

# PURSUING PEACE WHILE ADVANCING RIGHTS:

## *The Untried Approach to North Korea*

“The promotion of human rights cannot be about exhortation alone. At times, it must be coupled with painstaking diplomacy. I know that engagement with repressive regimes lacks the satisfying purity of indignation. But I also know that sanctions without outreach—condemnation without discussion—can carry forward only a crippling status quo. No repressive regime can move down a new path unless it has the choice of an open door.”

President Barack Obama  
Nobel Peace Prize Acceptance Remarks  
December 10, 2009

**David Hawk**  
**May 2010**

A U.S.-Korea Institute at SAIS Report

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*The Untried Approach to North Korea*

David Hawk

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## ABOUT THE AUTHOR

**DAVID HAWK** directed the Cambodia Office of the UN High Commissioner for Human Rights in the mid-to-late 1990s. In the 1980s, Hawk documented the Khmer Rouge atrocities in Cambodia under the auspices of the Institute for the Study of Human Rights, Columbia University. In August 1994 and again in 1995, Hawk went on missions to Rwanda for the U.S. Committee for Refugees and Amnesty International respectively. Hawk is a former executive director of the United States section of Amnesty International and has served on the board of directors of AIUSA and Human Rights Watch/Asia.

His research and writing on North Korea include:

- *Hidden Gulag: Exposing North Korea's Prison Camps—Prisoner Testimonies and Satellite Photographs*, The Committee for Human Rights in North Korea
- *Thank You Father Kim Il Sung: Eyewitness Accounts of Violations of Freedom of Thought Conscience and Belief in North Korea*, U.S. Commission on International Religious Freedom
- *Concentrations of Inhumanity: An Analysis of the Phenomena of Repression Associated with North Korea's Kwan-li-so Political Penal Labor Camps According the Terms and Provisions of Article 7 of the Rome Statutes of the International Criminal Court*, Freedom House
- “Human Rights and the Crisis in North Korea” in *North Korea: 2005 and Beyond*, eds. Philip Yun and Gi-Wook Shin, APARC/Stanford University, Brookings Institution Press
- “Factoring Human Rights in the Resolution of Cold War Conflict on the Korean Peninsula” in *Human Rights in North Korea: Toward a Comprehensive Understanding*, eds. Kie-Duck Park and Sang-Jin Han, The Sejong Institute
- “Human Rights Issues During Phase Three of the Six Party Talks” in *Failure to Protect: The Ongoing Challenge of North Korea*, Havel, Bondevik, and Wiesel, DLA Piper and the Committee for Human Rights in North Korea

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# CONTENTS

PREFACE	7
EXECUTIVE SUMMARY	11
INTRODUCTION	13
PART ONE: <i>The Reigning Paradigm for North Korea: Conflict Resolution and Human Rights Divorced</i>	17
I.    Negotiations without a Human Rights Component: U.S. Policy (1993-2000)	17
II.   Engagement without a Human Rights Component: South Korean Policy (1998-2008)	21
III.  Human Rights without Negotiations or Engagement: U.S. Policy (2002-2005)	30
PART TWO: <i>An Alternative Paradigm: The Untried Approach</i>	35
I.    The Role of Human Rights If the Six Party Talks are Revived	36
II.   The Main Event: U.S.-DPRK Relations and the Role of Human Rights Dialogue in the Decent Burial of “Hostile Intent”	46
III.  Talking About Talking About Human Rights	57
CONCLUSION	69

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## PREFACE

For the last twenty years, the paradigm that has guided approaches to the Democratic People’s Republic of Korea (DPRK or North Korea) is that the pursuit of peace—either in the form of diplomatic discussions centering on North Korea’s nuclear weapons and missile programs or in the form of extended social, economic, and political engagement aimed at fostering improved relationships between the DPRK and other nation-states that intersect in Northeast Asia—requires that human rights concerns be kept off the table and that North Korea’s potential partners in the pursuit of peace and reconciliation affect a deaf, dumb, blind, and mute posture toward the systematic, severe, and widespread human rights violations in the DPRK.

Over the last two decades of diplomatic interaction with the DRPK, there have been recurring cycles of provocation, confrontation, and crisis alternating with negotiations and engagement. Throughout, these two contrasting approaches to North Korea—negotiations, reconciliation, and engagement in the pursuit of peace in ways that rebuff human rights considerations, or alternatively, the raising of human rights concerns about North Korea in the absence of an attempt to reconcile and engage the DPRK—have both failed. This paper outlines the limitations and inadequacies of either course both in terms of achieving peace and in terms of advancing rights, and suggests an alternative that would pursue peace, engagement, and reconciliation in association with the promotion and protection of human rights: a fundamentally new and untried approach.

The pursuit of peace and the promotion of respect for human rights have generally gone hand in hand. At least since the formation of the modern nation-state system, there has been a long history of human rights concerns being raised at peace conferences and conflict resolution negotiations, sometimes successfully, sometimes not. In the late twentieth century, human rights concerns were factored into the resolution of Cold War conflict virtually everywhere in the world except for Northeast Asia. In the contemporary post-Cold War world, human rights dialogue and components are part of nearly all peacemaking and peacekeeping projects and operations.

But in the case of North Korea, an unusual combination of circumstances—two successive, center-left, peacemaking administrations in South Korea resolutely refused to raise human rights issues with their nominally socialist countrymen to the north, and a deeply conservative administration in the United States conflated human rights concerns with the religious practice of shunning<sup>1</sup> and the chimera of externally forced “regime change”—resulted in the idea that one either raises human rights issues about North Korea or

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<sup>1</sup> Not meeting or talking to those who have sinned lest it confer moral legitimacy on the sinner. For example, “The very fact that the high-level face-to-face meetings took place is a blow to human rights in North Korea, as any such discussions necessarily lend legitimacy to the repressive regime.” Stephen Hayes, *Weekly Standard*, 12 December 2009.



engages and tries to negotiate peace with them, in which case, human rights is a “taboo topic.”<sup>2</sup>

This paradigm is all wrong. The general rule of historical and contemporary association between peacemaking and rights promotion will be briefly noted below. Following that, two policy situations will be examined wherein peace was pursued with the DPRK absent any human rights advocacy or concern: the arms-control negotiations with the DPRK during President Clinton’s administration and the engagement and reconciliation policies during the South Korean presidencies of Kim Dae-jung and Roh Moo-hyun. This is followed by a look at the policy of raising human rights concerns about the DPRK in the absence of an attempt to reconcile or engage with North Korea: U.S. policy during the first five years of President George W. Bush’s administration.

Following this review of the various rationales for excluding human rights considerations from negotiation and engagement agendas with the DPRK, a policy toward North Korea that maintains the organic, historical, and contemporary global relationship between the search for peace and the advancement of human rights and human security is explored, including the unavoidable triangle between denuclearization, diplomatic normalization, and human rights dialogue. What a human rights policy toward North Korea should and should not be is noted. This includes suggestions about the normative and analytical basis for human rights dialogue with the DPRK. Also included are suggestions of the various openings and locations for incorporating human rights considerations in bilateral and multilateral approaches to North Korea.

There is a preliminary question: Is a genuine peace process with North Korea possible? This question can be answered only in the course of serious negotiations, if sustained negotiations can—sooner or later—be restarted. If the answer is no, if the only policy option is deterrence, containment, and “crisis management,” then there may not be very much of a peace process into which human rights concerns can be integrated. But the primary question, and the one addressed herein, remains: If a peace process with North Korea can be reinvigorated and sustained, should human rights concerns be incorporated into a search for reconciliation with North Korea? Up to now, this approach has not yet been tried. The desirability of ending North Korea’s destabilizing quest for nuclear weapons and the ongoing, unnecessary suffering of its population require an examination of the failed diplomacy and a search for a new approach.

As used herein, “human rights” are the international norms and standards set forth by the United Nations General Assembly in the 1948 Universal Declaration of Human Rights, and codified into international law by the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and subsequent multilateral conventions.

“Rights” in the modern world are dealt with in isolation when they are being defined and elaborated into international conventions or when violations of those norms and standards are being documented. More commonly, in contemporary global usage, human rights norms are embedded within “governance” and “development.” That is, commonly, civil and political rights are violated in the course of either ill-considered or vindictively maladroit policies of governance.<sup>3</sup> Many economic and social rights, such as, for example, the rights to adequate food, health, or education, are recognized in international law as being “progressively realizable,” that is, dependent in part on policy, but contingent also on the resources available within any given

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<sup>2</sup> Georgy Toloraya, “North Korea Now: Will the Clock Be Turned Back?” The Brookings Institution, 21 April 2008, p. 2.

<sup>3</sup> For a North Korea-pertinent example, family reunification, visitation, and correspondence are often seen as humanitarian cum political issues, which indeed they are. They are also, profoundly, a matter of human rights in that there can hardly be any freedoms of speech, expression, or association more fundamental than the ability to talk to, meet or correspond with other family members.

state or society, and hence, on the level of economic development.

While the present author has dealt with “rights” in the narrow sense,<sup>4</sup> this paper approaches human rights considerations in the larger sense, in which human rights considerations are commonly embedded within policies of governance and development, in line with contemporary practice within the programs, departments, agencies, and funds of the UN system, and certainly within the contemporary approach of nongovernmental organizations in East Asia.

The first part of this paper argues that the seventeen years (at this writing) of engagement and off-and-on negotiations with North Korea—during which time human rights considerations were deliberately kept off the engagement and negotiation agendas—have not worked. Those negotiations did not result in sustainable arms-control or nonproliferation agreements. Engagement without a human rights component has not achieved sustainable reconciliation. While prolonged food aid deliveries during the North Korean famine and after surely saved lives and mitigated malnutrition, a decade and a half of international food assistance has not achieved food security for the people of North Korea. Nor has considerable energy assistance, an obvious and essential factor of production in North Korea, resulted in sustainable economic growth and development.

This paper reviews the arguments made at the time for keeping human rights off the reconciliation agenda with North Korea and argues in favor of factoring human rights considerations into any future engagement and negotiation processes with the DPRK.

Readers already convinced that the reasons proffered over the last decade and a half for keeping human rights off the engagement and negotiation agenda with North Korea have not stood the test of time are invited to turn to the second part of this paper, which outlines suggestions as to how human rights considerations could be included in future peace efforts and reconciliation processes with North Korea.

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<sup>4</sup> Including participating in an NGO consultant capacity in several drafting sessions for the recent Convention on the Rights of Persons with Disabilities, and researching and documenting severe violations, most particularly in Cambodia, Rwanda, and North Korea.



## EXECUTIVE SUMMARY

*Pursuing Peace While Advancing Rights: The Untried Approach to North Korea* argues that the reigning paradigm—the idea that either centrally involved nation-states seek to reconcile, engage, and negotiate with the DPRK, in which case raising human rights issues is taboo, or another government raises human rights issues but forgoes engagement and negotiations—is all wrong. This report seeks to make the case that the two should go hand in hand, and outlines an alternative paradigm, which combines the search for peace with the promotion of human rights, and suggests some ways that this alternative, as yet untried, approach might be pursued.

The report begins by briefly noting how the search for peace and the advancement of rights have long been associated. A human rights component has been included in the resolution of Cold War conflicts everywhere else in the world—in Central Europe, Southeast Asia, and Central America—except, so far, Northeast Asia. Human rights considerations are also routinely factored into conflict resolution in the post-Cold War world. As such, the report reviews three different policy settings over the course of nearly two decades in which human rights and conflict resolution with North Korea have been deliberately and assiduously delinked and critically examines the rationales put forward for doing so.

