

## The Libyan Crisis, the Responsibility to Protect, and the Korean Peninsula

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With the death of Muammar Qaddafi on October 20th, the 8-month-long conflict in Libya which caused tens of thousands of casualties has come to an end. The forthcoming task of peace-building will likely be more arduous and more critical than what has come before, but even the current situation has major implications for the Korean Peninsula as well as international society.

### The Libyan Crisis

The recent crisis in Libya broke out on February 15th, 2011, with blatant human rights violations drawing global attention. The Qaddafi regime sent its army of hired African mercenaries against unarmed civilians and even mobilized fighter jets to commit massacres. In response the international community imposed economic sanctions via UNSC Resolution 1970, which froze Libya's foreign assets and authorized an arms embargo, while referring the Libyan situation to the International Criminal Court (ICC) on charges of crimes against humanity. Despite the consistent messages from the world community, the Qaddafi regime showed no fundamental change in its stance, and on March 17th the UNSC adopted Resolution 1973 establishing a no-fly zone and authorizing the use of armed force by member states in accordance with Chapter

7 of the UN Charter. This resolution's explicit mention of "protection of civilians" as a justification, along with subsequent statements by the UN Secretary General and others, made direct application of the "responsibility to protect" (R2P) concept which has been much debated in the UN since the 2000s. R2P, conducted on the basis of international intervention and the UNSC's capability to refer crimes against humanity to the ICC, has taken up a significant portion of international law discourse in recent times. This particular area of international law, uniquely highlighted by the Libyan crisis, has caught attention in Korea as it may have possible applications for the Korean Peninsula in the future.

## The Responsibility to Protect

Modern international law recognizes that human rights should no longer simply be viewed as a domestic matter to be handled under the jurisdictions of individual states; it is a common value of mankind that has become enshrined in global culture. Nevertheless, it does not automatically regard mass violations of human rights as "a threat to or breach of international peace and security" which would justify UNSC-invoked military sanctions or unilateral armed intervention by a group of nations (so-called "humanitarian intervention"). With this issue unresolved, in 1999 NATO forces proceeded without UNSC authorization to conduct aerial operations in response to the ethnic cleansing occurring in the Serbian province of Kosovo. There was considerable debate about the legality of the strike at the time, but international society was largely in agreement on the legitimacy of humanitarian intervention in that case.

The "humanitarian intervention" debate, in terms of the international community's "basis" or "right" to intervene in internal issues such as mass human rights violations, developed through UN discussion in the 2000s about the R2P concept, which approached various issues in terms of international "responsibilities" and "obligations." This originated out of reflection over the collective failure to prevent ethnic cleansing and genocide in Bosnia and Rwanda in the mid-1990s. According to the "2005 World Summit Outcome" document adopted as a UN General Assembly resolution in October 2005, each individual country has the primary responsibility to protect the populations within its jurisdiction from genocide, war crimes, ethnic cleansing, and crimes against humanity. But in accordance with Chapters 6 and 8 of the UN Charter, the international community also has a responsibility to help in this regard via appropriate peaceful means. Furthermore, if peaceful means are inadequate and the country in question manifestly fails to execute its responsibility to protect its people from the aforementioned crimes, then according to Chapter 7

the international community is “prepared to take collective action, in a timely and decisive manner,” through the UNSC. The idea that all countries share a responsibility to help prevent international crimes and guarantee human rights has some points in common with the existing idea of “humanitarian intervention,” but R2P takes a more aggressive stance in challenging the traditional concept of state sovereignty and demands a stronger sense of responsibility from the international community represented by the UNSC.

From the perspective of international law, as of yet there is no “hard law” (such as international customary laws or treaties) related to R2P; all that exists is “soft law” (such as non-binding UNGA resolutions). Further, the articles on R2P are neither specific nor concrete and it is considered an evolving concept. Thus, “armed” intervention in another country’s human rights crisis without the explicit approval of the UNSC is still a violation of positive international law, and while in principle the international community represented by the UNSC may use its own “discretion” to take collective action in response to mass human rights violations, it does not have an explicit legal “obligation” or “responsibility” to do so. In this interim context, the UNSC’s approval of armed intervention in the recent Libyan crisis sets a meaningful precedent of putting the “R2P” principle into actual practice, even with a prohibition against occupation of Libyan territory by foreign troops.

### Implications for the Korean Peninsula

If something similar to the Libyan crisis were to break out in North Korea, the international community’s collective R2P might be applied. But in terms of concrete plans for implementation, the current discourse on R2P specifies the principle of “intervention led by the UNSC,” thus subjecting any plans to potential veto by any of the UNSC permanent member states. However, the R2P concept has evolved not as a matter to be left simply to the discretion of the UNSC members, but as a minimum “moral obligation” in situations that must be resolved by the international community as a whole. This distinction is necessary in order to put to rest accusations that humanitarian interventions have been selectively implemented according to the great powers’ national interests.

Additionally, all international crimes relevant to the R2P concept may be referred to the ICC. In incidents of mass human rights violations such as the Libyan crisis, the global response may be anything from the collective use of force against violating “states” to international prosecution against “individuals,” and a close relationship is implied between these two extremes. Thus, as was seen recently when arrest warrants were issued against Libya’s Qaddafi and the president of

Sudan following formal investigations by the ICC, North Korea's leaders may face international prosecution alongside international intervention in the country in line with the R2P concept.

The intervention by the UN and the international community in the recent Libyan crisis was meaningful as it demonstrated that protection of civilians and human rights issues are no longer simply the internal problem of the nation concerned, but can justify armed intervention by the international community. Such incidents have tremendous implications for the Korean Peninsula, particularly in the context of North Korea's decision to promote a 3rd generation succession in spite of its current economic crisis. The South Korean government needs to conduct more in-depth study and policy analyses on how to concretely apply the various points and lessons from the Libyan crisis to the situation on the peninsula.