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RESPONSIBILITY TO PROTECT, HUMANITARIAN INTERVENTION AND NORTH KOREA

Young Sok KIM

I. INTRODUCTION

In the aftermath of the collapse of the Warsaw Pact and the disintegration of the Soviet Union, there has been a great deal of discussions promoting “humanitarian intervention” and its corollary “responsibility to protect.” The purpose of this article is to examine the so-called doctrine of “humanitarian intervention” and “responsibility to protect” in accordance with the changing character of state sovereignty and the requirements of international law.

Recently, the doctrine of humanitarian intervention has been increasingly used by the United States and the NATO member states including the United Kingdom in justification of their intervention into countries such as the former Yugoslavia, Kosovo, Afghanistan and Iraq. “For example, once it became clear that the [George W. Bush] administration could not produce any weapons of mass destruction in Iraq, the administration fell back upon the retroactive application of the doctrine of “humanitarian intervention” in order to somehow justify its war of aggression against Iraq on an ex post facto basis.”

Then, what is the definition of humanitarian intervention? Even though the term is filled with ambiguity and subject to endless debate,

a working definition of “humanitarian intervention” is best limited to the threat or use of force by a state, group of states, or international organization primarily for the purpose of

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1 FRANCIS A. BOYLE, DESTROYING WORLD ORDER: U.S. IMPERIALISM IN THE MIDDLE EAST BEFORE AND AFTER SEPTEMBER 11TH 106 (Clarity Press, 2004).
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protecting the nationals of the target state from widespread
deprivations of internationally recognized human rights,
whether or not the intervention is authorized by the target
state or the international community.²

Therefore, the rescue by states of their own nationals or transboundary
action by non-governmental organizations (NGOs) such as the International
Committee of the Red Cross (ICRC) are not included within this scope. The
focus here is on state action, not NGO’s, and on the protection of the target
state’s nationals, not their own nationals.

Further, the humanitarian intervention may be subdivided as “UN-
authorized humanitarian intervention” and “unilateral humanitarian
intervention.” The former is defined as a state or states acting under the express
authority of the United Nations (UN or United Nations) Security Council
pursuant to Chapter VII of the UN Charter while the latter is when humanitarian
intervention is undertaken by a state or states acting without the authority of
either the United Nations or a regional organization.

In this article, I briefly examine the changing character of the norms of
sovereignty and the notion of responsibility to protect, and show that “unilateral
humanitarian intervention” is still in violation of international law while “UN-
authorized humanitarian intervention” may be permitted and used under the
strict scrutiny of international law requirements.

II. THE CHANGING CHARACTER OF SOVEREIGNTY

The principle of state sovereignty was the traditional legal order of
international relations. Sovereignty is the central notion of international law.³
Sovereignty is described as “independence from any outside authority”.⁴ The
purpose of international law was formerly described as creating legal safeguards
for the preservation of the sovereign power vested in a territorial nation state.⁵

In the past centuries, sovereignty considered the nation state as the
only legitimate international actor entitled to the protection of international

² SEAN D. MURPHY, HUMANITARIAN INTERVENTION: THE UNITED NATIONS IN AN EVOLVING
³ IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 289-290 (Oxford University Press
⁴ STANLEY HOFFMANN, THE ETHICS AND POLITICS OF HUMANITARIAN INTERVENTION 12
(University of Notre Dame Press 1996).
⁵ David J. Scheffer, Toward a Modern Doctrine of Humanitarian Intervention, 23 U. Tol. L. Rev.
law. The reigning international legal positivist doctrine said that "only states could properly be considered the subjects of public international law endowed with international legal personality, and therefore individuals were merely objects of international law." However, this exclusive premise of sovereignty no longer prevails. Nations are not the only actors in international affairs. There are many regional and international organizations exercising jurisdiction across national borders such as the UN and the Organization of American States (OAS). Further, the international human rights treaties for protecting individual human rights can challenge the sovereign power of a nation state by permitting individuals to claim their own human rights independently before international forums such as the Human Rights Committee under the International Covenant on Civil and Political Rights (ICCPR). Moreover, the International Criminal Court (ICC), which was established in 1998 and has 100 state parties, pursues "individual criminal responsibility" of the violators of international law, not the state responsibility of the violators' state of nationality. Therefore, the notion of sovereignty is changing and, "within the system of international relation[s], the principle of sovereign consent has proven to be increasingly unworkable." Today the nations of the world are [trying] to cope with the progressive evolution of a system of international relations that needs to move away from the notion of sovereign consent and toward its replacement by the principle of consensus founded on reciprocal expectations of state behavior.

