The Responsibility to Protect (R2P) in Humanitarian Emergencies: From Libya to North Korea?

Shin-wha Lee
Korea University

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I. Introduction

The end of the twentieth century witnessed a change in the nature of armed conflict. Large interstate wars were replaced by violent intrastate conflicts, or "new wars" (Kaldor 1999; 2007), where the vast majority of casualties have been civilians. Overwhelmed by the proliferation of internal conflicts and the resulting humanitarian crises over the past two decades, the international community has increasingly recognized the importance of international mediation or intervention for crisis prevention and response. UN peace-keeping and humanitarian missions have been the primary tool for dealing with these problems, with human rights and international responsibility towards civilians trumping potential violations of state sovereignty.

However, international intervention, particularly ones that involve military action, has increased concerns among some states worried about potential infringements on state sovereignty. Since the issue of human rights is commonly regarded as part of the domestic legal affairs of state, external intervention on the grounds of human rights violations is viewed as unjustifiable violation of sovereignty (Lee 2004). Consequently, the international community remains undecided whether human rights and humanitarian issues should be seen as problems of security. In contrast, issues such as environmental and economic deterioration, and the spread of epidemiological diseases have been defined as security relatively easily. Regardless, it seems to be an irreversible trend within the United Nations (UN) and among other international actors to seek and justify new norms and rules of protection after witnessing obvious failures to prevent mass atrocities and the

genocides in Rwanda, Bosnia, and Darfur. In order to address the issues of state sovereignty and individual human rights simultaneously, a change in the normative framework is much needed. The notion of the responsibility to protect (R2P) was developed with this imperative to seek a new international norm and policy guideline on when and how the international community should intervene for the sake of human protection. After the NATO-led military action in Kosovo in 1999 for humanitarian ends brought about serious concerns about the legality and legitimacy of humanitarian intervention, the report by the International Commission on Intervention and State Sovereignty (ICISS) on the R2P attracted global attention and fueled an international debate.

The R2P is a norm or set of principles that redefines sovereignty as a responsibility rather than as a privilege or a means of control. It prescribes that a state has the responsibility to protect its population and if a national government is neither able nor willing to fulfill the responsibility to protect its people, the international community has a secondary responsibility to protect them by force, if necessary, from the "four R2P crimes," genocide, ethnic cleansing, war crimes, and crimes against humanity (ICISS 2001). The principles of R2P were unanimously adopted by the heads of state and government at the World Summit High-level Plenary Meeting of the 60th Session of the United Nations General Assembly (UNGA) in September 2005,[1] and the UN General Assembly Resolution (A/RES/63/308) on the implementation of R2P was adopted in September 2009.

However, it is very difficult to turn the concept into policy, even if it is unanimously accepted. Originally, the ICISS report recommended that the range of R2P should include situations of state collapse and overwhelming natural or environmental catastrophes (ICISS 2001), but this was later narrowed down to the four R2P crimes. This was to prohibit arbitrary use of the R2P concept to justify unbounded international intervention. Yet, it still generated much controversy during the United Nations Security Council (UNSC) sanctioned North Atlantic Treaty Organization (NATO) military intervention in Libya in 2011, an intervention based on R2P. Moreover, this limited definition of R2P has led to debates on how it can effectively respond to cases such as North Korea, which face complex emergencies where a combination of natural and man-made disasters adds to the suffering of the people.)

Just as in humanitarian intervention, the R2P faces several dilemmas: How serious should humanitarian emergencies be to warrant international intervention? How can the narrowly defined R2P crimes accommodate those suffering in complex humanitarian crises? When should the UNSC approve external military engagement as a justifiable act and when should it not? What generates more danger, forcibly intervening or remaining an onlooker to the humanitarian crisis within a state? What kinds of normative and legal grounds can

the R2P provide for outside involvement? Why is the R2P doctrine more than mere humanitarian intervention, and can the R2P overcome the shortcomings of humanitarian intervention? Why did we need intervention in Libya while not in Syria where the situation has been more or less the same as in Libya in terms of the necessity of civilian protection? Is it feasible for the international community to opt for military intervention in North Korea based on the principles of the R2P if a crisis occurs as it did in Libya?

Along the line of these inquiries, this working paper first reviews international responses to complex emergencies, with particular emphasis on multidimensional UN peacekeeping and humanitarian intervention. Second, the development of the concept and debates of the R2P will be discussed, which will be followed by the limitations and controversies related to the notions and practices of the R2P. Third, the possibility of the R2P applied to both internationally endorsed R2P crimes and "non-R2P" crimes will be examined with a number of case studies: Cambodia, Darfur, Kenya, Ivory Coast, Libya, and Syria as R2P-delineated crimes; and Myanmar, Somalia, and Zimbabwe as non-R2P cases. Through these case studies, we can evaluate the possibility and validity of expanding the scope of the R2P and find the practical implications for the case of North Korea. It seems unfortunately improbable that the UN member states will apply the R2P to North Korea, not only in its current situation, but even if the people of the country were to face a situation like that of Libya and Syria, because China and Russia, both permanent members of the UN Security Council, will veto any military intervention against North Korea.

In brief, the initial assumption of this paper is that considering the difficulty in turning the R2P from words to deeds, it is practical to limit the R2P's scope to four crimes. However, the narrowly described R2P also limits its potential to prevent, protect, or react to complex humanitarian emergencies, even for cases such as North Korea, where human rights violations and humanitarian challenges are among the most dreadful in the world. Therefore, it is ultimately beneficial to explore ways to expand the scope of the R2P in a way that does not undermine its applicability in the real world.

II. International Intervention in Complex Emergencies

1. Rise of Complex Humanitarian Emergencies

The UN is dedicated to respecting the territorial integrity and political sovereignty of its member states, as well as safeguarding peace through international cooperation and collective security. The founders of the organization envisioned its vital role in preventing conflicts between states. It was believed that defending against external aggression would in turn guarantee the personal security of citizens within the respective states.

The majority of armed conflict today, however, stems from civil wars and communal conflicts within a single recognized state, rather than wars between states. Out of a total of 29 major armed conflicts over the past decade 2001-2010,[2] only 2 were fought between states and the remaining 27 cases have been internal (SIPRI Yearbook 2011). These intrastate conflicts, which have become more prevalent since the end of the Cold War, have been based on ethnic, communal, and religious differences within a state, and often have become intractable when factors, like struggle over political power, territorial issues, and core economic resources have come into play.

The most serious crises that have emerged in the midst of intrastate conflict or state failure have often been defined along humanitarian lines. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), today's armed conflicts are coupled with the "active and deliberate targeting of civilians, including humanitarian aid workers, widespread human rights violations, the use of rape and other crimes of sexual violence as brutal weapons of war, particularly against women and children, and forced displacement."[3] The denial of civilian access to basic necessities, such as food, water and shelter, and limited international humanitarian access to crisis zones are also the main causes of widespread human afflictions, not to mention cases of ethnic cleansing or genocide which represent the worst forms of humanitarian crises in conflict areas (Lee 2004).

"Failed states," in which government capacity and authority are weak or collapsed, have generated the most severe human suffering, creating "complex emergency" situations which possess (with or without the existence of civil war) a complicated mixture of population displacements, rampant injustice and lawlessness, starvation, dire poverty, disease, environmental degradation, and random and systematic violence against non-combatants, including genocide (Weiss and Collins 1996), all of which can, in turn, renew or exacerbate conflict. In addition, human sufferings have been made worse within a state where an oppressive dictatorial government has increasingly become responsible for offenses committed against its own citizens (Rummel 2009). Incapable, inefficient, or cor-

rupt governments, with no authority or political will to manage natural and man-made disasters, fail to counter widespread damage to existing social system and economies. Furthermore, governments facing complex emergencies tend to hinder or prevent relief aids because of political and military constraints, even if the country urgently needs large-scale humanitarian assistance from the outside world (IFRC 2011).

As a result, complex emergencies are likely to bring about "large numbers of civilian casualties, populations who are besieged or displaced quickly and in large numbers, and human suffering of major proportion."[4] This grim reality has challenged the United Nations with an enormous dilemma: "how to reconcile its foundational principle of member states' sovereignty with the primary mandate to maintain international peace and security" (Thakur, 2006: 245), while seeking the rationale and mechanisms for international intervention in humanitarian crises.

