THE HUMAN RIGHTS RESPONSIBILITIES OF INTERNATIONAL AID PROVIDERS: TOWARD A NORMATIVE FRAMEWORK

A Research Proposal for Post-Doctoral Fellowship at the Minerva Center for the Study of the Rule of Law under Extreme Conditions

Michal Saliternik

Background

Countries emerging from violent conflicts, natural disasters, or economic crises often rely on the financial, operative, technological, or diplomatic assistance of better-off countries to facilitate their return to normality. International law, as well as the national laws of aid providing countries, regulates various aspects of such emergency assistance. For example, these laws define the goals and methods of foreign assistance, set forth procedures and criteria for providing it, and establish monitoring and inspection mechanisms. In addition, some rules and policies have been adopted by aid providing countries and organizations that condition their assistance upon recipient countries’ compliance with certain human rights and rule of law requirements. Linking foreign assistance to such “good governance” requirements, however, is largely understood as a prerogative of aid providers—it is for them to decide whether and when to apply human rights or other conditions to their assistance. Under existing laws, the only type of human rights violations that aid providers may be required to prevent are those committed directly by their own personnel (e.g., sexual abuses of local population by peacekeeping forces).

Goals

The purpose of this research is to challenge the view that presenting human rights and rule of law requirements to recipient governments should be considered merely as a right possessed by aid providers. It suggests, instead, that under certain conditions, international law should also attribute to aid providers a duty to prevent or reduce human rights violations and other wrongdoing by recipient governments. In particular, they should have a duty to ensure that the assistance that they provide does not directly or indirectly facilitate such wrongdoing. For example, states allocating funds to ameliorate poverty or epidemics should be under a duty to make reasonable efforts to ensure that these funds are used by the recipient government in an equitable manner, without discriminating against ethnic minorities, women, or other vulnerable groups. Similarly, peace mediators or donors should take appropriate measures to ensure that they do not facilitate a peace agreement that brings about serious human rights violations, for example because it establishes an oppressive regime or provides for a discriminatory population transfer. The ultimate purpose of this research is to develop a normative framework that will provide a basis for attributing such duties to international aid providers.

Research Stages and Methodology

In presenting the case for aid provider responsibilities, the research will proceed in two stages. First, it will offer a theoretical justification for holding foreign aid providers responsible for ensuring that their assistance does not enable wrongdoing by recipient governments. At the heart of this justification lies a humanity-oriented conceptualization of state sovereignty, which asserts that alongside the primary responsibility of governments to protect the human rights of their own citizens, they also have a secondary responsibility (and not merely a right) to protect the human rights of non-citizens in the case that the latter’s own governments fail to do so. This conceptualization of sovereignty, I will argue, is grounded in sound principles of global justice, and it also finds support in contemporary international legal doctrine. In any event, in order to prevent collective action failures, the responsibility to protect non-citizens should be allocated...
among the world’s governments on the basis of some objective criteria. Potential contribution to wrongdoing and special capacity to prevent it should be considered as serious candidates, having deep roots in both moral philosophy and legal practice.

Applied to the context of international aid cooperation, this theoretical framework entails that even when experiencing irregular situations of violent conflicts, economic meltdowns, or natural disasters, governments should be duty-bound to respect the human rights of their citizens and seek solutions that are based on equal concern for them all. At the same time, all the other world’s governments should have the duty to ensure that governments emerging from crisis situations live up to their human rights duties toward their citizens. Aid providers, however, should be singled out among all the world’s governments to discharge this collective duty. For as noted above, their assistance can indirectly contribute to crisis resolution-induced injustices. At the same time, their special relationship with the recipient country suggests that they are better placed than other countries to affect its crisis resolution policies. In other words, aid providers meet both the contribution and the capacity criteria for the allocation of collective responsibility. The human rights duties that are attributed to aid providing states can also be attributed, with some variations, to aid providing international organizations, by virtue of their agency relationship with member states that bear these duties.

In the second stage of the research, I will examine ways for translating the theory of aid provider responsibilities into concrete international legal obligations. I will discuss the contents of these norms as well as the processes through which they can be articulated, considering both formal international lawmaking processes such as treaty ratification and less formal processes such as the adoption of guidelines and recommendations by international organizations. The proposition underlying this discussion will be that when articulating the human rights obligations of foreign aid providers, international lawmakers should take into account at least two risks associated with such obligations. First, these obligations may lead to excessive intervention of aid providers in the domestic policies of recipient countries and thus undermine their right to self-determination. Second, they may undermine the effectiveness of post-crisis recovery processes and perhaps also deter potential aid providers from offering their assistance, ultimately resulting in greater suffering of the populations that international human rights law seeks to protect. The main task of international lawmakers should therefore be to strike an appropriate balance between the need to allow sufficient discretion to governments emerging from national crises to make independent choices as to how to ameliorate their situation, on the one hand, and the need to ensure that constraining political, economic, or security circumstances will not be a license to ignore basic human rights and rule of law considerations, on the other hand.

Innovation

Despite the central role that international aid cooperation occupies in contemporary international relations, on the one hand, and the ever expanding reach and influence of international human rights law, on the other hand, the idea that aid providers may have human rights duties toward the constituencies of recipient governments beyond the narrow duty not to directly abuse local populations has hardly gained any scholarly or policy attention. The absence of such discussion is regrettable, since under the constrained political or economic circumstances that give rise to foreign aid initiatives, recipient governments cannot be exclusively relied upon to protect the human rights of their citizens. In order to fill this protection gap, this research will develop a novel normative framework for attributing to aid providers a responsibility to ensure that recipient governments’ responses to national crises are compatible with international human rights norms. The research will also suggest ways to translate these responsibilities into concrete legal obligations, hopefully contributing to the protection of human rights not only in theory but also at the more practical level.