The rationale posited in the “Perry Report” during the Clinton administration for keeping economic or political reform out of negotiations, lest it interfere with arms control, has not stood the test of time. Nor have the three main reasons for keeping human rights concerns off the engagement agenda with North Korea during the South Korean administrations of Kim Dae-jung and Roh Moo-hyun. Their supporters urged the international community to wait until peace had been achieved, until malnutrition had been banished and until economic development was well underway, before raising human rights issues. However, after nearly two decades of negotiations and engagement without a human rights component, peace, food security, and sustainable development are still nowhere in sight. Where the Bush administration went wrong was not in its raising of human rights concerns, but in its refusal to talk directly with the North Koreans about this, or anything else, for the first six years of President Bush’s two terms. The result was an enormous setback for the nonproliferation regime and left human rights conflated with “regime change,” an association from which policy has yet to recover.

This report proposes an alternative paradigm in approaching North Korea: engagement and negotiation with human rights components. If the Six Party Talks can be revived, human rights concerns and human rights-related issues should be allowed to arise organically in most of the “working groups” and subsidiary negotiations that have been built into the forum, particularly with respect to economic and energy cooperation, the creation of a Northeast Asian peace and security mechanism, and the envisioned negotiations to replace the 1953 Korean War armistice with a “peace regime” on the Korean peninsula.

In retrospect, both the implementation of the 1994 Agreed Framework and the 2007-2008 Six Party Talks agreements were too narrowly focused on arms-control issues and did not devote enough effort to the possibility (and it is only a possibility) of working out a less antagonistic relationship between the United States and North Korea. The DPRK asserts that it is the hostile intent of the United States that both requires the North to possess a nuclear deterrent and is the major impediment to the promotion and protection of human rights in the country. As the DPRK has conjoined both nuclear weapons and the state of human rights in North Korea to the state of its relations with the United States, there is a potential role for human rights dialogue in efforts to forge a less hostile relationship between the two countries.

Arguing that a human rights dialogue is doable, three potential lead-ins to such a dialogue are outlined: North Korea's backhanded invitation for such a dialogue in the DPRK report to the United Nations as part of the Universal Periodic Review; a process of seeking to clear human rights-related sanctions and aid conditions that Congress has imposed on the U.S. relationship with North Korea; and a thorough exploration of what exactly are the security assurances the DPRK says are required before it will denuclearize, as some of the assurances, as delineated by former negotiators with North Korea, have profound human rights implications.

A proposed dialogue should be based on the approach prescribed in UN General Assembly Resolution 60/251 ("on principles of cooperation and genuine dialogue and aimed at the strengthening of the capacity of Member States to comply with their obligations for the benefit of all human beings"). It should also establish from the outset that it is not promoting regime change. It is also not promoting politicized slander or vilification. Most importantly, noting the discrepancy between international standards and national practice is neither an infringement of sovereignty nor interference in internal affairs.

On the positive side, this report details the normative and analytical basis for a human rights dialogue with North Korea: the recommendations made to the DPRK by the treaty implementation review committees at the United Nations, which are based on the reports submitted to these "treaty bodies" by the DPRK pursuant to the core human rights conventions to which North Korea has acceded. The UN's expert recommendations outline what measures the DPRK should take to better fulfill its obligations under those conventions. These recommendations constitute a veritable UN roadmap for human rights improvements in North Korea, and North Korea claims to be implementing these recommendations. The substance of a sustained dialogue, which preferably should be multilateral as well as bilateral, should focus on those recommendations and the means of their implementation.

The report concludes by outlining several areas for specific dialogue and discussion, including tackling trafficking and violence against women, and how to talk to the North Koreans about the political prison camps.

# INTRODUCTION

## THE LONG ASSOCIATION OF MAKING PEACE AND PROMOTING RIGHTS

The case for combining conflict resolution and engagement with the promotion and protection of human rights is, of course, much stronger than the mere process of elimination—the only approach to North Korea that has not yet been tried.

The most noteworthy proponent of combining human rights and the search for peace in recent years was the Soviet academician Andrei Sakharov, the nuclear physicist often called the “father of the Soviet hydrogen bomb,” who in 1968, wrote an internationally acclaimed essay, “Thoughts on Progress, Peaceful Co-existence, and Intellectual Freedom,” which argued, in global terms, that human progress required arms control and coexistence (between and among Cold War rivals), along with the necessity for intellectual freedom and broader human rights. His 1975 Nobel Peace Prize Lecture, “Progress, Coexistence, and Human Rights,” reiterated these themes. These ideas and this approach came to dominate the international human rights movement that swept the globe in the 1970s and 1980s. This approach was increasingly adopted by governments, particularly in multilateral pursuit of conflict resolution, and particularly in attempts to resolve conflicts—hot and cold—between nation-states allied with the United States and those allied with the Soviet Union.

Historically, human rights considerations have been factored into and associated with peace negotiations since the beginning of the modern nation-state system. National and international recognition that human beings (first men and later women) have rights first emerged as part of the same process of political modernization during which kingdoms and empires evolved into nation-states and men and women evolved from being the *subjects* of kings and emperors into being the *citizens* of nation-states—citizens with limited but constantly expanding sets of human rights and fundamental freedoms. As far back as 1648, the Peace of Westphalia, which ended thirty years of population-decimating post-Protestant Reformation warfare in Central Europe and which is commonly recognized as the birth of an international system based on sovereign states, acknowledged citizen rights—in this case limited religious freedom (for Catholics, Lutherans, and Calvinists)—among the states party to the Westphalian peace agreements.

Taking another historical example, the famed 1814 Congress of Vienna, convened to restructure a European

peace following the failure of Napoleonic France's bid for hegemony, adopted the Eight Power Declaration recognizing the international slave trade to be "repugnant to the principles of humanity and universal morality" and accepting "responsibility to abolish the trade as soon as practicable."<sup>5</sup>

Moreover, the confluence of human rights protection, conflict resolution, and peacemaking intensified as the nineteenth century yielded to the twentieth. Modern international human rights and humanitarian law had its start at the Hague Peace Conferences of 1899 and 1907. Minority and labor rights were incorporated into the Versailles treaties following WWI. The role of respect for human rights in the maintenance of a peaceful world order was incorporated into the Charter of the United Nations following WWII. And, as there was insufficient time at the San Francisco Conference, it was decided that among the first acts of the world organization would be the promulgation of a Universal Declaration of Human Rights—the seminal document associated with the founding of the United Nations, which made human rights, in the words of former U.S. National Security Advisor Zbigniew Brzezinski, "the single most magnetic political idea of the contemporary time."<sup>6</sup>

Nor, it should be noted, was recognition of the need to incorporate human rights issues into peacemaking a Eurocentric phenomenon. Following the replacement of the ancient imperial dynasties, modernizing Asian governments and social organizations sought to inject human rights considerations into twentieth-century peace negotiations. Although thwarted by Woodrow Wilson, the Japanese government and social activist groups sought to introduce a core human rights concern—a provision on racial equality—in post-WWI settlements. Also without success, Chinese, Korean, and Vietnamese social organizations flocked to Versailles to seek the globalization of the human right to self-determination.<sup>7</sup>

In the present era, human rights considerations and provisions—in much more detail than expressed in the UN Charter—were explicitly incorporated into the peaceful resolution of Cold War conflicts in Europe in the mid-1970s, in Central America in the mid-1980s, and in Southeast Asia in 1991.<sup>8</sup> Further, most post-Cold War conflict resolution efforts contain human rights provisions and human rights components in the peacekeeping, peacemaking, or peacebuilding operations that oversee contemporary regional or intra-national peace agreements. Contemporary conflict resolution efforts frequently include mechanisms to hold accountable the perpetrators of severe violations during the conflict. Contemporary conflict resolution currently pays particular regard to violations of women's and children's rights during conflict. A UN Security Council resolution urges the full participation of women in mechanisms for the management and resolution of conflict at the national, regional, and international levels.<sup>9</sup>

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<sup>5</sup> Cited in Paul Gordon, *The Evolution of International Human Rights*, University of Pennsylvania Press, 1998, pp. 40-41. (Not all agreed, of course. Lord Castlereagh, the head of the British delegation to the Congress of Vienna, thought it wrong to force these human rights matters "upon nations at the expense of their honor and tranquility..." expressing a viewpoint that still persists among some diplomats and peace activists when they consider the Kim family dynasty in North Korea.)

<sup>6</sup> Cited in David Forsythe, *Human Rights in International Relations*, Cambridge University Press, 2000, p. 33.

<sup>7</sup> As it turned out, the principle of self-determination was applied only to a limited number of territories and populations within the collapsed empires on the losing side of WWI.

<sup>8</sup> Multiple conflicts in southern Africa could be included as well, although those were at root anti-racist, anti-colonial struggles for self-determination that got tangled up in Cold War alliances. The resolution of Cold War conflict in the heart of Europe was via the 1975 Helsinki Final Act, which established the Conference on Security and Cooperation in Europe. The resolutions of the nasty Cold War conflicts in Central America (El Salvador, Nicaragua, and Guatemala) even tackled the complicated human rights issue of accountability for atrocities. The 1991 (Paris) Comprehensive Agreements to end the conflict in and over Cambodia had explicit human rights provisions in the peace treaty, backed by a human rights component in the UN peacekeeping force that oversaw the implementation of the Paris peace treaty. Outside Cold War conflicts, human rights were factored into conflict resolution efforts in East Timor, and into an attempted reconciliation process in Sri Lanka, and a series of post-independence conflicts in West Africa.

<sup>9</sup> UN Doc S/RES/1325, 31 October 2000.

If human rights considerations and provisions are not factored into the resolution of Cold War conflict in Northeast Asia, it will be the exception. And, as will be explored below, the present-day practice of including human rights concerns in the resolution of civil war and conflict in the post-Cold War era is also particularly relevant to the Korean peninsula in that reconciliation between the two Koreas entails resolving the humanitarian and human rights issues carried over from the five-year civil war between the north and south, left and right, in Korea prior to the entry of the United States and China into the Korean conflict in 1950.

While factoring human rights considerations into peace processes requires proactive diplomacy, the fundamental reality is unarguable: in democracies and dictatorships alike, war, the threat of war, and the fear of war leads to human rights restrictions and violations. Conflict resolution, reconciliation, peacemaking and what is now called peacebuilding do not automatically end human rights abuse. But they do create an environment in which respect for human rights has a much better chance to take root. It is the approach that has yet to be tried with North Korea.





# PART ONE

## THE REIGNING PARADIGM FOR NORTH KOREA: CONFLICT RESOLUTION AND HUMAN RIGHTS DIVORCED

In looking at whether the linkage of human rights and engagement should be precluded or pursued, two instances of engagement and reconciliation-seeking with North Korea without human rights being part of the process will be examined, along with the reasons offered for keeping human rights issues off the engagement agenda: 1) U.S. policy from 1993 to 2000; and 2) South Korean policy from 1998 to 2008. Also examined is the situation in which focus on North Korean human rights took place in the absence of engagement or reconciliation: U.S. policy under President George W. Bush from 2000 to 2005.

### I. NEGOTIATIONS WITHOUT A HUMAN RIGHTS COMPONENT: U.S. POLICY TOWARD NORTH KOREA (1993–2000)

#### THE AGREED FRAMEWORK

Early in President Clinton’s first term of office, U.S. policy toward the DPRK focused on the crisis set off by North Korea’s refusal to allow requested inspections by the International Atomic Energy Agency (IAEA),<sup>10</sup> followed by the DPRK’s insistence that it would treat a referral of this matter to the UN Security Council as an act of war. This crisis was resolved by a narrow arms-control agreement—the 1994 Agreed Framework—in which the arms-control trade-offs were fairly detailed: freezing plutonium production and reprocessing at Yongbyon under IAEA supervision in exchange for shipments of heavy fuel oil and the construction of supposedly proliferation-resistant light-water nuclear reactors.<sup>11</sup> The accompanying political steps were posed

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<sup>10</sup> It was suspected that enough fissile material for one or two nuclear weapons had been processed and removed from the five-megawatt reactor at Yongbyon.