2. Unintended Consequences of UN Multidimensional Peacekeeping

Although the term, "peacekeeping" does not appear in the UN Charter, the expression has evolved into a crucial mechanism for dealing with conflict-ridden regions around the world. With authorization from the UNSC, peace operations are carried out by UN forces and multinational troops serving under the UN operational command. Peace operations in the Cold War era were characterized as "traditional" uni-dimensional military actions that were established in order to monitor cease-fire agreements on the basis of consent, impartiality, neutrality, and the minimal use of force. However, the plethora of internal armed conflicts and humanitarian emergencies in the 1990s made post-Cold War era peacekeeping missions more complex, multifunctional, and multidimensional. Multidimensional peacekeeping operations aim to rebuild and rehabilitate post-civil war states, and over the years have increased involvement in non-military activities, such as humanitarian relief and electoral assistance.[5] Each UN peace operation is assigned a specific mandate to implement, to achieve certain peacekeeping, peace-building, or peace enforcement functions. This new type of multidimensional mission, however, is often ambiguously mandated in terms of its goals and activities, while often launched in areas of conflict where there is no peace to keep, in situations where neither cease-fires nor peace agreements (not to mention agreements within the UNSC) have been agreed upon. Although there have been several successful UN peace operations,[6] there have also been failures, largely attributed to the UN's lack of resources and capabilities, often combined with the "egoistic interests" of its member states. In particular, disagreement within the UNSC over the scope of military action and intervention has led to numerous failures: the failure

to prevent the Rwandan genocide of 1994, where as many as 800,000 people were massacred within less than 100 days; the failure to intervene in the 1995 Srebrenica massacre and protect a refugee haven; and the failure to provide humanitarian aid and intervene in the civil war of the Democratic Republic of the Congo (DRC, 1998-present), to name a few. Oftentimes, the phrase "never again" at the UN seems not to have been translated into a revision of action for the protection of civilians under severe risk of violent attack, forced displacement, and manslaughter,[7] as humanitarian tragedies related to genocide, ethnic cleansing, and famine have recurrently appeared in international media and public discussions.

This complication has increased the risk of unexpected consequences to arise during peace operations. Furthermore, it has increased the level of uncertainty in peacekeeping missions, hindering the successful implementation of UN peace settlement plans. As a result, these unexpected and unwanted repercussions have undermined the credibility of overall UN field operations, ultimately compromising the legitimacy and relevance of UN intervention in conflict-ridden areas. To remedy this, the UN has seriously re-examined its security approach in carrying out complex peace operations over the past decade. The Report of the Independent Panel on the UNPKO (August 2000), or the *Brahimi Report*, called for an integrated task force at UN Headquarters to design each UNPKO from its inception, and to enhance field operation planning and preparation capacities of UN humanitarian agencies such as the Office of the UN High Commissioner for Human Rights (OHCHR).[8] The UN has also made efforts to reduce negative humanitarian consequences of its interventions, most of which are inadvertent. These revisions have been focused largely on reducing the limitations of UN peace operations caused by a lack of resources, inadequate capacities to facilitate the relief of complex humanitarian emergencies, and the lack of political will of member states that prioritize their own national interests and concerns over humanitarian responsibility. Unless the humanitarian imperative overcomes the strategic interest of the member states, the role of the UN peace operations as a whole is at risk of being discredited.

3. Dilemma of Humanitarian Military Intervention

Humanitarian intervention, referred to as military interference in one state (a conflict zone) by foreign states (with or without UN authorization) for human protection, has also been a prominent yet challenging issue on the global stage during the turbulent 1990s. Distinguished from "strategic intervention," which aims to promote the national interests of the intervening country, the United States and other Western nations advocated the phrase "humanitarian intervention" as a means to thwart crimes against humanity and uphold human rights and democratic values. For example, US intervention in the Dominican Republic in 1965 and Grenada in 1983 (both of which were conducted to contain the expansion of radical revolutionary regimes) and Vietnam's intervention in Cambodia's genocidal Khmer Rouge regime in 1979 (which intend to secure the former's territorial security and regional stability) qualify as strategic interventions (Kim 2003).

On the contrary, humanitarian intervention was introduced in order for the international community to take action when a state commits egregious human rights abuse on its own people. Global responses to the uses of humanitarian intervention were divided. While humanitarian internationalists welcomed the new approach to handle international human rights violations, some were suspicious of the real intent behind intervention and devalued it as a new form of colonialism. How humanitarian intervention can garner legal justification and moral legitimacy from the international community has been constantly debated (Holzgrefe and Keohane 2003; Seybolt 2008) for the following reasons.

First, claiming legal justification and moral legitimacy for humanitarian intervention from the international community (Holzgrefe and Keohane 2003) has been enormously difficult, since intervention infringes on inviolable sovereign rights of state and the contradicts the principle of nonintervention in the domestic affairs of other countries. Furthermore, there is great disagreement on when and where to use military force, since interventions are legally prohibited by the UN Charter, which necessitates its member states to refrain from the threat or use of force against any other state (Article 2:4). There has also been great controversy over who should intervene and how it should be decided and processed.

Second, humanitarian intervention has been criticized as highly selective and unilateral, mainly functioning as "invocations of humanitarian intentions by strong powers or coalitions that tried to conceal their own geopolitical interests" (Lobel and Ratner 2000). In the 1990s, U.S. President Bill Clinton and other Western leaders claimed that foreign states should be able to use coercive measures, including the use or threat of force across state borders without consent of the state and the UNSC, to eradicate domestic state criminalities (Sarkin 2010). However, with the international community remaining mum on the genocide

in Rwanda, a country of little strategic and economic interest, the U.S.-led NATO strike against Yugoslavia in 1999 was accused of another example of powerful countries promoting their domination in international affairs. This intervention brought about widespread concern regarding the use of force by certain states under the banner of humanitarian intervention without UN authorization. In addition, the issue of providing humanitarian aid to the people of the countries that are subject to embargos or economic sanctions becomes a major problem of concern, especially when the Security Council decides to impose economic sanctions as a means to resolve a conflict. The question of restricting humanitarian aid to countries in order to achieve a "larger mission" remains a thorny issue that is still under debate.

Third, with more instances of humanitarian military intervention in the post-Cold War world, the international community faces increased risks of failure and larger unintended ramifications resulting from peace operations. Risk of failure to contain conflicts and support a peaceful settlement notwithstanding, intervention "increases the intensity of the violence by adding troops, fire power and another armed group to an already volatile environment" (SIPRI 2007: 17), as witnessed in the case of Somalia in 1993 when the involvement of the UN and U.S. forces further complicated the severe fighting. Also, principles of humanitarian organizations are frequently endangered, especially in regions where humanitarian activities co-exist with military involvement. The objectives of humanitarian organizations are to provide relief aid based on the principle of impartiality and neutrality, but additional expansion of humanitarian action facilitated by military personnel is often biased.

For instance, when NATO forces, upon the request of UNHCR facing difficulties protecting refugees in the border areas, provided humanitarian services in the region impartiality of this additional aid was questioned. Unfortunately, answering the request of one of the warring parties "seriously undermined the impartiality of the assistance programme" (Porter 2000).

In sum, to prevent future failures of peacekeeping missions and humanitarian intervention, it is crucial to examine the lessons learned from both successful and failed cases. This is a leading step that is highly necessary and urgent to enhance the UN's capacity to prevent unintended consequences (Heldt and Wallensteen 2004; Oward 2008). It is also important to upgrade the UN response to the challenges of increasing "grey zones" that require UN action whether it is traditional peacekeeping activities or full-blown enforcement execution (Landgren 1995). However, it is not easy for UN member states to recognize the gravity of humanitarian emergencies and collectively work toward developing corresponding mechanisms. Indeed, the majority of recent UN peacekeeping missions and humanitarian interventions have been struggling to combat complex emergencies where civil wars coincide with a mixture of large-scale displacement, famine, disease, human rights abuse, and political or social collapse. Both peacekeepers and forces of humanitarian intervention do not

seem to have been sensitive and responsive enough to cater to the needs of the victims of complex emergencies, as they lack financial and administrative resources, a concrete guide-line for actions, and a broad coalition with international and local non-governmental or-ganizations (NGOs) in the field.