Professor Oscar Schachter also wrote that "[t]he fact that increasingly treaties in the economic and social fields as well as in the area of the law of war recognize the well-being of individuals as their raison d'être is further evidence that international law is moving away from its State-centered orientation."

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6 Id.
8 THOMAS BUERGENTHAL ET AL. INTERNATIONAL HUMAN RIGHTS IN A NUTSHELL 59 (West Group, 3rd ed., 2002).
10 Boyle, supra note 7, at 15.
11 Id.
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III. STATE SOVEREIGNTY AND NON-INTERVENTION IN DOMESTIC AFFAIRS

The corollaries of the principle of state sovereignty "are the norm of the equality of rights of states and the norm of nonintervention in a state's domestic affairs." Then, what is the implication of this changing character of sovereignty to the principle of nonintervention in domestic affairs? The principle is provided in Article 2(7) of the UN Charter as follows:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Even though the words "domestic jurisdiction" seems definite, it has been interpreted as having evolving meanings. "In the past, the United Nations found that "domestic jurisdiction" was [not an obstacle] to de-colonization or anti-apartheid measures." Further, if a state has a treaty obligation or an obligation under customary international law, the state is bound to the obligation. For example, Article 27 of the Vienna Convention on the Law of Treaties provides "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." Thus, as more nations commit to international treaties and customary international law expands its reach, the concept of "domestic jurisdiction" shrinks.

In his annual report in 1991, UN Secretary-General Javier Perez de Cuellar stressed the importance of striking a balance between the rights of states and the rights of the individual by writing as follows:

I believe that the protection of human rights has now become one of the keystones in the arch of peace. I am also convinced that it now involves more a concerted exertion of international influence and pressure through timely appeal, admonition, remonstrance or condemnation and, in the last resort, an

13 HOFFMANN, supra note 4, at 12.
14 U.N. CHARTER art. 2, para. 7.
15 SCHEFFER, supra note 5, at 261.
17 SCHEFFER, supra note 5, at 262.
appropriate United Nations presence, than what was regarded as permissible under traditional international law.\textsuperscript{18}

However, Perez de Cuellar did not argue for "humanitarian intervention", but for "a higher degree of cooperation and a combination of common sense and compassion."\textsuperscript{19} He wrote that

We need not impale ourselves on the horns of a dilemma between respect for sovereignty and the protection of human rights... What is involved is not right of intervention but the collective obligation of States to bring relief and redress in human rights emergencies.\textsuperscript{20}

IV. SCHOLARS' OPINIONS ON UNILATERAL HUMANITARIAN INTERVENTION

1. The Opinion of Antoine Rougier

"The first comprehensive study of humanitarian intervention was published by Antoine Rougier in 1910.\textsuperscript{21} He concluded that humanitarian intervention looks like "an ingenious juridical technique to encroach little by little upon the independence of a State" as the following:

The conclusion which emerges from this study is that it is neither possible to separate the humanitarian from the political grounds for intervention nor to assure the complete disinterestedness for the intervening States... Whenever one power intervenes in the name of humanity in the domain of another power, it cannot but impose its concept of justice and public policy on the other State, by force if necessary. Its intervention tends definitely to draw the [other] State into its moral and social sphere of influence. It will control the other State while preparing to dominate it. Humanitarian intervention consequently looks like an ingenious juridical

\textsuperscript{18}Id.
\textsuperscript{19}Id. at 263.
\textsuperscript{20}Id. at 263.
\textsuperscript{21}BOYLE, supra note 1, at 107 citing A. Rougier, La théorie de l'intervention d' humanité, 17 Revue général de droit international public 468.
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technique to encroach little by little upon the independence of a State in order to reduce it progressively to the status of semi-sovereignty.22

2. The Opinion of Francis A. Boyle

Francis A. Boyle, Professor of International law at the University of Illinois, "examined the entire history of United States military intervention into the Western Hemisphere and the Pacific Basin from shortly before the Spanish-American War of 1898 up to the...Good Neighbor Policy of President Franklin Roosevelt's administration starting in 1932."23 Even though "almost all of these military interventions were publicly justified on some type of humanitarian grounds by the United States government[, he wrote, according to] actual historical records[, . . .] that this specious rationale was nothing more than mere propaganda disseminated for the purpose of building public support for military intervention."24 Professor Boyle concluded that "under international law, 'humanitarian intervention' is a joke and a fraud that has been repeatedly manipulated and abused by a small number of very powerful countries in the North in order to justify wanton military aggression against and prolonged military occupation of weak countries of the South."25