<sup>11</sup> Light-water reactors (LWRs) yield materials useful mostly for “dirty bombs” transportable only by ship, rail, or truck, not fissile material that can be miniaturized and placed in the nose cone of rockets. The idea was that prior to turning on the LWRs, the matter of any fissile material produced prior to 1994 would be clarified, and fissile material would be removed from North Korea.

in rather more general terms: a relaxation of sanctions, improved relations, and the creation of liaison offices in Washington and Pyongyang that would expand to full diplomatic normalization.

This agreement, it should be noted, was reached prior to widespread awareness of acute famine conditions and the beginning of the enormous post-1995 international famine relief effort for North Korea, and before widespread awareness of the outflow of hundreds of thousands of North Koreans to China in search of survival or asylum. Additionally, the 1994 Agreed Framework was negotiated prior to the widespread availability of detailed information in English about the severe human rights conditions in North Korea.<sup>12</sup>

## THE PERRY REPORT

North Korea, dissatisfied with a perceived lack of progress toward a new political relationship with the United States, sought to recapture Clinton's attention by test-firing an intercontinental ballistic missile over Japan. This, coupled with the ongoing unpopularity of the Agreed Framework in the Republican-controlled Congress, resulted in the "fundamental review" of U.S. policy toward North Korea led by the highly regarded former Secretary of Defense, William Perry.<sup>13</sup>

Unlike the first nuclear crisis with North Korea in 1993-1994, by 1998 the scope of the humanitarian, refugee, and human rights crises in the DPRK was much more widely recognized. And by this time, the United States was well along in the process of providing North Korea with nearly a billion dollars worth of foreign assistance. But the "Perry Report" expressly rejected the option that:

[T]he United States should promote the accelerated political and economic reform of the DPRK *along the lines of established international practice*, hastening the advent of democracy and market reform that will better the lot of the North's people and provide the basis for the DPRK's integration into the international community in a peaceful fashion (emphasis added).

This rejection was posited on the possibility that the DPRK would view reform promotion as "indistinguishable from a policy of undermining" and that it would "take more time than it would take the DPRK to proceed with its nuclear weapons and ballistic missile programs."<sup>14</sup>

While the Perry Report is couched in terms of economic and political reform, it seems likely that human rights considerations, in the perspective of the Perry Report, would fall under the rejected umbrellas of

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<sup>12</sup> Information on the deplorable conditions inside North Korea came initially from famine relief workers allowed inside Korea and from the North Koreans who fled to China and provided information to South Koreans who interviewed North Koreans in China. Smaller, but soon significant, numbers of North Koreans made their way from China to South Korea, where they told their stories to the press and nongovernmental human rights organizations. While North Korea's previous claim to be a "worker's paradise" was scarcely credible, specific and detailed information about widespread repression and severe human rights violations was limited, even to country specialists.

<sup>13</sup> Publicly unbeknownst at the time, the DPRK also sought to put together a uranium enrichment program, an alternate route to nuclear weapons, even though uranium enrichment was precluded by the 1994 Framework Agreement with the United States, which referred to the explicit prohibition on uranium enrichment efforts contained in the 1991 North-South Korean "Declaration on the Denuclearization of the Korean Peninsula."

<sup>14</sup> "Review of United States Policy toward North Korea: Findings and Recommendations," unclassified report by William J. Perry, 12 October 1999, p. 5. Hereafter, Perry Report.

economic or political reform.<sup>15</sup>

At the time, a veteran human rights activist encountered Dr. Perry at a diplomatic reception in Washington and asked him if human rights issues would be addressed in his recommendations. He replied negatively, lest North Korea stop talking to the United States about its security concerns.<sup>16</sup>

In retrospect, ten years later, several things are much clearer. First, in the terms set out in the Perry Report, simultaneous with any possible denuclearization, North Korea will insist on its “peaceful integration with the international community.” The only question is whether it will be done “*along the lines of established international practice*,” which includes human rights considerations and provisions, or whether the DPRK will be treated as an exception, and not required to conform to the norms and standards the various institutions of the international community generally seek from participating nation-states.

Second, it is clear that denuclearization, if can be achieved at all, will be accompanied by multiple billions of dollars worth of foreign assistance to the DPRK. Inescapably, this aid will either encourage the reforms that will enable North Korea to carry out sustainable economic development or allow the regime to avoid the reforms necessary to achieve even food security, let alone sustainable economic development.<sup>17</sup> The substantial compensation North Korea will insist upon in exchange for giving up any of its weapons systems cannot be separated from issues of economic reform. The obvious donors that North Korea is now looking to for a large-scale bailout of its collapsed industrial and agricultural economy, South Korea, the United States, and Japan, cannot escape questions about how and to what ends their economic assistance and investment will be used.<sup>18</sup>

Third, it is now apparent that the denuclearization of the Korean peninsula, if it includes abandonment of the DPRK’s nuclear arsenals, and if it can be achieved at all, will be a much longer process—by a factor of years, even decades—than the Perry process assumed, leaving more than adequate time for North Korea to improve policy and practice in the areas of human rights and human security.<sup>19</sup>

Fourth, and most importantly, treating human rights issues as taboo is no guarantee that arms-control negotiations with North Korea will succeed. What is far more likely to be the case is that if there is a deal to be made on denuclearization, it will not be unmade by either the United States or North Korea because human rights concerns have also been put on the table for serious, in-depth discussion.

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<sup>15</sup> Actually, while significant improvements in human rights are often associated with political and/or economic reform, human rights can be approached much more narrowly in terms of the implementation or non-implementation of the human rights standards a country has formally recognized.

<sup>16</sup> Suzanne Scholte, “The North Korean Human Rights Situation and How We Should Respond,” 17 June 2006, Kwangju, South Korea. (At the time, the United States was seeking a testing moratorium and, possibly, a buyout of North Korea’s intermediate- and long-range ballistic missile program.)

<sup>17</sup> In the 1970s, substantial loans to and investments in North Korea from Europe, Japan, and the USSR unaccompanied by macroeconomic reform lead to widespread default that now precludes DPRK access to the credit and investment markets to which many countries turn to stimulate economic growth. A mammoth humanitarian food aid program starting in 1995 was treated by the regime as balance of payments support and a substitute for commercial importation of food. Without macro-economic reforms, after fifteen years of humanitarian food assistance, the DPRK citizenry remain without food security.

<sup>18</sup> See pp. \*39-42 below on the Energy and Economic Working Group at the Six Party Talks. See also the discussion below on the skewed economic arguments in South Korea for postponing human rights discussions with North Korea, pp. \*21-30.

<sup>19</sup> It is likely that what the Perry process had in mind was the Agreed Framework negotiations in Geneva, which took only months to negotiate a deal that would take years to implement. Projected negotiations to halt the DPRK’s development and testing of intercontinental ballistic missiles were thought to require weeks to reach a possible deal.

## A DIFFERENT DIRECTION TOO LATE IN THE DAY?

It is possible that late in its second term, the Clinton administration may have sought to move in the direction of including human rights issues in its approach to North Korea. Following a visit to Washington by North Korea's second-in-command, Marshal Jo Myung-rok, U.S. Secretary of State Madeleine Albright visited Pyongyang. Over the objections of some elements of the administration, she took the assistant secretary of state for democracy, labor, and human rights<sup>20</sup> with her to Pyongyang. And she briefly raised the human rights issue with Kim Jong-il, though he all too easily brushed it aside.<sup>21</sup>

The immediate purpose of Secretary Albright's visit to Pyongyang was to see if enough progress could be made on a deal in which the United States would buy out North Korea's medium- and long-range missiles. The buyout would have been consummated with, or perhaps at, a visit to Pyongyang by President Clinton. Obviously, a summit meeting would have covered a wide-ranging agenda not limited to the technicalities of arms control. Whether any human rights concerns would have been included or addressed in a presidential visit to North Korea is, of course, unknowable, as the administration remained divided over the details of a missile buyout deal, particularly with respect to verification. As it happened, the chance for presidentially mediated Israeli-Palestinian negotiations at Camp David, and the domestic political turmoil over the botched vote count in Florida consumed the final weeks of the Clinton presidency, and ruled out a trip to Pyongyang.

In retrospect, former Secretary of State Albright notes, "Clearly the United States cannot have a conventional relationship with the DPRK as long as its government remains totalitarian." Thus, writing in 2008 to advise an incoming president-elect, she recommends: "[T]he next U.S. administration should push for North Korean progress on human rights."<sup>22</sup>

Notwithstanding the multitude of discussions with the North Koreans—over delivery of heavy fuel oil, delivery of humanitarian food aid, recovery efforts for U.S. servicemen's remains, efforts to set up liaison offices in Washington and Pyongyang, KEDO and the construction of two light-water reactors, and missile testing and exports—the Clinton administration's failure to put human rights concerns on the agenda for discussion with the DPRK, in effect, handed the "human rights issue" over to those who oppose negotiation and engagement in pursuit of the "regime change" chimera, an association from which U.S. policy has yet to recover.

While the Clinton administration had treated North Korea as a security problem (which, of course, it was) and *only* a security problem (which, of course, it was not), it remains to be seen whether the Obama administration's policymakers will absorb the recommendation of Secretary Albright or return to the "security problem *only*" scenario advocated by the Perry approach.

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<sup>20</sup> Assistant Secretary of State Harold Hongju Koh, a Yale Law School professor and the highest-level Korean American to have served in the U.S. government.

<sup>21</sup> Reportedly with the stock DPRK formulation, "There can be no human rights problems in our people-centered socialism."

<sup>22</sup> *Memo to the President Elect: How We Can Restore America's Reputation and Leadership*, Harper, 2008, p. 188. Former Secretary of State Albright posits that a refusal on moral grounds to negotiate with the North Koreans on security matters may end up with no improvement on either security or human rights. She asks, but does not answer, the question: Would a security arrangement that lowers the risk of a nuclear confrontation but also benefits Kim Jong-il be defensible?

## II. ENGAGEMENT WITHOUT A HUMAN RIGHTS COMPONENT: SOUTH KOREAN POLICY DURING THE ERAS OF “SUNSHINE” AND “PEACE AND PROSPERITY” (1998–2008)

Two successive administrations in the Republic of Korea (ROK or South Korea) were led by politicians who gained national and international prominence in South Korea’s decades-long struggle for human rights, democracy, and the rule of law. First Kim Dae-jung (1998–2003) and then Roh Moo-hyun (2003–2008) sought engagement and reconciliation with North Korea. “D.J.,” as President Kim Dae-jung was universally known, called his North Korea policy “Sunshine;” President Roh called his “Peace and Prosperity.” The primary purpose of these policies was reconciliation and for some progress toward eventual reunification of the two Koreas. These approaches did, however, aspire to a human rights spin-off: creating an environment in which North Korea “can continue to open itself with confidence to the outside world. Once Pyongyang is sure of the regime survival, even if it commits to opening, it will let its fortified guard down and allow basic human rights to its citizens such as freedom of residence and the right to move at will and freedom of expression.”<sup>23</sup>

Controversially, within South Korea, because of the perceived need to give Pyongyang confidence in its survival in order to procure human rights in the (perhaps distant) future, human rights had to be kept off the engagement and reconciliation agenda with North Korea.<sup>24</sup> This led to the bizarre circumstance that North Korea raised human rights issues with South Korea, but not vice versa,<sup>25</sup> and to the improbable circumstance that North Korea criticized human rights policies of South Korea at the UN, but not vice versa.<sup>26</sup> The official North Korean news agency, KCNA, carries stories protesting against “prisoners of conscience” (Amnesty International’s designation for nonviolent political prisoners) in South Korea’s jails,<sup>27</sup> while South Korean officials barely even inquire about South Korean prisoners of war and civilian South Korean citizens, mostly fishermen whose boats drifted into North Korean waters, whom the DPRK will not allow to return to South Korea.

There are aspects of inter-Korean reconciliation and reunification that are fundamentally for Koreans north and south of the 38<sup>th</sup> parallel to tackle between and among themselves. However, the key arguments by South Korean advocates for keeping human rights issues off the engagement agenda with North Korea were made

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<sup>23</sup> Jang-Hie Lee, “Improving North Korean Human Rights,” International Symposium on North Korea Human Rights Issues, ROK National Human Rights Commission, 1 December 2004, p. 170.