III. Concepts and Practices of R2P

1. Development of the R2P Concepts

After comparing the case of Rwanda (too little and too late) and Kosovo (too much and too early), many voices of concern have been raised urging the development of a new in-ternational norm , an alternate way of thinking that would reconcile state sovereignty and international intervention for human rights purposes (Weiss 2007). In response to former UN Secretary-General Kofi Annan's call for global consensus on effective and justified humanitarian intervention for the sake of protecting civilians, the ICISS, which was es-tablished by the Canadian government in September 2000, released the *Responsibility to Protect* report in December 2001. Responsibility to Protect (R2P) redefines collective se-curity by emphasizing the importance of shared responsibility. The concept is largely in-debted in the previous work of Francis Deng on conceptualizing "sovereignty as respon-sibility"(Deng 1998; Cohen and Deng 1998), as well as Kofi Annan's call for a new con-sensus on the competing ideas of "two sovereignties" (national and popular) and how to remedy the challenges facing humanitarian intervention (Annan 1999b).

The R2P champions the "three-pillar approach": (i) States have the primary responsi-bility to protect their own people; (ii) the international community has the commitment to provide assistance to states in building capacity to protect their people; and (iii) in case that the state is incapable or unwilling to meet that responsibility, the international com-munity has the responsibility to take timely and decisive action to prevent violence and atrocious crimes. Here, the international responsibility must first exhaust all diplomatic, legal, and other peaceful measures, deploying military force only as a last resort (ICISS 2001). On the basis of these principles, the practice of R2P is broken down into three phases: (i) "the responsibility to prevent" root and immediate causes of civil war and oth-er human-induced crisis putting people at risk; (ii) "the responsibility to react" to situa-tions of compelling human suffering through appropriate measures, preferably via peace-

ful means including diplomatic pressures and sanctions, but with no military intervention; and (iii) "the responsibility to rebuild", to offer full assistance with rebuilding and reconciliation efforts, particularly after military intervention.[9] This multi-phased notion of responsibility underscores that a successful response to gross atrocities requires not only reaction, but continued engagement to prevent conflict from reoccurring and to facilitate post-crisis rebuilding efforts. In particular, the ICISS report identifies prevention as the most important dimension of the R2P. It also emphasizes a balance between prevention and utilizing coercive measures, reiterating that the least intrusive measure should be applied first (ICISS 2001). Therefore, as humanitarian intervention has raised concerns about possible domination by global power politics, R2P aims to provide a legal and normative basis for humanitarian intervention by foreign actors by emphasizing the assessment of crises from the perspective of those in need, rather than those who consider intervention (Thakur 2006). Upon this premise, the shift from the "right to intervene" (or humanitarian intervention) to the responsibility to protect has gathered broad support from nation states, the UN, academia, and civil society.

R2P was first announced in December 2001, an inopportune time in the wake of the September 11, terrorist attacks. At that time, the debate on how to prevent and preempt terrorism and the proliferation of weapons of mass destruction overshadowed any discussion on crisis prevention and corresponding response under the conceptual guidance and practice of R2P. Furthermore, the US-led invasion of Iraq in 2003, termed "Operation Iraqi Freedom," which was aimed at human protection, led to negative repercussions against the R2P concept, as the Iraqi invasion aroused suspicions among many states, particularly smaller non-Western developing countries. Many of these smaller nations suspected that the R2P would be another Western justification of strong powers imposing their geopolitical and economic interests on the weak and systematically impinging on the latter's sovereignty under the pretext of human rights.[10] These concerns are well valid, considering that power politics is frequently at the core of military intervention in the name of human protection, and UN multidimensional peacekeeping operations are often directed by high-level political disputes at the UN headquarters with little relevance to the field mission in the conflict zone (Hughes, Schabas, and Thakur 2007).

2. Development of the R2P Concepts

Over the past decade, since the release of the report of the ICISS in 2001, there has been much effort to promote the idea and principles of R2P and empower the new norm by obtaining UN General Assembly member states' consent, as stated in the 2004 report of the High-Level Panel on Threats, Challenges and Changes, *A More Secure World: Our Shared Responsibility.*[11] This was also later endorsed by the UN World Summit in September 2005 and reaffirmed by the Security Council in April 2006.[12] This report stressed the importance of collective action to deal with new security threats to humanity. It recognized the necessity of taking comprehensive and collective security measures when a state is incapable of preventing mass atrocities or negligent about man-made catastrophes. The UN High-Level Panel also agreed on the basic principles of R2P and regarded it as an emerging norm. The subsequent panel report allowed the R2P to be discussed further in the UN.[13] Announced in 2005, Kofi Annan's report, *In Larger Freedom: Towards Development, Security, and Human Rights for All* also embraced R2P as a way of collectively handling international humanitarian crises. The report was presented in the UN General Assembly at the 2005 World Summit and was unanimously adopted as R2P gained international legitimacy.[14]

The scope of R2P is specified into four specific crimes: genocide, war crimes, crimes against humanity, and ethnic cleansing.[15] Paragraphs 138 and 139 of the 2005 World Summit Outcome Document reaffirmed at the UN Security Council in April 2006 gave "final language" to the scope of the R2P and specified the four crimes to which R2P would be applied. It reflected an international political compromise between legitimizing the R2P by obtaining the General Assembly's consent and narrowing down the scope of its application to four international crimes.

The African Union (AU) also supported the concept of R2P and enshrined the principles of R2P within its founding Charter. AU member states declared the protection of individual human rights as the organization's principal objective and endorsed "the right of the Union to intervene in a Member State in pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crime against humanity."[16] They also adopted the "Ezulwini Consensus" in March 2005 to embrace R2P and recognized the authority of the Security Council to decide on the use of force for the prevention of mass atrocities.[17] The AU's endorsement of R2P has contributed to making developing states, which tend to question UN doctrines and declarations as products of the western dominance, accept the notion of R2P as a universal a norm or set of principles to define a specific relationship, "a relationship of protection," between a state and its popu-

lation. At the 2005 World Summit, the "southern" leadership of Argentina, Chile, Guatemala, Mexico, Rwanda, and South Africa was also noteworthy in insisting on a meaningful commitment to the R2P agendas (Mataconis 2011).

The process has also faced setbacks. In January 2007, China and Russia, two UNSC permanent members, vetoed a resolution - the first use of multiple vetoes at the UNSC since 1989 -that called for Myanmar to release all political prisoners and stop human rights abuses against ethnic minorities. They suggested that the situation in Myanmar should instead be taken up by the Human Rights Council.[18] The adoption of UNSC Resolution 1769 to authorize the deployment of a hybrid UN-AU force for Darfur did not refer to R2P or to the Protection of Civilian Resolution.[19] In 2007, the General Assembly's 5th Committee declined funding for the office of a new Special Adviser on R2P. This was partially due to procedural matters, but also because some member states argued that R2P had never actually been agreed upon as a norm during the World Summit (R2PCS 2008).

However, Secretary-General Ban Ki-moon has been eager to espouse R2P. He first raised the issue in his Berlin speech in July 2008, reaffirming its principles and highlighting sovereign responsibility and international capacity building with regards to the three pillars of R2P. He also confirmed the scope of R2P as limited to the four crimes agreed upon at the 2005 World Summit. In January 2009, he released a report called *Implementing the Responsibility to Protect*[20] to call for the implementation of R2P, which led to successful debates at the General Assembly in July 2009 and the adoption of the Responsibility to Protect Resolution (A/63/677 of 12 January 2009).[21] The majority of member states appeared to agree with the United Kingdom's statement that called for "a culture of prevention," which can be construed as "an R2P culture." Regardless of whether this culture spreads across the world, the 2009 General Assembly debate served as a watershed moment.[22] In July 2010, Ban Ki-moon's second R2P-related report titled "Early Warning, Assessment and the Responsibility to Protect" (A/64/864 of 14 July 2010) was produced to initiate an informal interactive dialogue at the General Assembly in August 2010. His third report, called "The Role of Regional and Sub-regional Arrangements in Implementing the Responsibility to Protect," was released for another informal dialogue at the Assembly in July 2011. One of the important features in the third report is the promotion of global-regional-sub-regional cooperation in implementing the R2P.[23] By emphasizing cross-regional learning networks to encourage a trans-regional lessons-learning process, Ban Ki-moon urged member states to strengthen R2P as an operational, not merely conceptual, doctrine.[24]

Although R2P doctrines have been empowered by the consent of the UN member states, several developing countries still have voiced suspicions that the R2P could become another

mechanism allowing powerful states to advance their own private interests (Bellamy 2011). To enhance R2P as a new normative and legitimate guideline for the UN, the most important question is whether all member states can be convinced by the ICISS argument that the issue is not the states' right to intervene, but the states' responsibility to protect.