3. The Opinion of Ian Brownlie

Professor Ian Brownlie of Oxford said that operation of the doctrine of humanitarian intervention was "open to abuse since only powerful states could undertake police measures of this sort."26 He concluded that "no genuine case of humanitarian intervention has occurred, with the possible exception of the occupation of Syria in 1860 and 1861. With the embarrassing exception provided by Nazi Germany, the institution has disappeared from modern state practice"27

22 BOYLE, supra note 1, at 107.
23 BOYLE, supra note 1, at 107.
24 BOYLE, supra note 1, at 107. See also BOYLE, supra note 7.
25 BOYLE, supra note 1, at 106.
27 Id. at 340.
4. The Opinion of Michael Akehurst

In an article, Professor Michael Akehurst reviewed state practice regarding humanitarian intervention since 1945 including Vietnamese intervention against Cambodia.\(^{28}\)

At the beginning of 1979 Vietnam overthrew the Pol Pot regime in Cambodia. But, instead of claiming to have exercised a right of humanitarian intervention, Vietnam denied that its forces had entered Cambodia and said that Pol Pot had been overthrown by the Cambodian people.\(^{29}\)

In the Security Council debate in January 1979, many states said that “Vietnam had acted illegally by intervening in Cambodia’s internal affairs.”\(^{30}\) Professor Akehurst observed that “Several of these states mentioned the Pol Pot regime’s appalling violations of human rights, but nevertheless said that those violations did not entitle Vietnam to overthrow that regime. Not a single state spoke in [favor] of the existence of a right of humanitarian intervention.”\(^{31}\)

He concluded as follows:

From this brief survey of state practice, it will be seen that the concept of humanitarian intervention has been invoked by states on a surprisingly small number of occasions since 1945, and on each occasion humanitarian intervention has been condemned as illegal by other states. Moreover, the United Nations debates on Cambodia in 1979 provide some evidence that there is now a consensus among states in [favor] of treating humanitarian intervention as illegal.\(^{32}\)

5. The Opinion of Hedley Bull

Hedley Bull, former Professor of International Relations at Oxford University, recognized that the “developments in international law in recent decades, especially in the field of human rights[, might]. . .provide a wide

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\(^{29}\) *Id.* at 97.

\(^{30}\) *Id.*

\(^{31}\) *Id.*

\(^{32}\) *Id.* at 99.
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mandate for legitimate forms of outside involvement in what was previously considered the sphere of jurisdiction of states. However, he opposed unilateral humanitarian intervention as follows:

[W]e have a rule of non-intervention because unilateral intervention threatens the harmony and concord of the society of sovereign states. If, however, an intervention itself expresses the collective will of the society of states, it may be carried out without bringing that harmony and concord into jeopardy.

6. The Opinion of Sean D. Murphy

Professor Murphy wrote a book entitled “Humanitarian Intervention” while he was a lawyer working for the United States Department of State. He concluded against humanitarian intervention in his book: “In conclusion, unilateral humanitarian intervention finds little support in the rules of the UN Charter and in state practice in the post Charter era . . .” After reviewing incidents of military intervention after the Cold War such as Liberia, Iraq, Bosnia and Herzegovina, Somalia, Rwanda, and Haiti, Professor Murphy summed up: “Recent events show a striking willingness of states to forego unilateral humanitarian intervention in favor of Security Council authorization, thereby reinforcing the views of those that regard unilateral humanitarian intervention as unlawful.”

7. Conclusion

Most of the renowned scholars noted above opine that unilateral humanitarian intervention should not be permitted under current international law. Further, other eminent scholars such as Philip C. Jessup, Louis Henkin.

33 INTERVENTION IN WORLD POLITICS 189 (Hedley Bull, ed., 1984).
34 Id. at 195.
35 MURPHY, supra note 2, at 387; BOYLE, supra note 1, at 108.
36 MURPHY, supra note 2, at 393.
38 LOUIS HENKIN, HOW NATIONS BEHAVE: LAW AND FOREIGN POLICY164 (Frederick A. Praeger, Publishers, 2nd ed. 1979).
Noam Chomsky,39 and Oscar Schachter40 are of the view that unilateral humanitarian intervention is in violation of international law.