<sup>24</sup> Some aspects of the Sunshine Policy, most importantly food aid policy, can indeed be raised and discussed in humanitarian, human security, or human rights terms. The same is true for family reunifications, which can be considered as a humanitarian issue and/or a matter of freedoms of association, travel, and speech.

<sup>25</sup> At the June 2000 Summit, Kim Jong-il asked Kim Dae-jung to release and repatriate several score North Koreans still being imprisoned in South Korea, some as unrepentant Korean War-era POWs—which President Kim Dae-jung did. I have not been able to find any record that Kim Dae-jung asked Kim Jong-il about the several hundred South Korean war veterans in the comparable situation in North Korea.

<sup>26</sup> North Korea criticized South Korea’s infamous National Security Law during a process called the Universal Periodic Review at the UN Human Rights Council (formerly called the Commission on Human Rights), while under President Roh Moo-hyun, South Korea remained mute during debates and abstained during votes on resolutions recognizing North Korean repression at the UN Human Rights Council.

<sup>27</sup> “Release of Prisoners of Conscience Demanded in S. Korea,” KCNA, 3 August 2009, Juche 98. The “prisoners of conscience” were persons arrested during confrontations with Seoul police over “the right to existence” of South Korean children and others whose lives were threatened by the “wrong policy” of allowing the importation of cow meat from the United States.

in general terms, with much wider application. As these arguments continue to be advanced years later by various parties in East Asia, Europe, and North America, three are worth considering in detail: “peace first,” “economic development first,” and “food first.”

## THE UNWORKABLE IDEA OF “PEACE FIRST”

It was argued by supporters and participants in both President Kim’s and President Roh’s administrations that human rights considerations and issues should be deferred until peace has been secured for the Korean Peninsula. The desired peace entailed an end to the international standoff over North Korea’s nuclear weapons programs; and the replacement of the Korean War armistice (a ceasefire agreement) by a full-fledged peace treaty, bringing a formal legal end to the state of war on the peninsula.

In one sense, the “peace first” argument might have been more urgent if the “non-peace” were actually a situation of armed conflict in which civilians and combatants were being killed and wounded on a daily basis, notwithstanding that human rights promotion and protection are nowadays regularly factored into violence-ending, peacemaking, and peacebuilding processes.

However, the “peace first” argument was posited in terms of peninsular stability and legal formalities. It was averred that “peace is still fragile and tentative, and the situation unstable and delicate.” Thus, “endeavors to maintain peace and stability on the Korean peninsula take precedence over open calls concerning human rights in North Korea.”<sup>28</sup>

To be sure, very few nation-states seek turmoil and instability along their immediate borders, and South Korea is certainly not one of them. Ironically, while the North-South Korea land border is among the most militarized in the world, the fifty-year military standoff between hundreds of thousands of heavily armed troops along the 155-mile armistice line dividing North and South Korea is, in fact, quite stable.<sup>29</sup> In the words of former U.S. Secretary of Defense Perry, “[D]eterrence of war on the Korean peninsula is stable on both sides, in military terms.”<sup>30</sup> And, prior to the sinking of the *Cheonan*, many South Korean officials believed that North Korea had stopped the sorts of violent outbursts that occurred from the 1960s through the 1980s, such as the tunneling under the DMZ, commando infiltrations against the Blue House, and the successful attempts to blow up the South Korean cabinet or South Korean civilian airplanes. Moreover, South Korea has stopped talking about, and has little interest in, absorbing—in the style of East Germany into West Germany—the malnourished and impoverished population of the North.

Thus, it was widely thought, particularly prior to North Korea’s nuclear tests and proclamations of itself as a proud and dignified nuclear weapons state, that negotiated mutual threat reduction would remove North Korea’s perception that it needs nuclear weapons. It was even thought at the time that mutual threat reduction could be achieved in fairly short order, if only the United States could show a little more flexibility.

However, the rationale for postponing human rights issues until peace is at hand loses much of its force if it

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<sup>28</sup> Ambassador Park Kyung-seo, remarks at the 7<sup>th</sup> International Conference on North Korean Human Rights and Refugees, Bergen, Norway, 11 May 2006.

<sup>29</sup> The post-Korean War boundary in the West Sea, called the “Northern Limit Line,” is less stable, as North Korea doesn’t accept it, challenges it from time to time, and demands revision in its favor.

<sup>30</sup> Perry Report, p. 2.

is the case that, should peace be achievable at all, it may take decades of “confidence-building measures” and/or normalized relations with the United States before Kim Jong-il or his successor can be fully confident that the United States has dropped for good what the North terms “hostile intent”—a subjective and infinitely elastic term that the North Koreans have not defined with anywhere near sufficient clarity. Was it (is it) tenable that raising the issue of North Korea’s severe human rights problems should be deferred for a decade or even a generation?

Further, of course, there were (and are) numerous issues that could cause the negotiations to stumble or stalemate yet again. For example, North Korea may balk at the arcane verification technicalities that arms-control experts insist are essential.<sup>31</sup> Second, it was North Korea’s clandestine efforts to put together a uranium enrichment program<sup>32</sup> that, for the U.S. side, prompted the breakdown of the 1994 Agreed Framework. Presently, North Korea has proclaimed the uranium enrichment program it previously denied. Perhaps this declaration may place the uranium enrichment program on the table for negotiations. But the concealable nature of uranium enrichment, as opposed to its graphite-moderated plutonium production, will make its elimination harder to verify, even if formally agreed to.

Thirdly, North Korea’s longstanding demand that the United States “provide” them up-to-date light-water nuclear reactors to replace the seriously worn-out Yongbyon reactor is now widely seen in Washington in a different light following the DPRK’s proliferation of nuclear know-how and/or technology to Syria. It is quite possible that the U.S. Congress will not agree to forgo explanation of what the DPRK was doing in Syria, and may now be doing in Burma, in exchange for North Korea’s promise not to proliferate further.

Lastly, it is also possible that North Korea might demand more “compensation” than the U.S. Congress is willing to appropriate,<sup>33</sup> given the ambiguity, uncertainty, and “buyers remorse” that is likely to envelop any compromise agreement painfully negotiated with North Korea.

### ***Peace as Denuclearization***

Many observers think that North Korea will never give up its nuclear deterrent. Others contend that it has not yet made the decision to give up its plutonium stockpiles or that the present inclination to honor and cherish its “nuclear deterrent” can be reversed. While the DPRK will never renounce the goal of denuclearization of the peninsula, as it was a “last wish” of Kim Il-sung himself, it may be that for the foreseeable future the DPRK will want to be accepted and treated as a nuclear power state *de facto* if not *de jure*, and retain some of its nuclear deterrent, even if the Americans reduce or remove the pressures or stances that the North Koreans contend to be a threat.

Some see North Korea’s nuclear weapons program as a rational, though mistaken, response to its external

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<sup>31</sup> It was North Korea’s unwillingness to allow IAEA verification inspections that precipitated the first nuclear crisis in the early 1990s.

<sup>32</sup> In violation of the 1991 ROK-DPRK Declaration on a Nuclear-free Peninsula, and as referenced in the 1994 Agreed Framework.

<sup>33</sup> North Korea demands that it be compensated for the energy that would have been produced by the 50-megawatt and 200-megawatt reactors they stopped constructing in 1994, in exchange for the two LWRs that the United States, ROK, and Japan agreed to build for them instead. Some energy experts, however, query North Korea’s ability to safely operate the powerful reactors and wonder who will write and underwrite the mandatory insurance policy. Energy specialists doubt the ability of the North Korean electrical grid to handle the enormous volume of electrical power produced by the LWRs without building a new electrical grid for North Korea, which would cost additional billions of dollars. Also unresolved is the question of who would buy the energy produced by the LWRs North Korea demands.



environment, and seek resolution via altering the environment.<sup>34</sup> Korea scholars and analysts have delineated aspects of United States security and defense doctrine, policy, and practice that the DPRK could, arguably, regard as threatening.<sup>35</sup> In a 1999 interview, former Defense Secretary Perry observed, “We do not think of ourselves as a threat to North Korea. But I fully believe that they consider us a threat to them, and therefore they see [missiles and nukes] as a means of deterrence.”<sup>36</sup> Thus, the hope that patient diplomacy could (or can) achieve mutual threat reduction, and a step-by-step approach to improved relations and denuclearization.

Other Korea scholars, however, posit irrational factors at the core of DPRK’s foreign and defense policies. Australian Korea scholar Gavan McCormack succinctly characterizes North Korea as a “paranoid garrison state.”<sup>37</sup> A professor of North Korean literature teaching in South Korea details North Korea’s “ideology of paranoid nationalism.”<sup>38</sup> North Korea’s abundant paranoia may have, however, a deeply utilitarian function. Many posit that it is the prosperous, free, and internationally accomplished Korea south of the 38<sup>th</sup> parallel that is the real threat to the Kim family regime in North. But South Korea will hardly do as a fundamental antagonist. Better to have the world’s only superpower as the existential threat, while dismissing South Korea as a puppet state subservient to its imperialist master. Since the outset, the *raison d’être* of the Kim family dynasty has been the seamless struggle against Japanese colonialism and American imperialism. By this line of analysis, North Korea’s ideology cannot survive without a vicious great power enemy against which the entire society must be mobilized.

Thus, in the words of U.S. nuclear scientist Siegfried Hecker, “In spite of having received numerous security guarantees that promised to respect its sovereignty along with assurance not to invade the country, Pyongyang still feels threatened.”<sup>39</sup> Notwithstanding formal U.S. assertions, for example, in the 2005 Joint Statement at the Six Party Talks that “it has no intention to invade or attack North Korea with nuclear or conventional weapons,” the DPRK routinely warns its citizenry that a U.S. attack is imminent. Nor has nearly one and a half billion dollars worth of U.S. foreign assistance to the DPRK since 1995 dented North Korea’s insistence that the United States poses an existential threat to the North Korean state.<sup>40</sup>

Within the political limits on U.S. policy,<sup>41</sup> it may not be possible to disprove hostile intent toward the DPRK because “[t]he external threat is used to justify the need for the bomb and the sacrifices North Korea’s people are asked to make.”<sup>42</sup>

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<sup>34</sup> The DPRK’s original great-power sponsor and nuclear-powered protector, the Soviet Union, collapsed. North Korea’s other great-power ally, China, is now so friendly with the United States and South Korea that the DPRK cannot be sure of Chinese support in the event of a conflict with the United States or the Republic of Korea. Therefore, it is rational, even if misguided, for the DPRK to develop its own nuclear weapon until the United States makes peace with North Korea and until Japan and South Korea reconcile with North Korea, on terms acceptable to the DPRK.

<sup>35</sup> See chapters 1 and 2 of Bruce Cumings, *North Korea: Another Country*, New Press, 2003, or his *Inventing the Axis of Evil: The Truth about North Korea, Iran and Syria*, New Press, 2004. See also Peter Hayes, *Pacific Powderkeg: American Nuclear Dilemmas in Korea*, Lexington Books, 1990, on the three decades during which the United States stationed nuclear weapons in South Korea.

<sup>36</sup> Public Broadcast Service interview, Washington, DC, 17 September 1999, as cited in Samuel S. Kim, *North Korean Foreign Relations in the Post Cold War World*, Strategic Studies Institute, April 2007, p. 62.

<sup>37</sup> Gavan McCormack, “Japan and North Korea: the Long and Twisted Path toward Normalcy,” Working Paper Series, U.S.-Korea Institute at SAIS, December 2008, p. 4.

<sup>38</sup> B.R. Myers, *The Cleanest Race: How North Koreans See Themselves—And Why It Matters*, Melville House Publishing, 2009, p. 87.