3. Criticisms and Controversies Regarding R2P

While R2P doctrines are widely accepted as a new normative guideline to define a relation between a government and its people, there have been several criticisms and limitations. Those who are against the idea of international community assuming the responsibility to protect individuals of other nations argue that it is a threat to state sovereignty under the guise of human rights protection and blame it as a new form of colonialism (Evans 2007). Also, since the agreement in the UN General Assembly carries no legal binding force, substantive implementation of R2P may be unfeasible. Moreover, even if the UNSC is considered a legitimate decision maker for an international responsibility to protect, there still remains the potential problem of selectivity that comes from the *realpolitik* of its permanent members. R2P has also been criticized regarding the use of force in the process of implementing secondary international responsibility. For instance, the United States, Russia, China, Pakistan, and Egypt agree with the principles of the R2P, but remain suspicious or negative about its actual implementation. This reveals fundamental difficulties of achieving international consensus over military intervention to carry out R2P.

Another criticism of R2P, for which only four crimes are applicable, is related to its heavy emphasis on the protection of civilians in situations of violent conflict and its failure to properly address poverty and famine crises. At first, critics claimed that the current R2P crimes, except ethnic cleansing, are already considered as serious crimes in the Rome Statute of the Criminal Court and can be punished by the international criminal court[25] so R2P itself seems to be just a reaffirmation of the Rome Statute. In fact, a fundamental reason why only four crimes are included in R2P is that these crimes have been discussed several times under international law and it was easier to reach an agreement on these terms. Also, it was conceived that the international society would need to focus on R2P for these four crimes in order to enable the establishment of the new principle (Chandler 2010).

However, in comparison with the ICISS report's idea of R2P that emphasizes the responsibility to protect peoples from mass human rights abuses in internal war, insurgency, repression or state failure, the current R2P is less vibrant (Park, Park, and Im 2010). Moreover, the current R2P with only four R2P crimes is limited in its potential to handle

the complexities of contemporary humanitarian crises. Contemporary conflicts involve not only various clashes between religious factions, nations, and differing ideologies, but also issues like poverty and lack of resources which are very difficult to resolve by peaceful means. In addition, internal conflicts are caused by incapable, corrupt, and oppressive governments that fail to secure their citizens and that threaten the security of their people. In the process of these conflicts, fundamental human rights are frequently violated by mass murder, mobilizing child soldiers, systematic rapes and violence. Indeed, the specific targeting of an attack on civilians is increasingly considered as an effective and efficient strategy. For instance, in internal wars and racial conflicts, hostile groups deliberately target civilians, often resorting to terrorism. Sadly, the current scope of R2P limits the extent the international community intervenes to resolve contemporary conflicts, both international and internal, that require timely responses.

Furthermore, the narrow scope of R2P lacks the ability to prevent crises. The core difference between R2P and humanitarian intervention is in the responsibility to prevent, which consists of three main components: early warning and analysis mechanism, root cause prevention efforts, and direct prevention efforts (ICISS 2001). However, it is impossible to prevent international crises when R2P is confined to the four R2P crimes, since these crimes can only be assessed and evaluated once they are already committed. If the prevention element becomes ineffective or unimportant, there is no practical or substantive difference between the concepts of R2P humanitarian intervention.

Here, a discussion on human security is noteworthy. Considering the plethora of post-Cold War global challenges that encompass not only civil wars, but also climate change, communicable diseases, and financial turmoil, the international community has increasingly recognized the significance of non-traditional and non-military risks to the security of a state, instead of traditional territorial and military security issues that have long prevailed within the international security literature. Such nontraditional risks include threats against human survival that originate from political, economic, environmental, social, and humanitarian issues, which draw attention to how to safeguard individuals or groups within the boundaries of sovereign states. Despite the increasing awareness on human security matters, there have been theoretical controversies over how to conceptualize the term "human security." Although the UN-espoused objectives of "freedom from fear" and "freedom from want" have been the core values behind improving human rights and human development, such characterization and definition have been often criticized as too broad and all-inclusive to make action plans. It has been argued that the notion of protecting civilians from civil war and acts of domestic criminal behavior by the government (freedom from fear) should be given priority, as well reflect-

ed in the scholarly and policy discussion about R2P.

Yet, it is difficult to rule out the fact that the concept of physical violence necessitates the incorporation of all the activities that, in some way, can damage the physical condition of an individual, such as poverty-caused malnutrition as well as violence. In fact, individuals or groups are just as vulnerable in situations of famine, poverty, powerlessness, and discrimination, as they are in situations of armed conflict and warfare. This demonstrates how the concepts of freedom from fear and want are highly interrelated. This is particularly true in the case of vulnerable groups who suffer from the aforementioned complex emergencies. Despite its emphasis on freedom from fear, the ICISS report also acknowledges the responsibility of state authorities for not only safety, but also the welfare of their citizens (ICISS 2001). Nevertheless, when it comes to securitizing humanitarian issues and galvanizing the "collective international responsibility to protect," the inclusion of the elements of "want" into the scope of that responsibility would be flatly rejected as too ambiguous and subjective an intervention, not only by the target country but also by many countries around the world.

Therefore, issues related to "want" such as the North Korean famine and refugee crisis, appear not to be dealt with from the R2P perspectives, though they have been strongly related to the government's incapacities and unwillingness to address the crisis. In these situations, all the UN and the international community can do is to provide temporary humanitarian relief assistance, and not sustainable responsible measures to protect those in desperate need. However, considering the controversy on how to implement the notions of R2P, which is currently limited to the protection of civilians in conflicts and mass atrocities, it is not likely that the scope of R2P will be expanded to protect those in "want." Otherwise, it could reversely endanger the process of translating the notion of the R2P into real implementation, particularly when employing the use of force as a last resort to protecting civilians in danger.

IV. Case Analysis of R2P Crimes and Non-R2P Crimes

1. Development of Global Response to R2P Crimes

(1) The Cambodian Killing Fields: A Precedent for an R2P Dilemma

Cambodia's Khmer Rouge regime, from 1975 to 1979, under the banner of establishing a Marxist agrarian society, aggressively pursued the process of transforming the country by destroying its banking, financial, medical, and educational infrastructure and radically conducting forced transfer of the urban population to rural areas in order to force them to work in agrarian labor camps. The Khmer Rouge, under the leadership of Pol Pot, also proceeded to exterminate members of the upper, middle, or educated classes, as well as those suspected to be opposed to the regime. In this process, up to two million people were executed, while others suffered from hunger, disease, forced labor, and torture in what came to be known as the "Killing Fields" (Lee 2007; Kiernan 2008).

The genocidal Pol Pot regime collapsed after Vietnam made a full-scale invasion in December 1978 in the course of the Cambodian-Vietnamese war (1975-1977) and occupied Cambodia. Despite the breakdown, the Khmer Rouge did not fall apart completely and went to the countryside to instigate civil war. Finally, in 1991, the Paris Peace Accords were signed and the civil war, which had lasted for thirteen years, ended (Hinton and Lifton 2004). After years of lengthy and difficult negotiations between the Cambodian government and the UN from 1997, the Extra Chambers in the Courts of Cambodia, commonly referred to as the Khmer Rouge Tribunal or the Cambodia Tribunal, was established in 2005 in order to try high-ranking members responsible for crimes against humanity, war crimes and genocide under the Khmer Rouge regime.[26] At this writing, the Tribunal is still being held. It is not easy, however, to obtain justice for the victims of the Killing Fields, because the leaders of the Khmer Rouge have already died (for example, Pol Pot) or are in their eighties (for example, Nuon Chea). These senior surviving leaders also denied committing any war crimes.[27]

The mass atrocities that were committed by the Khmer Rouge should be clearly defined as the R2P crimes. Even though the Cambodian genocide occurred in 1970s, before the emergence of R2P, it can be seen as a precedent of the international responsibility to protect. If there had been systemic humanitarian approaches from the international society, rather than ad-hoc strategic intervention from China and Vietnam, the Cambodian people's suffering would have been reduced. The international community could have responded to the situation and protected the people from serious crimes. Also, if there

had been an international effort to rebuild Cambodian society, the long delay before the international tribunal's launch for prosecuting the criminals could have been shortened.