V. LEGITIMATE MILITARY INTERVENTION UNDER INTERNATIONAL LAW

1. The UN Charter Rules on the Use of Force

The UN Charter contains the “only legitimate justifications and procedures for the perpetration of violence and coercion by one state against another state.”41

[T]hese rules include the UN Charter’s Article 2(3) and Article 33(1) obligations for the peaceful settlement of international disputes; the Article 2(4) prohibition on the threat or use of force; and the Article 51 restriction of the right of individual or collective self-defense to repel an actual “armed attack” or “aggression armée,” according to the French-language version of the U.N. Charter.42

Concerning the right of self-defense, there are “two fundamental requirements for the “necessity” and “proportionality” of a state’s forceful response to the foreign armed attack or armed aggression.”43

2. International Judicial Cases against Humanitarian Intervention

(i) The Corfu Channel Case

The International Court of Justice (ICJ) unanimously rejected doctrines of “intervention”, “protection” and “self-help” in the Corfu Channel Case ((U.K. v. Alb.), 1949 ICJ 4(Apr. 9)) of 1949 as “being totally incompatible with

40 Schachter, supra note 12, at 125-126.
41 Boyle, supra note 1, at 109.
42 Id.
43 Id.
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the proper conduct of international relations in the post World War II era."\(^4\) Rejecting the British arguments in support of these three doctrines in order to justify its military intervention into Albanian territorial waters, the ICJ ruled:

The Court cannot accept such a line of defence. The Court can only regard the alleged right of intervention as the manifestation of a policy of force, such as has, in the past, given rise to most serious abuses and such as cannot, whatever be the present defects in international organization, find a place in international law. Intervention is perhaps still less admissible in the particular form it would take here; for, from the nature of things, it would be reserved for the most powerful States, and might easily lead to perverting the administration of international justice itself.

The United Kingdom Agent, . . . has further classified "Operation Retail" among methods of self-protection or self-help. The Court cannot accept this defence either. Between independent States, respect for territorial sovereignty is an essential foundation of international relations. The Court recognizes that the Albanian Government's complete failure to carry out its duties after the explosions, and the dilatory nature of its diplomatic notes, are extenuating circumstances for the action of the United Kingdom Government. But to ensure respect for international law, of which it is the organ, the Court must declare that the action of the British Navy constituted a violation of Albanian sovereignty.\(^5\)

This ICJ decision rejecting doctrines of intervention, protection and self-help constituted an authoritative declaration of the requirements of customary international law binding upon all members of the international community.\(^6\) Moreover,

when all states parties to an international dispute are members of the United Nations, [UN] Charter articles 2(3), 2(4), and 33 absolutely prohibit any unilateral or multilateral threat or use of force that is not specially justified by the article 51 right

\(^4\) Id.
\(^6\) BOYLE, supra note 1, at 111.
of...self-defense, or else authorized by the United Nations Security Council.47

(ii) The Nicaragua Case

In the decision of Nicaragua v. United States of America (1986), the ICJ condemned the United States Reagan administration’s contra/terror war against Nicaragua.48 In the Nicaragua Case, the ICJ “expressly rejected the assertion by the United States that it had...[a] right of military intervention against Nicaragua on the grounds of alleged human rights violations.”49

“The Corfu Channel case and the Nicaragua case are the two leading and most conclusive...international law [cases] that soundly condemn in no uncertain terms the so-called doctrine of humanitarian intervention.”50

3. Conclusion

From the discussions above, one may conclude that the transnational threat or use of military force and military intervention by one state against another state is only permissible in [two cases: (1) the case of individual or collective self-defense where the victim state of an armed attack has expressly requested such assistance from another state or states[; (2) the case when the conduct is] lawfully authorized by the U.N. Security Council acting within the proper scope of the powers delegated to it by the U.N. member states under the terms of the United Nations Charter.51

47 Id.
48 BOYLE, supra note 7, at 165-167.
49 BOYLE, supra note 1, at 113. Military and Paramilitary Activities (Nicar. v. U.S.), 1986 I.C.J. 14, 134 (June 27). Especially, paragraph 268 of the decision provides “In any event, while the United States might form its own appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be the appropriate method to monitor or ensure such respect...The Court concludes that the argument derived from the preservation of human rights in Nicaragua cannot afford a legal justification for the conduct of the United States.” Id.
50 BOYLE, supra note 1, at 113.
51 Id.
VI. HUMAN SECURITY AND RESPONSIBILITY TO PROTECT