<sup>39</sup> Siegfried Hecker, “Lessons Learned from the North Korean Nuclear Crisis,” *Daedalus*, Winter 2010, p. 44.

<sup>40</sup> See “Assistance to North Korea,” Congressional Research Service, 24 December 2008.

<sup>41</sup> In the blunt words of a former U.S. State Department Korea policy official, “The United States will not become a strategic partner with the DPRK, will not guarantee DPRK regime survival against internal threats, and will not take steps that might undermine the United States alliance relationships with the Republic of Korea and Japan.” David Straub, “United States-North Korea, Japan-North Korea Relations,” First Northeast Asia Future Forum, Chung-Ang University, 13 July 2009, p. 11.

<sup>42</sup> Hecker, “Lessons Learned,” p. 52.

It is possible, some scholars argue, that nuclear weapons are now simply part of the DPRK's political elite's conception of North Korea's national identity as a "powerful and prosperous socialist state."<sup>43</sup> Nuclear weapons are Kim Jong-il's only measure of achievement and success in a rule otherwise characterized by famine and economic collapse. Or, because "Pyongyang views nuclear weapons as diplomatic equalizers with its much more prosperous and powerful, but non-nuclear rivals, South Korea and Japan."<sup>44</sup> In particular, having immensely powerful weapons that the immensely more prosperous and domestically and internationally accomplished South Korean regime does not have is the necessary insurance that reconciliation and reunification will take place only on terms acceptable to the North.<sup>45</sup>

In short, "peace" as denuclearization may be an "iffy" proposition, as well as a long-term one. This is not an argument for not engaging or not negotiating with North Korea. The possibly slim chance for success at denuclearization is an argument for not (or no longer) excluding human rights concerns from such engagement and negotiations as would be necessary to discern North Korea's intentions and conditions.

### ***Peace as an End to the Korean War***

Along with resolving the standoff over the DPRK nuclear weapons programs, the "peace first" argument against addressing North Korea's human rights problems also often included waiting until after the attainment of a formal peace agreement to replace the 1953 Korean War armistice, a longtime North Korean demand.<sup>46</sup> If possible, a peace agreement to formally end the Korean War was (and is) a worthy goal, and both the Clinton and Bush administrations were willing to try. President Clinton initiated four party talks for this purpose, and such talks are provided for in the September 2005 Joint Statement of the Six Party Talks, which calls for subsidiary negotiation between the relevant parties. But so far there is not even agreement as to which and how many states should be included in these discussions.<sup>47</sup>

And unless it is limited to a general declaration that a state of war no longer exists on the Korean peninsula, there are many genuinely complicated issues and political landmines—the U.S. "nuclear umbrella" over South Korea, or even the longstanding U.S.-ROK military alliance—to work through. Other potential stumbling blocks include a mutual pull-back and draw-down of forces and armaments from the DMZ and the role and size of the U.S. forces in Korea—which may take a very long time to negotiate, if agreement can be reached at all.<sup>48</sup>

Even more fundamentally, with regard to the pursuit of peace without concern for human rights, whether it

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<sup>43</sup> See Jacques Hymans, "Assessing North Korean Nuclear Intentions and Capacities," *Journal of East Asia Studies*, May-August 2008, pp. 259-92, for an analysis of nuclear weapons as part of North Korea's national identity.

<sup>44</sup> Hecker, "Lessons Learned," p. 52.

<sup>45</sup> See Andrei Lankov, "Caution against Overestimating Pyongyang's Move," Nautilus Institute Policy Forum Online, 3 July 2008 on why North Korea is unlikely to give up its nuclear weapons, or Hecker, "Lessons Learned," pp. 44-56.

<sup>46</sup> Until this is done, the DPRK and the United States are technically in a "state of war," as an armistice is really only an agreement to cease fire and separate forces, not an agreement that settles the political problems that gave rise to armed conflict.

<sup>47</sup> Hence the odd formulation in the 2007 Inter-Korean Summit Declaration calling for such negotiations between "three or four parties."

<sup>48</sup> It may be hard for North Korea to pull back its "conventional deterrent" (the forward-deployed Seoul-threatening long-range artillery, etc.) at the same time as it is being asked to phase out its "nuclear deterrent." Similarly, the DPRK might ask or demand a *de facto* or *de jure* end of the ROK-U.S. alliance, an end to the U.S. "extended deterrence," i.e., nuclear umbrella over South Korea, and/or the removal from the Korean peninsula of all U.S. weapons and weapons systems capable of projecting U.S. military power north of the 38<sup>th</sup> parallel, gutting the basic ROK-U.S. deterrence strategy on the peninsula.

is a peace that removes nuclear weapons from the Korean peninsula or a peace agreement to legally terminate the Korean War, there is more than ample room to doubt that endemic silence regarding the consistent pattern of gross and severe violations of internationally recognized human rights in North Korea is honestly compatible with sustainable reconciliation or genuine peaceful coexistence. Waiting to raise human rights concerns until after peace is achieved—if it can be achieved—runs the risk that North Korea would then claim that any such articulated concerns were contrary to the peace and posed a threat to the peace that if pursued would nullify such peace agreements as might have been painstakingly negotiated over an extended period.

## THE FLAWED IDEA OF “ECONOMIC DEVELOPMENT FIRST”

Along with the notion that raising human rights concerns need to await the achievement of peace, it was also suggested by South Korean progressives that the “ultimate goal of enhancing rights” in North Korea should “wait until North Korea’s national per capita income and GDP reaches a certain level.”<sup>49</sup> Thus, a former South Korean minister of unification notes that in East Asia (South Korea, Japan, Singapore, Taiwan, and Hong Kong are specified), respect for human rights was not achieved until per capita income climbed over 20,000 USD, whereas North Korea’s per capita income as of 2006 was as low as 400–500 USD per annum.

There is something profoundly ahistorical about this line of reasoning. Outcome-determinative strides were indeed achieved in various countries when members of an emerging middle class were there to join students, workers, and religious leaders in demonstrations against dictatorship and autocracy. But democracy, the rule of law, and respect for human rights did not, and do not, just come along once economic development has produced a sizable middle class. And, almost everywhere, but certainly in Korea south of the 38<sup>th</sup> parallel, sustained efforts to oppose dictatorship and promote human rights began when per capita income was very low indeed.

Presently, the idea that raising human rights concerns about North Korea should await the enlargement of a middle class in the DPRK finds little support in the increasingly sizable North Korean refugee community now resident in South Korea. For all the obvious reasons, the former North Koreans who have successfully fled persecution and repression in the North are urgently anxious for action in support of their family and friends still held in detention or trapped in the various subsystems of deprivation and repression in the DPRK.

The “economic development first” argument also fundamentally ignores the vital contribution of civil, political, economic, and social freedoms to sustainable economic development, and especially poverty reduction and human security as a part of economic development.<sup>50</sup>

At the time the “economic development first” argument was being made, it was associated with the conviction, particularly among progressive sectors in South Korea, that the July 2002 “economic management

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<sup>49</sup> Jeong Se-hyun, “Finding a Reasonable Approach to North Korean Human Rights Issue,” *International Symposium on North Korea Human Rights Issues 2007*, ROK National Human Rights Commission, Seoul, p. 223.

<sup>50</sup> This relationship was most notably outlined by Amartya Sen in *Development as Freedom*, Oxford University Press, 1999, particularly in positing the direct, instrumental, and constructive (the place of “rights” in understanding “economic needs” in a social context) role in economic development, pp. 147-48. This is now widely recognized and endorsed by international development agencies as the “rights-based” or “rights-respecting” approach to development.

improvement measures” in North Korea were part of a economic “reform and opening” process that, coupled with the “marketization from below” that occurred in the mid-to-late 1990s and early 2000s, was going to lead to economic development.<sup>51</sup> In retrospect, this now looks different.<sup>52</sup>

For its own domestic political reasons, starting around 2004 North Korea chose a different economic policy course, even after the Bush administration dropped the hostile rhetoric and entered into serious dialogue and negotiations with North Korea. Apparently fearful that “marketization from below” was the opening wedge of capitalism’s ideological pollution, the DPRK initiated a series of still ongoing measures to restrict and reverse marketization and return to centrally planned and controlled state-socialistic practices that almost all economists see as inimical to sustained economic development.<sup>53</sup>

North Korea heralds its “new revolutionary upsurge,” and Korea scholars now describe what they see as “re-Stalinization,” the return to “military communism” or “socialist neo-conservatism”:

The era of [economic] relaxation and experimentation, which prompted the beginning of inter-Korean cooperation, is well and truly over. North Korea is headed for a major retreat, back to military communism. Only those elements of market economy which are necessary to keep the country afloat are being preserved.<sup>54</sup>

[S]ince around 2004/2005, and even more so since 2008, North Korea is returning to orthodoxy as it was created starting in the late 1950s and early 1960s and resembling a strongly Koreanized version of the Stalinist Soviet model. This refers to an emphasis on classical socialism with a strong nationalist component, values such as collectivism and self-sacrifice, militarism, political repression, xenophobia and the prospect of a rosy future in exchange for enduring the temporary hardships.<sup>55</sup>

[S]ince 2004 the North Korean government has persistently pursued a policy of counter-

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<sup>51</sup> The North Koreans, however, eschewed the use of the word “reform,” and reportedly, Kim Jong-il himself denounced “reform and opening”—Chinese- or Vietnamese-style economic modernization—when South Korean President Roh raised the issue at the 2007 inter-Korean summit.

<sup>52</sup> “In hindsight, we now know that the economic adjustment measures were indeed (just) another perfection drive, i.e. an attempt to make the system work and to replace it.” Rudiger Frank, “Socialist Neoconservatism and North Korean Foreign Policy in the Nuclear Era,” in *New Challenges to North Korean Foreign Policy*, ed. Park Kyung-ae, Palgrave Macmillan, 2010.

<sup>53</sup> These included gradual, year-by-year attempts to further suppress markets to force food distribution back into the state food rationing system known as the Public Distribution System, and forced sales of consumer goods back into state stores, where sellers and buyers could be brought under state control. After abruptly ending a large-scale USAID food delivery program, to solve the ongoing food crisis, rather than allowing farms to grow and sell food, the regime resorted to 1950s and 1960s-style Stakhanovite socialistic campaigns called the “150-day battle” and the subsequent “100-day battle”—compulsory mobilizations sending city folk out to the countryside to assist in planting and harvesting food for the state food rationing and distribution system. (For a description of this see Andrei Lankov, “Pyongyang Strikes Back: North Korean Policies of 2002-08 and Attempts to Reverse ‘De-Stalinization From Below,’” *Asia Policy*, no. 8, July 2009. Most recently, the regime initiated severe currency devaluation and exchange restrictions aimed at “reviving the state’s planned sectors and killing the market and the private sector” “in order to destroy the newly emerged North Korean middle class.” Hyeong Jung Park, “Impact and Outlook of Currency Exchange in North Korea,” Online Series CO 09-49, Korea Institute for National Unification (KINU), 17 December 2009, p. 8, and Rudiger Frank, “Currency Reform and Orthodox Socialism in North Korea,” Nautilus Institute Policy Forum Online 09-092A, 3 December 2009, p. 3. See also Stephan Haggard and Marcus Noland, “The Winter of Their Discontent: Pyongyang Attacks the Market,” Peterson Institute of International Economics Policy Brief PB10-1, January 2010.

<sup>54</sup> Leonid Petrov, “Pyongyang Turns Back the Clock,” Nautilus Institute Online Forum 09-053A, 1 July 2009.