(2) Genocide and Mass Rape in Sudan Darfur: Lack of Strong Powers' Political Will

Before the independence of South Sudan in July 2011, Sudan suffered Africa's longest armed conflict due to historical hatred and violent conflicts between the northern Muslims and southern blacks, which were initiated by differing religions and ethnic affiliations, later aggravated by conflict over oil resources. In the process, civil war and genocide occurred in the Darfur region of Sudan in February 2004 when the Southern guerrilla groups took up arms in February 2003 against the Sudanese government's repression of non-Arab people in favor of Sudanese Arabs. Pro-government militia corps, the Janjaweed, slaughtered and raped black people who were against the government and destroyed their villages. As a result, more than 240,000 refugees crossed the border to Chad and the Central African Republic, while some 25 million became internally displaced persons (IDPs) (Kahn 2008; Mamdani 2009). Also, the UN OCHA estimates that there have been more than 400,000 victims who lost their lives in the genocide. At that time, the UN Human Rights Office also accused forces allied with the Sudanese government of mass abduction, rape, and other forms of sexual violence toward women and girls in Darfur, which could constitute war crimes.[28]

In response to the crises, the UN attempted to pressure the Sudanese government with diplomatic measures and economic sanctions, but China and Russia vetoed these efforts out of concern for their own national interests (for example, importing crude oil and exporting weapons), preventing the UN from strong action. Furthermore, the United States, a non-member state of the International Criminal Court (ICC), abstained from voting in the adaptation of the UNSC resolution 1593 on sending Janjaweed to the ICC. While the strong powers were concerned with their own self-interests, people in Darfur suffered from severe human insecurities.[29]

In 2004, when the UNSC Resolution 1556 was adopted, a Philippine delegate requested that R2P be applied to the situation in Darfur (Bellamy 2005). Under R2P, because the Sudanese government failed to protect its civilians in Darfur the international community should have taken over the responsibility. However, there were disagreements over who should be the subject of the responsibility, among the UN, the AU, and the Sudanese government. Also, some criticized the idea for interfering with sovereignty, as the final resolution only included economic sanctions (Human Rights Center 2007). In August 2006, the UNSC resolution 1706 finally mentioned the responsibility to protect the civilians in Dar-

fur and in July 2007 the UNSC resolution 1769 was approved for military intervention for civilian protection.[30].In January 2009, the ICC launched a criminal investigation regarding the issue of genocide in Darfur, increasing the possibility of implementation of R2P in Darfur[31]. However, there has been an on-going controversy over the international responsibility to protect the civilians in Darfur preceding that of Sudanese government.

Overall, the UN's dawdling and hesitation in responding to the Darfur crisis illustrates the fact that R2P is still in its primary stage of development, and that its implementation even for cases involving obvious R2P crimes takes a great deal of time to obtain international consent. In order to develop the norms and implementation of R2P principles in horrendous humanitarian crisis situations, political will and commitment of the international society, especially that of the UNSC permanent members, are very much required. Unfortunately, the late and inadequate global response to genocide and mass rape in Darfur is a painful reminder of the consequences of a lack of will and commitment.

(3) Post-Electoral Ethnic Violence in Kenya: The First Successful R2P Case

Ethnic cleansing occurred in Kenya when up to 1,300 people were killed and 300,000 displaced following the disputed December 2007 elections. Yet the UN and AU's cooperative effort, as well as then UN Secretary-General Kofi Annan's diplomatic coordination to raise international apprehension of the crisis and commitment to apply R2P in the Kenyan situation, succeeded in persuading the main political rivals to achieve a power-sharing pact and an agreement to restrict violence. The UNSC also contributed to the effort and showed strong support by issuing a Presidential Statement. The UNSC Presidential Statement (SC/9242) in February 2008 urged Kenya's leaders to accomplish a sustainable political resolution and end the violence.[32] With a coordinated effort to promote a peaceful settlement in Kenya, the international community could prevent much worse human suffering (Johannes 2011). Later, Kofi Annan said that he examined the crisis with the R2P prism, since the Kenyan government was unable to manage the violent situation or protect its population. Without international intervention, the situation would have become seriously unstable and violent. He also argued that the Kenyan case proved that well-coordinated and rapid diplomatic reaction to conflicts and humanitarian crises could prevent mass atrocities. In this case, intervention would not necessarily involve the use of force as a last resort (Cohen 2008).

As Edward Luck, the UN Secretary-General's Special Adviser, acknowledged, the Kenyan case is the single instance in which the UN has successfully applied the R2P (Luck 2010). This success was even more meaningful since international diplomatic endeavors

actually were successful in preventing greater full-scale ethnic cleansing.[33] However, some controversies over the implementation of R2P in Kenya still remain, because it was not explicitly mentioned during the mediation process or in the 2008 post-electoral agreement. Also, there are doubts and concerns over sustainable peace in Kenya, and the upcoming 2012 elections entail the possibility of the reoccurrence of violence. Kenya's successful peacebuilding process seems to depend on the political will of the Kenyan government and the international community to take on the responsibility to prevent a crisis.[34]

(4) Post-Election Crisis in Cote d'Ivoire: Regime Change vs. Civilian Protection

Conflict in Ivory Coast or Cote d'Ivoire is nothing new to the country. It experienced violence in 2002, when France and the UN stepped in to reinforce a cease-fire agreement that lasted until 2007, when the government, under international pressure, held elections soon after. UN forces were already present in Ivory Coast as it was determined in 2004 with the passing of the UNSC Resolution 1528 that the situation in the country posed a threat to the international peace and security in the region (McGovern 2010). In the post 2010 presidential election, Ivory Coast again was the scene of further tensions that were split for ethnic, regional, and religious reasons. As the election results unfolded, and Alassane Ouattara was announced as the newly elected president, the results were declared invalid by the opposing and incumbent candidate, Laurent Gbagbo.[35]

This disputed election led to a political and humanitarian crisis in which supporters from both sides were involved in violent clashes that caused heavy civilian loss of life and displacement. As the dispute over the presidential election continued, the result was the decline of state security, regional instability, and numerous human rights violations against the civilian population. In March 2011, the UN reported that over 11,000 civilians had been killed in the clashes, with 500,000 more being forcibly displaced, and 94,000 civilians fleeing to neighboring Liberia (Meldrum 2011). The violence against the civilian population was not just rampant on one side, as both Gbagbo and Ouattara forces were accused of human rights violations (Fernandez 2011). Tension and the escalation of violence continued, with reports that pro-Gbagbo forces were using mortars and heavy machine guns against UN personnel in the country.

As these types of escalation continued, the European Union (EU) stated that the violence against the population in Ivory Coast might be considered as crimes against humanity, leading to calls for the ICC to investigate. Furthermore, the UN human rights experts, as well as the International Committee of the Red Cross argued that the human rights violations, sexual violence, and indiscriminate killings in Ivory Coast might "be tantamount to

international crimes, of which the ICC should take action" (ICRtoP 2011). Accordingly, on 29 December 2010 the Special Advisor of the Secretary-General on the prevention of genocide, Francis Deng, and the Special Advisor to the Secretary-General on the R2P, Edward Luck, issued statements that reminded all parties of the responsibility to protect, including the prevention of mass atrocities occurring in Ivory Coast and warned of possible violations of the four crimes of the R2P. Both advisors recommended that action was needed to be taken immediately in line with the responsibility to protect to avert the possible risk of genocide and other atrocities.[36] The UNSC also adopted Resolution 1962 to extend the presence of UN troops; it also provided more UN troops and personnel to support the UN's mission in Ivory Coast (UNOCI), while the Human Rights Council passed a resolution strongly condemning the human rights violations in the country. In January 2011, the UNSC unanimously voted to send an additional 2,000 UNOCI forces, and UNSC Resolution 1975 in March enforced sanctions on Gbagbo, stressing that attacks on civilians could be considered to be crimes against humanity and that it was the responsibility of the state to protect civilians (Amnesty International 2011).