1. The Advent of the Concept of Human Security

In the 1990s, the concept of human security appeared. It means "freedom from fear - freedom from pervasive threats to people's rights, safety, or lives". The concept of human security is derived from the transformation of International Human Rights Law in general and International Humanitarian Law and Criminal Law in particular. [International law is being transformed] from a state-oriented [dimension] to a people-oriented dimension, having regard to both the struggle against impunity in respect of the perpetrators and the responsibility to protect in respect of the victims. This revolution in international law includes (1) "the internationalization of human rights and the humanization of international law[, (2)] the protection of civilians in armed conflict and the criminalization of atrocities against civilians; [and (3)] the emergence of the individual as the subject -- and not just the object- of international law." 

2. Recent Developments concerning the Responsibility To Protect

(i) Canada's ICISS report

In 2000, inspired by the UN "Secretary General's call to action- and the demonstrable consequences of inaction in Bosnia and Rwanda,. . . Canada . . . establish[ed] the International Commission on Intervention and the State Sovereignty (ICISS)"). The Commission's report "argues that, where states are

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53 Id.
54 Id.
55 Id.
unable or unwilling to protect their populations from mass atrocities- or where
the state is itself the perpetrator- the international community has the
responsibility to act." However, the ICISS Report makes it clear that military
intervention needs authorization of the UN Security Council in stating

There is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes. The task is not to find alternatives to the Security Council, but to make the Security Council work better than it has.

(ii) UN High Level Panel Report

Further, in December 2004, the United Nations High Level Panel on Threats, Challenges and Change issued a report, entitled “A More Secure World: Our Shared Responsibility.” Paragraph 203 of the Report endorsed a collective international responsibility to protect when sovereign governments have proved powerless or unwilling to prevent as follows:

We endorse the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.

However, the UN Panel Report also summarized the threshold criteria and precautionary principles which restrain the responsibility to protect and forcible humanitarian intervention. These five precautionary principles are:

1) The Principle of the Seriousness of the Threat: Is the threat in question serious enough to justify the use of military force?

56 Id.
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2) The Proper Purpose Principle: Is it clear that the primary purpose of the proposed military action is to stop or avoid the humanitarian catastrophe in question?

3) The Principle of Last Resort: Has every non-military option been explored?

4) The Proportionality Principle: Is the use of force proportionate to the objectives sought to be secured?

5) The Balance of Consequences Principle: Is the intervention likely to be successful, and the consequences of action not likely to be worse than the consequences of inaction?

(iii) 2005 World Summit Outcome Report Concerning Responsibility to Protect


59 Id. at ¶ 207.

60 The text of three paragraphs are as follows:

Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity

138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter of the United Nations, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and
The World Summit Outcome Report emphasizes responsibility to protect through “peaceful means” by saying “the international community, through the United Nations, . . . has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter [of the United Nations], to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.” Further, the World Summit Outcome Report is in favor of “collective action. . .through the security council,” not unilateral action by providing

we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

3. An Evaluation

These recent developments of human security and responsibility to protect are responses to the UN’s failure to protect human lives in Srebrenica and Rwanda. “In July of 1995 approximately 10,000 Bosnian Muslim men and boys staying at a UN “safe haven” in Srebrenica were killed by the Bosnian Serb Army acting at the behest of the Milosevic regime and Serbia.” The “UN Security Council, the United States, the NATO states, the European Union. . .allowed this shameful event to happen.” In 1994, “the world witnessed
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outright genocide inflicted by the Hutu government against the Tutsis in Rwanda...while the U.N. Security Council stood by and did nothing.\textsuperscript{65}

It is an important step for the United Nations to respond to its former failure by making the UN Panel Report and the World Summit Outcome Report. The UN Panel report has merits in that it applies a broad definition of the UN Charter’s peace and security mandate, declares precautionary principles, and sets much higher and effective standards than previously set by the UN in Srebrenica and Rwanda.

Nevertheless, it should be pointed out that the UN Panel Report does not recognize unilateral humanitarian intervention as lawful. It clearly states unilateral humanitarian intervention violates articles 2(3), 2(4) and 51 of the UN Charter as follows:

185. The Charter of the United Nations, in Article 2.4, expressly prohibits Member States from using or threatening force against each other, allowing only two exceptions: self-defence under Article 51, and military measures authorized by the Security Council under Chapter VII (and by extension for regional organizations under Chapter VIII) in response to “any threat to the peace, breach of the peace or act of aggression”.