<sup>55</sup> Rudiger Frank, “Socialist Neo-conservatism and North Korean Foreign Policy in the Nuclear Era,” in *New Challenges to North Korean Foreign Policy*, ed. Park Kyung-ae, Palgrave Macmillan, 2010.

reform, with the clear objective of reviving ... the Stalinist system that collapsed in 1994-2004.... The counter-reform measures have damaged the country's economy such that a self-sustaining economic revival is virtually impossible. Nonetheless, these measures continued to be implemented with great persistence.<sup>56</sup>

It is, of course, the sovereign prerogative of the DPRK's rulers to select the economic system of their choice. But, presently, it makes even less sense to defer criticism of North Korea's human rights record until economic growth has taken hold or taken off than it did during the sunshine-filled days following the first inter-Korean summit in 2000 and Pyongyang's July 2002 "economic improvement measures." Now that North Korea presently opts for policies that close markets, constrict enterprise, and force economic activity back under state control, human rights in general and economic and social rights in particular, including the ideas associated with the "rights-based approach to development," have even more salience.<sup>57</sup>

Numerous analysts posit that *sooner or later* it will be recognized that retrograde state socialist economics will not lead to development or prosperity, and that *sooner or later* North Korean leaders will have to opt for some variation of Chinese-style "reform and opening" or Vietnamese-style "renovation." And that *sooner or later*, economic development will result in further monetization and marketization, and even the economic and social freedoms and spaces that are necessary for enterprise. And that *sooner or later* such policies will result in a North Korean middle class desirous of political as well as economic modernization. One may hope that this prediction will come to pass.<sup>58</sup> But deferring human rights concerns until it does seems like awfully thin gruel.

## THE SAD FALLACY OF "FOOD FIRST"

During the decade of South Korean "sunshine" and "peace and prosperity" toward North Korea, it was also asserted that raising human rights issues, particularly matters related to civil and political rights, should wait until the great famine of the 1990s was over, North Korea's food crisis was solved, and Korean people north of the DMZ were no longer starving or malnourished. This gave rise to an unfortunate debate, particularly in South Korea, over whether some rights—economic and social rights, such as the right to food or freedom from hunger—trump other rights, such as freedom of association, speech, thought, and belief, or the deprivation of physical liberty for reasons not permitted under international law.<sup>59</sup>

At the international level, it had long been agreed by large majorities of UN Member States that civil and political, economic, social, and cultural rights are "universal, indivisible, inter-dependent and inter-related and mutually reinforcing."<sup>60</sup> In the vernacular, human rights begin with a good breakfast—but go on from there to encompass virtually all of the activities and conditions that people, and peoples, need to live a life of dignity. As the list of human rights set forth in the Universal Declaration and the international human rights

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<sup>56</sup> Lankov, "Pyongyang Strikes Back," p. 49.

<sup>57</sup> See pp. \*40-41 for an outline of how economic assistance to the DPRK could address the human rights aspects and components of economic development.

<sup>58</sup> For a thoughtful presentation of eventual marketizing economic assistance, see "North Korea Inside Out: The Case for Economic Engagement," Asia Society, December 2009, though the report notes wistfully that "the DPRK appears not to want it" (p. 9). The same points are made in the numerous writings of the Russian economist Georgy Toloraya, a Korean-speaking diplomat formerly posted in both Pyongyang and Seoul.

<sup>59</sup> This debate was also prompted by the ill-considered opposition to humanitarian food aid to the North.

<sup>60</sup> See para. 5 of Vienna Declaration of the World Conference on Human Rights, UN Doc A/CONF.157/23, 12 July 1993, and General Assembly Resolution, UN Doc A/RES/60/25, 3 April 2006, which goes on to add that "...all human rights must be treated in a fair and equal manner, on the same footing, and with the same emphasis."

conventions is indeed quite long, there will inevitably be divisions of labor focusing on various rights, as no single person or organization can possibly tackle them all simultaneously. But attempts to posit or establish a hierarchy of rights are self-defeating.

In the unfortunate debate about humanitarian aid versus human rights, the “food first” argument overlooked the essential relationships of the freedoms of travel, association, and expression to starvation prevention and famine-coping mechanisms, not to mention the role of a free press in calling attention to acute food shortages.<sup>61</sup>

“Food first” proponents also averred that humanitarian food aid to the DPRK would improve human rights in North Korea. While the provision of humanitarian food and medical assistance to North Korea was (and is) entirely justifiable (particularly if carried out in ways that maximize end-use monitoring and aid delivery to the most vulnerable groups), the assertion that such aid improved human rights in North Korea confused food security with what Article 11 of the Covenant on Economic, Social, and Cultural Rights calls “the right of everyone...to food” and “the fundamental right of everyone to be free from hunger.” Any other government, organization, donor, or philanthropist that makes up the difference between domestic food production and the minimal nutritional needs of the people of North Korea can contribute, even guarantee, food security for those citizens the regime allows access to food. However, as with other States Parties to the Covenant on Economic, Social, and Cultural Rights, it is the North Korean state that has the responsibility and “obligation[s] to *respect*, to *protect*, and to *fulfill*” the right to food.<sup>62</sup>

With respect to violations of the right to food, the responsibilities of the state are spelled out even more clearly:

In determining which actions or omissions constitute a violation of the right to food ... the state has to demonstrate that every effort has been made to use all of the resources at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations ... to the maximum of its available resources.... A state ... has the burden of proving that ... it has unsuccessfully sought to obtain international support to ensure the availability and accessibility of the necessary food.<sup>63</sup>

Thusly, the UN Secretary General reports precisely to the General Assembly that “the Democratic People’s Republic of Korea is failing to fulfill its obligations under international law to protect the right to adequate food.”<sup>64</sup>

As with the “peace first” argument for excluding human rights issues from the engagement agenda with North Korea, the “food first” exemption—*don’t raise other human rights issues until hunger and malnutrition in North Korea have been banished*—also looks different now that the famine relief for North Korea, at one point

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<sup>61</sup> See Stephan Haggard and Marcus Noland, *Famine in North Korea: Markets, Aid and Reform*, Columbia University Press, 2007. (At the height of the North Korean food shortage, the regime continued the criminalization of famine coping mechanisms. Those laws remain on the books but are often circumvented by petty corruption.)

<sup>62</sup> “General Comment 12, The Right to Adequate Food,” Committee on Economic Social and Cultural Rights, Geneva, 12 May 1999, p. 4, para. 15, UN Doc E/C.12/1999/5. (Italics in the original.)

<sup>63</sup> *Ibid.*, para. 17, pp. 4-5. (In this regard, it is noteworthy that North Korea declined no less than six requests for a visit by the UN Special Rapporteur on the Right to Food.)

<sup>64</sup> Report of the Secretary General, “Situation of Human Rights in the Democratic People’s Republic of Korea,” UN Doc A/64/319, 24 August 2009, section I. para. 8, p. 6.

the international community's largest humanitarian famine relief program, is now well into its fifteenth year. Unfortunately, the DPRK does not seem to be taking the steps that many economists and food specialists see as necessary for resolving North Korea's chronic food shortages.<sup>65</sup>

In sum, while engagement with North Korea, as carried out in the South Korea's "Sunshine" and "Peace and Prosperity" policies, was meant to transform the DPRK through extensive contact with South Korea and South Koreans, the contradictions of hoping for transformation while keeping human rights issues off the engagement agenda were never resolved. Perhaps the advocates of an engagement policy deliberately stripped of a human rights component assumed that, in due course, the various and substantial investments, assistance, loans, and payments (both above board and under the table) extended to North Korea would, further down the line, bring the sorts of leverage that would facilitate the eventual raising of human rights concerns. However, this line of thought overlooks the DPRK's well-practiced "ability to turn its own economic dependency into an obligation and a liability for the donor rather than allowing the subsidies ... to become a source of leverage for the donor."<sup>66</sup>

### III. HUMAN RIGHTS WITHOUT NEGOTIATIONS OR ENGAGEMENT: U.S. POLICY TOWARD NORTH KOREA (2002–2005)

The first five years of President George W. Bush's two terms of office represent attention to North Korean human rights issues, but without engagement of the North Koreans. According to a major account of President Bush's North Korea policy, "The Christian right—a key part of the President's domestic political base—[pushed] to put North Korea's appalling human rights record high on the U.S. agenda."<sup>67</sup> President Bush's positive actions, particularly his symbolic meetings with prominent North Korean refugees previously detained in the DPRK's prisons and labor camps, provided unparalleled recognition of the suffering and claims of the victims and survivors of human rights violations. These meetings and associated presidential statements raised global visibility of North Korea's violations to new heights.<sup>68</sup>

However, at a time when North Korea very much wanted to talk to the Americans, U.S. diplomats were not allowed to talk to them, formally or informally, about human rights or any other subject of concern. Even after the start of the Six Party Talks, the U.S. delegation was initially allowed to do little more than read statements to, or at, the North Koreans who were in the same room.<sup>69</sup> In essence, President Bush raised the

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<sup>65</sup> See Haggard and Noland, *Famine in North Korea*, and Hazel Smith, "Food Security" (chapter 5) and "Korean Security: A Policy Primer" (chapter 13) in *Reconstituting Korean Security*, ed. Hazel Smith, United Nations University Press, 2007.

<sup>66</sup> Scott Snyder, *China's Rise and the Two Koreas*, Lynne Rienner, 2009, p. 109.

<sup>67</sup> Mike Chinoy, *Meltdown: The Inside Story of the North Korean Nuclear Crisis*, St. Martin's Press, 2008, p. 215.

<sup>68</sup> These efforts, along with the European Union-sponsored resolutions starting in 2003 on the situation of human rights in the DPRK at the UN; the 2004 North Korea Human Rights Act unanimously approved by the Senate and House of Representatives, which President Bush signed into law; the articulated concerns of the Japanese public and government over North Korea's kidnappings of Japanese citizens in Japan in the 1980s; and a good deal more documentation of violations based on the testimony of the growing number of North Korean refugees now resident in South Korea, are what elevated North Korea's human rights record into a prominent international issue. A recent *Washington Post* headline rued that human rights concerns about North Korea were on the "back burner," but it was not all that long ago that these concerns were not even on the stove.

<sup>69</sup> See Yoichi Funabashi, *The Peninsula Question*, Brookings Institution Press, 2007, for accounts of China, as the chair of the talks, arranging the furniture so as to get the North Koreans and Americans close enough to each other to be able to converse.

issues of human rights, but U.S. policy confusion and paralysis prevented U.S. diplomats from following up with North Korea on human rights or anything else.<sup>70</sup>

The 2004 North Korea Human Rights Act, which President Bush signed into law, mandated the appointment of a Special Envoy for Human Rights in North Korea. A former domestic policy staff attorney was selected by President Bush. Disappointing many human rights advocates, this potentially important post was treated as a very part-time appointment, with the Special Envoy continuing a law practice in New York City. Little was accomplished.<sup>71</sup>

Further, President Bush's "Human Rights Initiative" toward North Korea, as it was called, was associated with the "Proliferation Security Initiative" and the "Illicit Activities Initiative." While those later efforts are entirely defensible in their own right (nation-states are certainly entitled to take action to protect their currency from counterfeiting), the administration officials associated with those initiatives made little effort to deny a larger political purpose: the hoped-for demise of the "evil" regime. Along with other administration statements and policies on North Korea after 9/11—inclusion in the "axis of evil," the new "preventive attack" strategic doctrine, nuclear retargeting, and gratuitously insulting name-calling<sup>72</sup>—President Bush's human rights statements and symbolic gestures, however positive in and of themselves, became associated with the policy and politics of "regime change."<sup>73</sup> In the words of former U.S. negotiator Charles ("Jack") Pritchard, North Korea policy was "captured by those in the administration who [sought] regime change."<sup>74</sup>

In actuality, according to the Bush administration's point man on North Korea, Assistant Secretary of State for East Asia and the Pacific James Kelly, "regime change was not the policy. But it was so broadly talked about around the edges of the administration that it may well have become a permanent perception—and perceptions and realities certainly intermix in these matters."<sup>75</sup>

Others saw ulterior motives behind President Bush's human rights initiatives. In the words of a Heritage Foundation arms-control specialist, "The U.S. ... has been focusing clearly on trying to use the human rights issue as another way of beating up North Korea, as another way of providing an impediment to resuming nuclear negotiations.... [T]he human rights organizations ... try to improve the human rights and the conditions of the citizens of North Korea, but I think the Bush administration is using that issue along with counterfeiting and money-laundering, etc, as a way of putting speed bumps in the path back to the Six Party

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<sup>70</sup> On the policy confusion and paralysis, see Charles ("Jack") Pritchard, *Failed Diplomacy: The Tragic Story of How North Korea Got the Bomb*, Brookings Institution Press, 2007.