On 4 April 2011, in response to continued violence and attacks on UN peacekeepers by Gbagbo supporters, UN Secretary-General Ban Ki-moon instructed UNOCI to "take the necessary measures to prevent the use of heavy weapons against the civilian population, pursuant to UNSC Resolution 1962." Consequently, a military operation began between French and UN peacekeepers and Gbagbo's forces in an attempt to prevent the use of heavy weapons on the civilian population (ICRtoP 2011). In the process, Gbagbo was arrested by Ouattara forces on 11 April and Ouattara was sworn in as the president on 6 May.

However, it remains to be seen as if the humanitarian crisis is over in the country. There is still great concern over the instability surrounding many regions of the country where pockets of Gbagbo supporters lie, as well as the hundreds of thousands of civilians still displaced within or outside of the Ivory Coast (Amnesty International 2011). The case of Ivory Coast brings up a number of questions on whether international interventions had the goal of regime change, rather than the application of the R2P. As the crisis erupted over the legitimacy of the presidential election, with the UN ultimately backing Ouattara during the course of the conflict, doubts remain on the purpose of attempting to apply the R2P in this case.

2. R2P Crimes and Different Responses: Libya vs. Syria

(1) Crimes against Humanity and International Intervention in Libya

As events started to unfold in North Africa in the so-called Arab Spring, where mass protests and civil uprisings were occurring in response to decades of repression by its governments, Libya became the focus of the international community. Libya's ruthless ruler, Muammar Gaddafi, responded to these mass protests by dispatching government troops in an attempt to forcefully suppress the peaceful civilian protests. However, what occurred was a number of defections within the army and the political elites, leading to a civil war in the country. Gaddafi, who had ruled for over forty years, was unshaken by the pressure of the international community to step down and halt the violence against his own people. He remained vocal in his intention that he did not plan to give up its rule, or let up on those who opposed him, planning to "cleanse Libya house by house" until all protestors surrendered (ICRtoP 2011).

In February 2011, the Transitional National Council (TNC), the interim opposition government to Gaddafi, was established and officially recognized by a number of states, including France and Qatar. Eventually, other states followed suit as the EU and the Arab League endorsed the TNC.[37] However, the uprising against Gaddafi's repressive government continued, causing a humanitarian crisis both at the domestic and at the regional levels. There were growing reports of indiscriminate killing of civilians as well as a massive influx of refugees fleeing to neighboring states numbering over 650,000 people (Barker 2011).

In response to Gaddafi's ruthless oppression of his own people, for the first time since the inception of the R2P framework in 2005, the UN passed a number of resolutions that precipitated the military involvement of NATO. After the UN reminded Libya of its responsibility to protect its civilian population and called for an end to the violence on February 22, 2011, there were several efforts at the UN to implement R2P. The UN Human Rights Council adopted Resolution S-15/2, calling for the end of human rights violations, while the UNGA suspended Libya's membership on the council. The UNSC Resolution 1970 was adopted on 26 February, imposing financial sanctions in addition to an embargo and the Resolution 1973 on March 17 (with Russian and China abstaining), calling for a no-fly zone and a cease-fire. Two days later, NATO began its military attacks against Gaddafi forces with the objective of protecting civilians in Libya. UN Secretary-General Ban Ki-moon held up the historic Resolution 1973 by stating that the justification for the use of force in Libya was based on humanitarian grounds and this case was the first appli-

cation of R2P to validate military intervention.[38] After seven months of NATO's involvement in Libya, its mission ended with the death of Gaddafi on 20 October and NATO officially ended its mission on October 31, 2011.

In these developments, the role of regional organizations was noteworthy. The AU denounced the violence in Libya, stating that it "posed a serious threat to the peace and security in that country and the region as a whole" (Barker 2011), while the Arab League took a similar position against the Gaddafi regime, suspending Libya's membership in the league, as well as considering a no-fly zone. On March 12, it called on the UN Security Council to "impose a no-fly zone", as well as to create "safe areas" for the protection of the Libyan people.[39]

While Secretary-General Ban and several UN member states see the application of the R2P in Libya as a win for the protection of civilians from R2P crimes, others, including India, have questioned whether Libya was a good test case of the R2P. It is argued that the use of the R2P in Libya has given it a "bad name," arguing that the NATO-led mission in implementing the resolution went beyond the mandate of the resolution to protect civilian lives and changed into one that sought regime change in Libya (CFR 2011). In particular, the establishment of a no-fly zone (to prohibit all fights in Libyan airspace in order to protect civilians) became highly controversial, as it enabled only NATO air forces to attack Libya from the air, leading to the collapse of the Gaddafi regime and finally the killing of Gaddafi (Cotler and Genser 2011).

(2) Crimes against Humanity and No Intervention in Syria

As NATO's mission in Libya came to a close, the world shifted its attention to Syria where the proponents of R2P were again calling for international intervention. In May 2011, the Syrian people also began to rally against its government's dictatorial rule by engaging in protests throughout the country. The response of the government was similar to that of Libya, as President al-Assad brutally oppressed the protestors, leaving at least 2,000 civilians dead with thousands more injured. The government also deprived civilians of essentials, such as access to food, water, and medical supplies. As the violence continued, more than 12,000 Syrians fled into neighboring Turkey by 26 June. However, unlike Libya, no international intervention has been made against the al-Assad regime (ICRtoP 2011).

Secretary-General Ban Ki-moon vehemently denounced the violence in Syria, demanding an end to the use of force against its civilian population and calling for further investigations in the alleged crimes in Syria. The head of the UN Human Rights Council reminded Syria of its responsibility and obligation to protect peaceful demonstrators, as

well as its civilian population. Despite these warnings, Syrian forces continued their brutal tactics of targeting civilians. A draft of a UNSC resolution endorsed by Secretary-General Ban on April 22, which would have enforced sanctions and an embargo on Syria, was flatly rejected by Russia and China. They claimed that the Syrian crisis did not meet the threshold of a threat to global peace and security. On October 4, with Russia and China vetoing, the UNSC again failed to reach a consensus regarding the situation in Syria, putting a stop to any type of collective response in dealing with the Syrian violence. The reasoning, according to opponents, was the lack of prioritizing on the part of the UNSC to set up a dialogue with the Syrian government, as well as concerns over previous implementation of the UNSC resolution in Libya (Peral 2011). In response, the British ambassador to the UN, Mark Lyall Grant, denounced China and Russia because no matter how hard UN member states tried to water down a UNSC resolution, they were repeatedly met with the opposition of these two. Similarly, the U.S. ambassador to the UN, Susan Rice, criticized the failure of these two countries to adopt a draft resolution as a missed opportunity for the UNSC to act in Syria. In February 2012, the UN General Assembly overwhelmingly approved a resolution denouncing President Assad's ruthless crackdown, but China and Russia again vetoed the Security Council's action against Assad's regime. As of April 15, 2012, although an uncertain cease-fire monitored by the United Nations went into effect in the country, violence continues, with government forces resuming their atrocious shelling.

Meanwhile, regional organizations, such as the Arab League initially were reluctant to name Syria in their statement condemning the use of violence by government forces on civilians. However, the Arab League began to take steps in recognizing the hostilities in Syria and gradually escalating its warnings to pressure President al-Alssad. On July 21, the Arab League finally pinpointed Syria in its statements regarding ending the violence against civilians, leading several regional governments to begin to remove their ambassadors and suspend operations in Syria. The Arab League suspended Syria's organizational membership on 12 November and adopted a number of sanctions on the repressive regime on 27 November (Peral 2011). These new sanctions included a number of financial sanctions, further pushing the Syrian government into isolation with little support from the states in the region. These sanctions were in conjunction with a number of sanctions already imposed by the United States, the EU, as well as the EU's refusal to purchase oil from Syria.