186. For the first 44 years of the United Nations, Member States often violated these rules and used military force literally hundreds of times, with a paralysed Security Council passing very few Chapter VII resolutions and Article 51 only rarely providing credible cover. Since the end of the cold war, however, the yearning for an international system governed by the rule of law has grown. There is little evident international acceptance of the idea of security being best preserved by a balance of power, or by any single — even benignly motivated — superpower.\textsuperscript{66}

To conclude, it is fair to argue, first, as of today unilateral humanitarian intervention without the express authorization of the UN Security Council is a violation of international law and the possibility of collective humanitarian intervention authorized by the UN Security Council becomes greater than before.

\textsuperscript{65} Id.

\textsuperscript{66} The UN Panel Report, supra note 58 paras. 185-186.
VII. THE CONCEPT OF RESPONSIBILITY TO PROTECT
AND ITS IMPLICATIONS FOR NORTH KOREA

1. Introduction

Since the announcement by the United States on October 16, 2002 that North Korea (North Korea or DPRK) had acknowledged that it had a “program...to enrich uranium for nuclear weapons,” tensions in the Korean Peninsula have increased.

In confirmation hearings before the U.S. Senate on January 18, 2005, the nominee for the U.S. Secretary of State and current Secretary of State, Condoleezza Rice, said that international unity was necessary to apply pressure on North Korea to abandon its nuclear arms program. She also mentioned North Korea as one of the six “outposts of tyranny that should be dismantled.”

Therefore, there are two major international concerns regarding North Korea: its nuclear weapons program and human rights violations.

2. North Korea’s Nuclear Weapon Problem and Six Party Talks

After North Korea’s announcement in October 2002, the United States together with Japan and the Republic of Korea (ROK or South Korea) on October 28, 2002 and Korea Energy Development Organization (KEDO) on November 14, 2002 respectively issued statements “that the DPRK’s program was a violation of the Agreed Framework [between the US and DPRK signed on October 21, 1994,] the Non-Proliferation Treaty, the DPRK-IAEA Safeguards Agreement and the North-South Joint Declaration on the Denuclearization of the Korean Peninsula.”

Therefore, there are two major international concerns regarding North Korea: its nuclear weapons program and human rights violations.

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68 Brian Lee, U.S. can deter threats from North, Rice says, JOONGANG DAILY, January 20, 2005.
69 Kim Young-hie, Bush’s freedom policy is no joke, JOONGANG DAILY, February 6, 2005.
71 IAEA, Fact Sheet, supra note 67.
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[2002] shipment."\(^72\) In November and December 2002, the IAEA requested that the DPRK reply and cooperate with the Agency, but on “December [22, 2002] the DPRK started to cut seals and disable surveillance cameras.”\(^73\) In January 2003, the “IAEA Board of Governors adopted a resolution January [6,] 2003 that called upon North Korea to cooperate fully and urgently with the Agency. . .[affirming] that unless the DPRK takes all required safeguards measures, it would be in further non-compliance with its safeguards agreement.”\(^74\) However, “North Korea announced its withdrawal from the [Non-Proliferation Treaty] effective as of January [11,] 2003.”\(^75\) In February 2003, the IAEA referred this issue to the UN Security Council, and the UN Security Council expressed its “concern” over the situation in North Korea in April 2003.\(^76\) Additionally, “UN Secretary-General Annan . . has appointed a Special Advisor on the North Korea issue.”\(^77\)

Still, the tensions from the North Korea’s nuclear weapons program have not been defused. After three rounds of negotiations, six nations, including South Korea, North Korea, China, the United States, Russia and Japan, met in Beijing, China and held talks in July 2005. However, after nearly two weeks of the six party talks, the parties deadlocked over the issue of “peaceful use” of nuclear programs.\(^78\) But, North Korea and the United States said an agreement remained possible.\(^79\) Negotiators from the six countries announced the six-party Joint Statement on September 19, 2005 which “was intended to set the for the negotiation of a specific process through which North Korea would abandon a nuclear weapons program in return for economic and political steps by the other parties (in particular the United States), to promote mutual trust, stability and peace on the Korean Peninsula and in Northeast Asia.”\(^80\)
3. Human Rights Situation in North Korea and UN Commission on Human Rights

On April 15, 2004, the UN Commission on Human Rights adopted a resolution entitled “Situation of Human Rights in the Democratic People’s Republic of Korea”. The resolution by the Commission expressed “its deep concern about continuing reports of systemic, widespread and grave violations of human rights in the Democratic People’s Republic of Korea” and requested the “Special Rapporteur to report his/her findings and recommendations to the General Assembly at its fifty-ninth session and to the Commission at its sixty-first session.”