<sup>71</sup> In response, for the 2008 Reauthorization, Congress stipulated that the post be made a full-time position. And to give Congress a voice in the appointment, the post was raised to the ambassadorial level, giving the Senate Foreign Relations Committee a role in the confirmation process.

<sup>72</sup> If one wants to ask foreign leadership to show greater respect for human rights, it seems counterintuitive and almost certainly counterproductive to call that leader a "loathsome" "pygmy" or the like.

<sup>73</sup> "Regime change," the shorthand slogan for actively seeking the overthrow of a government of another UN Member State, should not be conflated with the argument that "the regime cannot change"—the argument that Kim Jong-il is so committed to the social structure and ideology created by his father and himself, and is otherwise so calcified and sclerotic, that neither domestic or foreign policy will or can be changed as long as Kim Jong-il is in charge. Nor should externally-driven efforts for regime change be confused with the possibility that a sclerotic regime can hollow out and collapse from within of its own accord on account of its depleted political economy and the disaffection of its citizenry.

<sup>74</sup> Pritchard, *Failed Diplomacy*, p. 131.

<sup>75</sup> James Kelly, "The United States and East Asia: Assessing Problems and Prospects," Senior Policy Seminar, The East-West Center, Appendix, p. 21, as cited in Hyeong Jung Park, "Looking Back and Looking Forward: North Korea, Northeast Asia and the ROK-US Alliance," The Brookings Institution, December 2007, p. 11.



Talks.”<sup>76</sup>

Declarations on North Korea’s human rights violations thus became associated with threats against North Korea and opposition to negotiations with the DPRK, an association that still lingers. The 2004 North Korean Human Rights Act, signed into law by President Bush, was seen in some quarters in the United States and abroad as part of a buildup of public opinion to support a coming U.S. attack on North Korea. According to a former State Department Korea policy official, while President Bush never intended to attack North Korea, “[his] diplomacy helped to create a situation in which not only the North Koreans [said] they fear[ed] an attack, but in which many South Koreans believe[d] that the United States might attack North Korea at great risk of the Republic of Korea.”<sup>77</sup> According to both the former American ambassador to Seoul and the former South Korean ambassador to Washington, among South Korean President Roh Moo-hyun’s “greatest fears was that the U.S. might attack North Korea” and “precipitate a military conflict on the Korean peninsula.”<sup>78</sup>

The perceived association of human rights concerns with implacable verbal hostility to the North Korean regime brought little or no discernible improvement to the human rights situation in North Korea.<sup>79</sup> This association, however, led to the questioning in many quarters of the motivations and purpose behind raising human rights concerns about the DPRK. One prominent progressive South Korean organization opposed the European Union’s (EU) resolution at the UN Human Rights Commission, fearing it would create a pretext for the United States to “acclaim itself as the liberator” and “invade North Korea and turn the peninsula into a bloody theater of war.”<sup>80</sup>

In addition to gratuitously insulting name-calling, bellicose-sounding strategic doctrines, and the substantially programmed collapse of the 1994 Agreed Framework,<sup>81</sup> the United States’ unwillingness to negotiate seriously resulted in renewed production and processing of plutonium at the previously mothballed Yongbyon reactor, the end of North Korea’s nuclear ambiguity by its explicit claim to be a nuclear weapons state, additional missile tests, the first test explosion of a nuclear device, and the proliferation of nuclear know-how to a regime in the Middle East.<sup>82</sup>

## DÉJÀ VU: A DIFFERENT DIRECTION, AGAIN TOO LATE IN THE DAY?

When the United States was not talking to the North Koreans, its position was that if or when it did, it would talk to them about human rights. And when it did start talking seriously with them—after the DPRK had unloaded and reprocessed enough plutonium for some six or more nuclear warheads, tested a nuclear device, and proclaimed itself to be a proud and dignified nuclear weapons state—discussion of human

<sup>76</sup> Bruce Klingner, “North Korea: 2007 and Beyond,” The Brookings Institution, 14 September 2006, p. 28.

<sup>77</sup> David Straub, KORUS House lecture, 24 October 2006, as cited in Park, “Looking Back and Looking Forward,” p. 11.

<sup>78</sup> Thomas Hubbard and Han Sung-joo respectively, *Ambassadors’ Memoir: U.S.-Korea Relations through the Eyes of the Ambassadors*, Korea Economic Institute, 2009, pp. 183, 191.

<sup>79</sup> The North Koreans have, however, taken note of the international condemnation of their human rights record. While denying that there are any human rights violations, they recently inserted a respect-for-human-rights provision in their revised constitution.

<sup>80</sup> Human Rights Sarangbang, cited in “South Korea and Human Rights in North Korea,” *Hankyoreh* 21, 24 April 2003.

<sup>81</sup> See John Bolton, “Driving a Stake through the Agreed Framework,” in *Surrender Is Not an Option: Defending America at the United Nations*, Threshold Editions, pp. 100-18. (Of the risk that killing off the Agreed Framework might lead to resumed North Korean nuclear bomb-making, Bolton says only that this would be a matter for contingency planning, p. 117.)

<sup>82</sup> Some of these provocative actions by North Korea might have happened anyway, as many analysts see these as part and parcel of the DPRK’s negotiating strategy, if not also its fundamental foreign policy direction.

rights concerns was put off. It was projected to take place in association with the bilateral Working Group on DPRK-U.S. Normalization Relations initially envisioned to get into high gear during the third phase of the Six Party Talks.<sup>83</sup> However, key aspects of the second phase, which were initially envisioned in the October 3, 2007, “Second Phase Actions for the Implementation of the Joint Statement” to take a matter of weeks, instead stretched out to nineteen months before the process then stalled out over “sequencing” and verification complications, combined with Kim Jong-il’s illness and the inevitable policy hiatus occasioned by U.S. presidential campaigns.

Assistant Secretary of State Christopher Hill, the lead U.S. negotiator with North Korea, had clearly posited the locus of human rights discussions with the DPRK. “The issue of human rights will be a key element of the normalization process. We will continue to press the DPRK for the kind of meaningful progress that will be necessary for the DPRK to join the international community,” he told Congress in 2008. President Bush similarly said, “[I]n the process of normalizing relations, meaningful progress should be made on improving North Korea’s human rights record.”<sup>84</sup>

However, at the tail end of George W. Bush’s two terms of office, as had also happened with President Clinton, U.S.-DPRK negotiations again stalemated on verification issues. Normalization discussions barely got under way, let alone up to speed. Nor had the working group on a regional peace and security mechanism, another entry point for human rights concerns, gotten off the ground.<sup>85</sup> Time ran out on the Bush administration’s belated opportunity to raise human rights concerns with the DPRK.

The two years that President Bush was willing to allow serious negotiations with the DPRK were almost entirely dominated by narrow and quite preliminary arms-control issues (which are what the United States wanted to discuss) associated with phase two. While the phase two project of “disablement” of the reactor and reprocessor at Yongbyon was an entirely reasonable place to start denuclearization, in retrospect, in the face of delay after delay, on points large and small, it may have been more efficacious to push ahead simultaneously with more far-reaching discussion on normalization of relations (which is what the DPRK says it wanted to talk about).<sup>86</sup>

As will be examined below, the normalization discussion is indeed a primary location for a human rights dialogue with North Korea. Taking on the normalization discussion earlier in the process, including a human rights component, would have avoided congressional and public misunderstanding that negotiating with the DPRK meant shelving human rights concerns articulated during the earlier years of Bush’s presidency.

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<sup>83</sup> For accounts of the change in U.S. policy in the last two to three years of the Bush administration, see Chinoy, *Meltdown*, Glenn Kessler, *Confidante: Condoleezza Rice and the Creation of the Bush Legacy*, St. Martin’s Press, 2007, chapter 3, and David Sanger, *The Inheritance: The World Obama Confronts and the Challenges to American Power*, Harmony, 2009, chapters 9, 10, and 11.

<sup>84</sup> Statement of the ROK-U.S. Summit, Seoul, South Korea, 6 August 2008.

<sup>85</sup> See pp. \*38-39 below.

<sup>86</sup> The step-by-step approach to normalization of relations got no further than the symbolic U.S. “delisting” of the DPRK as a state sponsor of terrorism.



## PART TWO

### AN ALTERNATIVE PARADIGM: THE UNTRIED APPROACH

#### NEGOTIATIONS AND ENGAGEMENT WITH A HUMAN RIGHTS COMPONENT

The organic relationship between peace, security, and human rights (or the absence of all three) is particularly acute in the case of North Korea. The search for peace on the Korean peninsula focuses most often on North Korea's nuclear weapons programs, which the DPRK says it needs, presently, to guarantee its security. A perceptive and experienced expert on North Korea posits that "North Korea's pariah status [is] the cause of its insecurity."<sup>87</sup> North Korea's pariah status cannot be mitigated or even tackled without taking up its human rights problems. As discussed above, failing to do so over the last decade and a half did not work. And the arguments variously put forward for keeping human rights considerations out of the search for peace and security on the Korean peninsula have not held up.

Attention will now turn to the as yet untried approach to North Korea: engagement and negotiations with a human rights component. A number of suggestions will be made as to how, when, and where human rights considerations might be introduced into a search for peace and reconciliation on the Korean peninsula and in Northeast Asia. Initially, some of these ideas may sound quite radical, since the combination has heretofore been widely seen as taboo and counterproductive to progress in arms control. To the contrary, as will be seen, human rights concerns do not have to be shoehorned into any such extended negotiations as may take place. Human rights issues arise necessarily and organically in any serious search for peace and security.<sup>88</sup>

This section will sketch out what engagement and negotiations that take human rights seriously might look like, particular in terms of the two most important elements of any possible peace process: the Six Party

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<sup>87</sup> Georgy Toloraya, "Continuity and Change in Korea: Challenges for Regional Policy and U.S.-Russia Relations," The Brookings Institution, February 2009.

<sup>88</sup> As was recently posited by President Obama in his recent Tokyo remarks, "Supporting human rights provides lasting security that cannot be purchased in any other way." Suntory Hall, Tokyo, 14 November 2009.

Talks (if they can be revived), and the achievement of a less antagonistic relationship between North Korea and the United States as well as with South Korea and Japan.

Specifically, if the Six Party Talks can be revived and if they get back to what was previously envisioned for “phase three,” human rights issues will arise in virtually all of the “working groups” within the Six Party Talks, with the exception of the Working Group on Denuclearization. And while the other working groups will not succeed or progress unless there is progress on denuclearization, denuclearization will not progress unless there is momentum in the other working groups that are equally vital to the six party process; those working groups, and subsidiary negotiations, contain what North Korea will insist upon in exchange for such steps toward denuclearization as the DPRK might be willing to resume.

## I. THE ROLE OF HUMAN RIGHTS IF THE SIX PARTY TALKS ARE REVIVED

In 2008, the Talks initially stalled out over “sequencing.” The North Koreans had declined to include their efforts to assemble a uranium enrichment program<sup>89</sup> and their proliferation of nuclear know-how and/or technology to Syria in the “complete and correct declaration of all their nuclear programs” as they were committed to do as part of the second or “disablement” phase agreements.<sup>90</sup> Because of the perceived priority to “cap” plutonium production and the fissile material so produced, a compromise was negotiated in Singapore whereby the North Koreans “received” and “took note” of American concerns and information on uranium enrichment and proliferation, and agreed to address these in the future, essentially moving the completion of North Korea’s “complete and correct” declaration into the third phase. Haltingly, the United States then proceeded to remove North Korea from the “State Sponsors of Terrorism” list, as it was committed to do by the “action-for-action” working principle of the Six Party Talks.