The humanitarian crisis in Syria, although receiving similar condemnation from a majority of the international community has resulted in a completely different response, compared to that of Libya. Whereas the UNSC failed to sanction the Syrian regime, there has been an increasing role for the Arab League in initiating a number of measures to

work diplomatically with Syria and impose sanctions on the regime only if all their diplomatic efforts failed. At this writing, Kofi Annan is playing an important role as the joint Arab League-UN envoy for Syria to implement a six-point peace plan to terminate the violence in the country. However, it is unclear if the Arab League's moves will have enough impact to change Syria's behavior without the backing of the UNSC resolution, and with this, it seems unlikely that NATO will act in any type of military intervention (Peral 2011).

3. Cases of Non-R2P Crimes

(1) Natural Disaster and Humanitarian Crisis in Myanmar

In May 2008, cyclone Nargis swept Myanmar and caused enormous loss of life and property damage. In the aftermath of this devastating natural disaster, the UN and the international community immediately offered humanitarian aid. Yet, the Myanmar military government questioned the intent behind the humanitarian approaches from the international community, which has in the past repeatedly called for improvements in human rights in Myanmar, considered it as a threat to their sovereignty, and refused to accept the aid. As a result, the crises deteriorated with 130,000 deaths and more than two million people falling victim (OCHA 2008).

At that time, the French foreign minister Bernard Kouchner claimed that the international community should invoke R2P in Myanmar on the grounds that the acts of the military junta, in neglecting the victims of the cyclone and rejecting international relief aid, was a crime against humanity. His position was supported by a number of politicians and analysts in Europe and North America. European Union's High Representative for the Common Foreign and Security Policy also mentioned that the international community "should use all possible means to aid through the victims of Myanmar's cyclone." However, this idea was limited because damages caused by a natural disaster did not encompass the scope of R2P. Accordingly, the international community could not reach a consensus on implementing R2P in Myanmar. The Chinese government rejected the French proposal, arguing that natural disasters did not fit the invocation of R2P (Wenrong 2011). The British Minister for International Development, as well as the British UN ambassador had feelings similar to those of the Chinese government over the application of R2P to natural catastrophes. The Secretary-General's special advisor on R2P Edward Luck also concurred that the implementing of the R2P in Myanmar would be a "misapplication" of the concept (Luck 2008).

As an alternative to the limitations of the R2P, some scholars reinterpreted it in the Asian context and developed "R2P-Plus," which encompasses various threats to human security, but excludes the possibility of military intervention (Caballero-Anthony and Chang 2008). Although the likelihood of the R2P-Plus actually being implemented in real situations seems unlikely, R2P as an international norm and principle has been an effective diplomatic tool for negotiations undertaken by the Association of Southeast Asian Nations (ASEAN) and the UN Secretary-General. When ASEAN and Secretary General Ban were negotiating with Myanmar's military juntas, the threat of implementing R2P in the region and resulting fear of intervention persuaded junta members to accept the ASEAN-UN humanitarian relief. In fact, active and frequent discourse regarding the implementation of R2P in the aftermath of Myanmar's cyclone was meaningful, because it worked as a negotiation tool for ASEAN and the UN (Caballero-Anthony and Chng 2008). It also provided the international community with the opportunity to raise the question of the necessity of a global responsibility to address human rights violations that are beyond the four R2P crimes.

(2) State Failure in Somalia and Zimbabwe

Somalia has remained without a representative government and was left in a state of severe conflict that involves military actions since the downfall of the Siad Barre regime in January 1991. Root causes of the contemporary Somali turmoil go back to the historical division of the country under colonialism by the Great Britain and Italy. The colonial separation created a huge gap between the British-ruled region of Puntland and the Italian-ruled part that covered the rest of the territory. Furthermore, after colonialism ended, the first elected civilian governments were inefficient, corrupt, and incapable of creating any kind of national political culture. Under these circumstances, General Mohammad Siad Barre decided to usurp power in 1969, suspending the constitution and banning political parties.

The Barre regime stayed in power for twenty-two years until 1991, backed by the United States and the former Soviet Union during the Cold War. The end of the Cold War, however, led to the collapse of the military regime. By 1991, the Somali civil war had broken out and destroyed what was left. At present, Somalia is governed by a weak Islamic government with little control or legitimacy outside the capital. The reality is, and has been, that clans rule the country on a regional basis. For the last two decades, Somalia has remained stateless, or has been identified as a collapsed state, with no central authority or provision of public services. For several years, the failed states index (from Fund for Peace) has shown that the situation in Somalia is unquestionably the worst among the

failed states,[40] and Robert Rotberg categorizes it as a collapsed state (Rotberg 2003).

Because of the collapse of the state, the Somali people suffer severely from various humanitarian issues including poverty, famine, health problems, and flows of refugees and internally displaced persons (IDPs).

Zimbabwe is another example of a failed state that has no authority or ability to protect its people from mass human rights violations. From 2000, Zimbabwean national security forces committed illegal detentions, forced disappearances, murder, torture, and rape upon thousands of its civilians. Moreover, President Robert Mugabe has pursued corrupt financial and economic policies, including unfair land reform, bringing about collapse of social services and economic breakdown (with unemployment rate exceeding 80 percent and hyperinflation). Nevertheless, Mugabe failed to keep his word to step down from presidency and was reelected in 2008 by dishonest means. Zimbabwe is listed as a failed state and fails to fulfill the fundamental responsibilities of a sovereign state. 'Fund for Peace' also ranked Zimbabwe the fourth in the Failed States Index[41]. The UN has announced that they are keeping an eye on the situation in Zimbabwe, but its effort does not lead to practical collective responses for civilian protection against human rights abuses. Likewise, there are ongoing controversies over whether the human rights situations in Zimbabwe fit any of the four R2P crimes (Rotberg 2003).

These two cases are clear examples of state failure, which is a situation of a state with an inability to perform core state functions, such as the provision of public goods, having little or no political authority or legitimacy, and an inability to impose the rule of law. According to Robert Rotberg, the term "failed states" refers to countries that can "provide only very limited quantities of essential political goods," and as a result their populations suffer immensely from direct threats to human security, including political instability, economic deterioration, food shortage and high crime rates (Rotberg 2003). Oftentimes, these states manifestly show an inability or unwillingness to improve the situation, and thus meet the condition for applying the secondary international responsibility to protect. However, any discussion related to the possible application of the R2P to such situations would be flatly rejected as too ambiguous and subjective an intervention. This could bring about enormous contentions onto the world stage and endanger the process of translating the notion of the R2P into the real implementation.

V. Conclusion: Practical Implications for North Korea

With the growing demand for "right" humanitarian intervention, especially in the aftermath of the war in Kosovo, former UN Secretary-General Kofi Annan's strong plea for a new consensus on international intervention led to the creation of the R2P. Incumbent Secretary-General Ban Ki-moon has also been eager to promote the notion of applying the R2P, since "wrong" intervention, even for humanitarian purposes, might seriously damage the authority and relevance of the United Nations as a whole. The unanimous approval of the R2P doctrines at the 2005 World Summit and the UNSC, as well as the fruitful discussions on implementing the R2P at the General Assembly in July 2009, appeared to indicate that the UN has successfully managed the challenge of demands for humanitarian intervention by separating the notion of protection from the debate of contentious military intervention. The 2009 Secretary General's report on *Implementing the Responsibility to Protect* clearly stated a three-pillared approach to turning words into deeds: state responsibility, assistance to states and timely and decisive action by the international community if a state is manifestly incapable or unwilling to protect its people from the four UN-adopted R2P crimes. This statement has been reaffirmed by UN Secretary-General's succeeding reports on "Early Warning, Assessment, and the Responsibility to Protect" in 2010 and on "The Role of Regional and Sub-regional Arrangements in Implementing the Responsibility Protect" in 2011.[42]

Although R2P is largely perceived as a new normative and legitimate guideline for the UN, the most important question is whether all member states can be convinced by the ICISS argument that the issue is not of state sovereignty, but fulfilling the responsibility to protect its people. In this regard, the future of R2P doctrine is still uncertain, and the controversies, particularly over its implementation, will continue, as countries like Venezuela, Iran, Pakistan, and North Korea argue that R2P could potentially misuse the right of forceful intervention and pose a threat to national sovereignty. A Sri Lankan diplomat argued that R2P is "a license for the white man to intervene in the affairs of dark sovereign countries" (Philips 2008). The non-alignment movement (NAM) statement was also skeptical about the R2P being utilized as an excuse for intervention in the internal affairs of states. The selective application of R2P principles in practice, mainly by the five permanent members of the Security Council, has also been problematic. As discussed above, the case of Libya, which marked the first time a military operation based on R2P was authorized by the UN, further intensified international contentions over the justification and relevance of R2P. Proponents of R2P see Libya as a win for the future of civilian protection throughout the world, but this case will also be a source of continued concern

for states that fear the immeasurable intentions and selectiveness of powerful states involved. With the current humanitarian crisis in Syria and the failure of the UNSC to reach a consensus with China and Russia vetoing, it will be difficult to quell the calls that R2P is just another ad hoc response based on the interests of dominant states.