On April 14, 2005, the UN Commission on Human Rights again expressed its deep concern about continuing reports of systemic, widespread and grave violations of human rights in the Democratic People’s Republic of Korea, including: (a) Torture and other cruel, inhuman or degrading treatment or punishment, public executions, extrajudicial and arbitrary detention, the absence of due process and the rule of law, imposition of the death penalty for political reasons, the existence of a large number of prison camps and the extensive use of forced labour;

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82 Id.
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4. The Possibility of Humanitarian Intervention Against North Korea

If the UN Commission on Human Rights continues to raise the situation of human rights in North Korea, there may be some suggestions for humanitarian intervention against North Korea. However, any suggestions are very dangerous to the peace and security of the Korean Peninsula and in East Asia. The United States President George W. Bush has already decided it was too risky to take military action against North Korea in early 2003.84 If military action is taken against North Korea, it could ignite a new war on the Korean Peninsula and possibly bring a North Korean nuclear attack on Japan.85 If a full-scale war resumed on the Peninsula, it was estimated in 1993 that there would be as many as one million casualties including 80,000 to 100,000 Americans.86 Furthermore, “the destruction of propert[ies] and interruption of business activit[ies] [will] cost more than US $1 trillion.”87 The only way to prevent this tragic disaster is through diplomacy based on international law.88

International law prohibits unilateral humanitarian intervention without any exceptions. International law permits UN authorized humanitarian intervention under very strict conditions. Further, international law gives a mechanism for peaceful settlement of disputes and has precedent to settle disputes peacefully and to prevent wars.

VIII. CONCLUSION

In conclusion, principles of international law, UN Charter obligations, ICJ decisions and the opinions of the most respected scholars presume that humanitarian intervention is unlawful. Therefore, there is a heavy burden of proof to meet in undertaking the threat or use of force in the name of humanitarian intervention. With regard to unilateral humanitarian intervention, I think it is a flagrant violation of international law and has no justification. With regard to UN-authorized humanitarian intervention, there are five requirements to be met as specified in the report of the UN High Level Panel on Threats, Challenges and Change: (1) the Seriousness of the Threat; (2) Proper Purpose;

85 David E. Sanger, No Time to Lose on North Korea, N.Y. Times, July 18, 2003 at A16.
87 Id.
(3) Last Resort; (4) Proportionality and (5) Balances of Consequences. Those who invoke UN authorized humanitarian intervention and the Security Council must meet the five requirements cumulatively.

Of course, the principles of international law, UN Charter and ICJ decisions are not the panacea for all contemporary problems in the world. Further, the right of "humanitarian intervention" and the "responsibility to protect" are likely to be more frequently invoked in coming years because Cold War justifications have lost their efficacy. Nevertheless, we should bear in mind that, in Canada's ICISS Report, UN High Panel Report and UN World Summit Outcome Report of 2005, there are no references permitting unilateral military intervention without right authority such as authorization of the Security Council, authorization of the UN General Assembly under the "Uniting for Peace Resolution" or authorization of regional organization under Chapter VIII of the UN Charter.

In this regard, it may be worthwhile to pay attention to the views of Noam Chomsky:

A standard argument is that we had to do something: we could not simply stand by as atrocities continued. The argument is so absurd that it is rather surprising to hear it voiced. Suppose you see a crime in the streets, and feel that you can't just stand by silently, so you pick up an assault rifle and kill everyone involved: criminal, victim, bystanders. Are we to understand that to be the rational and moral response?

Military intervention in the name of responsibility to protect, which does not have any right authority, seems to be similar to the above-mentioned situation. Thus, unilateral humanitarian intervention against North Korea does not seem to be desirable nor permissible under the current conditions. It will do more harm than good to the Korean people as well as the people of the world. As a Korean, I hope this article makes a contribution to prevent war, ensure peace and human security in the Korean Peninsula and East Asia.

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89 CHOMSKY, supra note 39, at 49-50.
90 CHOMSKY, supra note 39, at 48.