or Canadians caught in bad countries but choose silence and indifference where they are held by allied governments for suspected terrorist offenses. The difficulty with this is how do we know the discretion is applied fairly, objectively and on reliable and credible ("slam dunk") evidence as opposed to willfully, whimsically and erroneously?

If we want to live in a nation of laws, there is little practical alternative to grounding our protection in the majesty of laws. It is not possible to be tough on terrorists and crime. (...)

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