In light of this, the concept and measures of R2P, regardless of whether or not it will be an ideal alternative to the current, controversial practices of humanitarian military intervention, should be further elaborated in legal, normative, and operational terms. Considering the controversies over the applicability of R2P only to the four crimes, the inclusion of non-R2P crimes may complicate and risk the entire process of implementing R2P. It also needs to be recalled that R2P intends to focus more narrowly on the protection of civilians in times of conflict in order to escape the conceptual vagueness and difficulties of utilizing the notion of human security that espouses in its meaning.

Nevertheless, it should be noted that current global crises may largely be characterized as complex emergencies in which a mixture of extreme poverty, famine, civil war, political unrest, and ruthless dictatorship forms a vicious circle and makes vulnerable groups more exposed to life-threatening and impoverished situations. In this vein, there should be some protection mechanism for chronic human rights violations. The discreet and thorough examination of the interaction between "fear" and "want" can help develop a more comprehensive norms and principles to redefine relations between a state and its citizens from the standpoint of a "relationship of protection." For example, a prudent approach to applying the prevention elements of the R2P, which includes long-term plans for analysis of root causes of humanitarian crises and relevant policies, to the situation of state failure, may strengthen international humanitarian mechanism to handle various types of global crisis. Note that the ICISS report on the R2P suggests efforts for poverty alleviation, economic growth and investment, democratic development, training and capacity building, and security sector reform as constructive ways to reduce the risk of state failure (ICISS 2001). Not surprisingly, the process of addressing the problems related to complex emergencies may backfire in the process of consolidating the R2P as norms and actions. As Cristina G. Badescu and Thomas G. Weiss have mentioned in their paper "Misrepresenting R2P and Advancing Norms: An Alternative Spiral?" however, cases of failure as well as those of success will be beneficial for the development of the R2P norms and principles (Badescu and Weiss 2010).

As for North Korea, there have been many debates over whether or not the R2P should be applied to the country's serious human rights and humanitarian situation. For example, in its October 2006 report, titled *Failure to Protect: A Call for the UN Security Council to Act in North Korea,* the Committee for Human Rights in North Korea argued

that the North Korean government had failed in its responsibility to protect its populations and called for a UNSC-sanctioned international action (CHRNK 2006). The 2006 and 2008 reports of the Oslo Center for Peace and Human Rights also criticized the Kim Jong-Il regime's failure to assume its responsibility to protect its own citizens against some of the world's most grave violations of human rights and international law and demanded UNSC strengthen the annual resolution on the North Korean human rights situation by referring to the R2P.[43] A 2010 report by Amnesty International also demonstrated how decades of famine, natural disasters, an ill-thought-out currency revaluation, and the lack of a health care system have continuingly exacerbated the life of ordinary North Korean people under the totalitarian regime.[44]

At this time, however, it is doubtful that the international community can take coercive measures and intervene in North Korea's "internal" matters in the name of international justice or the R2P, since the UN Charter clearly indicates respect for "matters which are essentially within the domestic jurisdiction of any state" (Article 2:7) Even if a situation like the one in Libya takes place in North Korea, it is improbable that R2P would be invoked in any UN-sanctioned intervention against the Kim Jong-un regime, as China and Russia will most probably veto any action against North Korea. Therefore, outright advocacy for putting the North Korean case into the basket of the R2P should be avoided, despite the commendable and heartfelt appeal of humanitarian NGOs and conscientious individuals for international action to halt the country's severe human rights abuses and economic afflictions. Such appeals will not only prove ineffectual in affecting the positions of the permanent Security Council members, but the UNSC discussion on whether to invoke R2P may incite North Korea to threaten to use the weapons of mass destruction (WMD) against South Korea and Japan or to actually launch missiles in protest of international intervention. Furthermore, the actual invocation of R2P against North Korea could make it difficult for the international community to shift its mandate from a humanitarianism-led military intervention to the facilitation of inter-Korean reunification and the removal of WMD from North Korea, particularly in the event of a North Korean regime collapse. Given that there has been a growing concern that states with more power tend to misuse the R2P to rationalize interventions that serve their strategic interests instead of a humanitarian mandate, any attempt to pursue reunification or WMD elimination (by the international community, including South Korea) during R2P operation in North Korea could meet huge recriminations from many parts of the world (Saeed and Przystup 2011).

Instead, it is sensible to examine whether and how significantly the application of R2P to the situation of state failure or complex emergencies has practical implications in assisting and protecting the North Korean population. According to the 2011 State Fail-

ure Index documented by *Foreign Policy*, North Korea is classified as a special category of state failure, which is characterized as a situation where the leaders have strong control over the societies and the political entities, but not qualifying any other criteria in terms of economic development, human rights protection, human security, social and economic transparency, and rule of law (Dikinson 2011). If central authority and political control weaken in North Korea, with or without the contingency, the consequences of state failure would be so devastating that the North Korean people will suffer even further from a severe humanitarian crisis. In this case, the original ICISS concept of the R2P, which includes the situations of natural disasters and state failure in addition to the four crimes, would be useful for the international community to involve (or intervene) in the situation of the North Korean contingency, with "appropriate diplomatic, humanitarian, and other peaceful means, and then by force, if necessary."[45]

In conclusion, while staying in tune with the UN-approved R2P crimes for broader international consensus and greater applicability, it should be recognized that R2P in a larger framework could work as an international humanitarian mechanism to force sovereign states to become decent security guarantors (for example, Myanmar, Zimbabwe, and Somalia), to respond to and prevent sovereign states' becoming security dangers (for example, Sudan, Darfur, Libya under the leadership of Gaddafi), and to protect silent victims from rogue states (for example, North Korea). In the long run, the R2P, with its primary purpose as a protector for civilians, seems to improve function, both normatively and operationally, in its three phases, that is, the responsibility to prevent, react, and rebuild, if such a multifaceted nature and dynamics of complex emergencies are fully considered in its implementation process. ▪

Acknowledgement

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Author's Biography

Shin-wha Lee
Korea University

Shin-wha Lee is a professor in the department of political science and international relations at Korea University. Professor Lee received her B.A. in English language and literature from Ewha Women's University and received her Ph.D. in government and politics (international relations) from University of Maryland at College and served as Post-Doctoral fellowship at the Center for International Affairs of Harvard University. She served as a researcher of Ilmin International Relations Institute at Korea University, special advisor to the United Nations, 'Rwandan Independent Inquiry' appointed by UN Secretary General Kofi Annan, chair's advisor of East Asian Vision Group, Korean Coordinator of Trilateral Commission, visiting professor of Institute of Defense and Strategic Studies at Singapore Nanyang University, Korean representative of the Korea-China-Japan Future Leaders' Forum, visiting scholar of East Asian Studies Program at Princeton University, full-time visiting professor of School of International and Public Affairs at Columbia University, and scholar-in-residence for political affairs of the Republic of Korea Permanent Mission to the United Nations. Now she is a member of editorial board of "Journal of East Asian Studies", research director of Ilmin International Relations Institute at Korea University, member of Council for Security Cooperation in the Asia Pacific, member of Trilateral Commission, member and executive committee of board of directors of Academic Council for the United Nations System, and division chief of Asiatic Research Center at Korea University Humanity Korea (HK) Project. Her recent English publications include South Korean Strategic Thought toward Asia (2008), Ethical, Normative and Educational Frameworks for the Promotion of Human Security in East-Asia (2004), and Environment Matters: Conflicts, Refugees & International Relations (2001).

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