However, largely because of serious concerns regarding North Korea’s nuclear proliferation in the Middle East, the “Singapore compromise,” with its acceptance of only a partial North Korean declaration, was deeply unpopular within parts of the Bush administration, sectors of Congress, and elements of the foreign policy community in Washington (many of whom were beginning to publically express doubts that North Korea was really going to give up its nuclear deterrent).<sup>91</sup> So the administration decided to push back and did so, as Secretary of State Rice explained, by “mov[ing] up issues that were to be taken up in phase three, like verification, like access to the reactor, into phase two.”<sup>92</sup> With North Korea balking at signing the U.S.-proffered verification protocol, U.S. foreign policymaking went into remission during the presidential primaries and election campaign.

During this time, Kim Jong-il suffered an illness (probably a stroke), leading to a “succession process”<sup>93</sup>

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<sup>89</sup> A second pathway to producing nuclear weapons.

<sup>90</sup> “Second-Phase Actions for the Implementation of the September 2005 Joint Statement,” 3 October 2007.

<sup>91</sup> In the words of former State Department Korea official David Straub, “The George W. Bush administration’s decision not to pursue the Syria issue more vigorously ha[d] been widely criticized in Washington, DC, by Democrats and Republicans alike.” “United States-North Korea, Japan-North Korea Relations,” Northeast Asia Future Forum, Chung-Ang University, Seoul, 13 July 2009.

<sup>92</sup> Remarks at the Heritage Foundation, 18 June 2008, cited in Leon Sigal, “North Korean Policy on the Rocks: What Can Be Done to Restore Constructive Engagement,” accessible at [www.globalasia.org](http://www.globalasia.org), 30 June 2009, and <http://japanfocus>. Also available at Napsnet Policy Forum Online, 09-046A, 10 June 2009.

<sup>93</sup> The “succession process” included the promotion of Kim Jong-il’s youngest son as heir along with his sister’s husband as a kind of

and a general closing of the ranks ideologically, politically, sociologically, and economically in Pyongyang. In the words of a Russian Korea specialist: “To increase the vigilance and boost the flagging spirits of the population an external enemy was needed. So the country followed the familiar pattern of closing up and tightening the screws as demanded by the military and ideologues.”<sup>94</sup>

While the nuclear negotiating “sequencing” issue described above should have not been irresolvable, the DPRK was miffed because, as they saw it, the United States had “moved the goalposts” and because it had not received all the compensation that had been agreed to as part of the “disablement” part of phase two.<sup>95</sup>

North Korean foreign policy officials had also been describing to their various interlocutors—the steady stream of journalists, academics, and former policymakers visiting Pyongyang—deeper dissatisfactions with the Six Party Talks. As described to one such interlocutor, the North Koreans explained that though they had gone further than in Clinton’s time (“disablement” as opposed to a lesser “freeze”), they “received much less in return. It had gained neither promises of normalization or even any glimpse of the hoped for light-water reactors.” Additionally, “Further down the road [of the Beijing-based talks] they would have to discuss—and would probably be pressed for concessions on something really tangible, such as their reprocessed fissile materials and actual nuclear weapons.” Even further, North Korean officials opined, the renewed regime collapse speculations in South Korea and the West that accompanied Kim Jong-il’s illness indicated an ongoing unwillingness to genuinely coexist with the North Korean regime.<sup>96</sup>

For whatever sets of reasons, the North Koreans initiated an escalating series of provocative actions culminating in renewed missile and nuclear tests, actions proscribed by previous UN Security Council resolutions. In response to renewed and unanimous condemnations by the Security Council, the DPRK announced its withdrawal from the Six Party Talks (though the most definitive pronouncements were linked to the supposedly ongoing hostile policies of the United States).

The incoming Obama administration took a dim view of North Korea’s provocations, seeing them as attempts to “game the system.” The United States renewed its policy coordination with Japan and South Korea and avowed its determination not to reward the DPRK for contributing to the solution of a crisis it had deliberately initiated or to make additional concessions to North Korea for the implementation of previously made agreements. And while North Korea said it would return to the Six Party Talks only if satisfied with bilateral talks with the United States, the United States announced that bilateral discussions with North Korea had to take place in the context of the Six Party Talks and North Korea’s return to them.

It may take several rounds of discussion between the United States and the DPRK to satisfy both sides that

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regent, and a reorganization of the National Defense Council, the DPRK’s ruling body.

<sup>94</sup> Georgy Toloraya, “The New Korean Cold War and the Possibility of Thaw,” *Japan Focus*, <http://japanfocus.org/-Georgie-Toloraya/3136>, also available on Nautilus Institute, Policy Forum Online 09-39A, 14 May 2009.

<sup>95</sup> Angered that North Korea was not forthcoming with an accounting of the fate of previously abducted Japanese citizens, the government of Japan refused to provide any of its share of the previously pledged heavy fuel oil and equivalent that was to have been delivered to Pyongyang during phase two. And angered at North Korea’s unremitting and vituperative denunciations of the incoming South Korean presidency of Lee Myung-bak as an “American whore” and “traitor to the Korean nation,” South Korea balked at the delivery of its last 20 to 30 percent of its pledged fuel oil. (The North’s crude vituperations were occasioned by President Lee’s linkage of further substantial ROK bilateral aid and investment to North Korea to the DPRK’s denuclearization, whereas his predecessor, President Roh, had promised billions of dollars of aid and investment to North Korea, irrespective of their nuclear weapons programs.)

<sup>96</sup> Toloraya, “The New Korean Cold War and the Possibility of Thaw.”

there is sufficient common ground and sufficient strategic ambiguity to reopen the Beijing-chaired multilateral talks. It would then, perhaps, take several sessions of the Six Party Talks to obtain mutual satisfaction that all participants have adequately recommitted themselves to the previously agreed upon provisions and commitments that were associated with phase one and phase two, or as may be now amended upon mutual agreement. This may be a lot, or even too much, to work through.

But if it can be, in whole or in part, then there is the prospect that many of the subject areas previously designated to the various working groups will again become areas for active and ongoing negotiations. Almost inevitably, these will include creating a security and cooperative security system for Northeast Asia that the DPRK can be a part of; increasing economic and energy cooperation with North Korea (the compensation that North Korea demands for not selling its nuclear or missile know-how or technology to other states or even non-state entities); replacing the Korean War armistice with a peace agreement or peace regime, and most importantly, improving relations between the DPRK and both Japan and the United States.

All of these areas were covered in specific working groups or subsidiary discussions at or within the existing Six Party Talks agreements. And most importantly for our present purpose, human rights, humanitarian, and what are called human security issues arise in all of these discussion areas.

## **THE NORTHEAST ASIA PEACE AND SECURITY MECHANISM (NEAPSM)**

It has been envisioned that the Six Party Talks would evolve into a regional security cooperation mechanism or organization for Northeast Asia, roughly comparable to the larger Association of Southeast Asian Nations (ASEAN) and/or even larger Conference on Security and Cooperation in Europe (CSCE). This idea—a semi-permanent forum or overlapping forums for discussion of security and political cooperation among the regional powers to supplement (though not replace) the various bilateral military alliance relationships in the area—has resonance beyond the issues of the denuclearization of the Korean peninsula.<sup>97</sup>

It is now common that such international organizations or mechanisms include a statement of principles of interstate relations that guide relations between participating states and underpin the ensuing deliberations. These principles often include: sovereign equality, nonuse of force or the threat of force, nonintervention in internal affairs, peaceful settlement of disputes, fulfillment of obligations under international law, and so forth. It is also now common, though not universal, in international affairs to include among the statements of principles for interstate relations a provision relating to “respect for human rights and fundamental freedoms,” posited most famously in the charters or founding documents of the United Nations, the Organization for Security and Cooperation in Europe (OSCE),<sup>98</sup> the Organization of American States (OAS), and the African Union (AU).<sup>99</sup>

Compared to Europe, Africa, or the Americas, Asia as a geographic expression, has always had a harder time

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<sup>97</sup> A former U.S. negotiator with North Korea has suggested that if North Korea declines denuclearization, the other five participants in the Six Party Talks should proceed to construct such a collaborative mechanism that the DPRK could then join at such a time when it will accept denuclearization. See Pritchard, *Failed Diplomacy*, part III.

<sup>98</sup> Formerly the Conference on Security and Cooperation in Europe (CSCE). (Among the Six Party Talks participants, Russia and the United States are key members of the OSCE, and both Japan and South Korea have observer status.)

<sup>99</sup> Formerly the Organization of African Unity (OAU).

configuring itself as a regional unit owing to its huge size and cultural diversity.<sup>100</sup> Within Asia, ASEAN's charter initially did not have a human rights component, although human rights provisions have been added recently.<sup>101</sup> The Shanghai Cooperation Council (SCC), dominated by China and Russia, has no human rights provisions in its charter.<sup>102</sup>

Thus, one initial issue for NEAPSM would be whether or not its charter should contain provisions recognizing respect for human rights as a factor of state and interstate relations among its members.

Additionally, of course, inasmuch as a number of human security, human rights, and humanitarian issues transcend the individual national borders of the six parties—legal and illegal immigration, refugees, family reunion and communications, and the like—such a regional security mechanism should, it is often suggested, also contain frameworks and forums for discussion and resolution of border-transcending human issues such as science and technology, environment, human rights, narcotics transport, human trafficking, and contraband smuggling.<sup>103</sup>

## ECONOMIC AND ENERGY COOPERATION

During phase two of the Six Party Talks, the mandate of the Economic and Energy Cooperation Working Group dealt only with energy: organizing the delivery of heavy fuel oil to the DPRK and “equivalents” such as steel plates, piping, and other materials usable for the repair of North Korea's decrepit conventional electricity generators, in exchange for the DPRK's disabling of its nuclear reactor at Yongbyon. The mandate of this working group during phase three had not been determined by the plenary sessions at the Six Party Talks. But it was widely anticipated that phase three, if the negotiations got back on track and moved on to the actual dismantlement of North Korea's nuclear programs, would involve economic as well as energy assistance, as no one expects North Korea to undertake dismantlement or actually forgo nuclear weapons without substantial “compensation.” Inevitably, human rights, human security, and humanitarian issues will arise in discussions of economic cooperation between the DPRK and the other five parties to the talks.

### ***Large-scale Assistance: With or Without Human Security?***

Human security, humanitarian, and human rights issues will come up because the other parties will have to decide if the variety of compensations to North Korea are to be little more than economically-irrational and

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<sup>100</sup> At the UN, the “Asia and Pacific region” stretches all the way from the eastern shores of the Mediterranean to the island states of the South Pacific. “Asia” has often been thought of in four or five different cultural components: the Near East, South Asia, Central Asia, Southeast Asia, and Northeast Asia.

<sup>101</sup> This took some time and effort as ASEAN works by consensus and Burma/Myanmar is a member of ASEAN. Other members dragged their feet as well.

<sup>102</sup> A Russia- and China-led organization includes the now independent “stans” of Central Asia (Tajikistan, Kyrgyzstan, Kazakhstan, and Uzbekistan) that were formerly part of the Tsarist empire and the USSR, but before that under the *de facto* suzerainty of Mongol-ruled China. (Following Mao's victory in China's civil war, Stalin “returned” “East Turkestan” (the home of Uyghurs, a Turkic ethnic group) to China in exchange for Russian privileges in Manchuria, while he kept all the other Central Asian Republics within the Union of Soviet Socialist Republics.)

<sup>103</sup> Ambassador James Goodby has written extensively on these issues, including the humanitarian and human rights elements. See in particular, “The Emerging Architecture for Security and Cooperation in Northeast Asia,” *Issues and Insights* 8, no. 3, Pacific Forum, Center for Strategic and International Studies, March 2008, and with Donald Gross, “From the Six Party Talks to a Regional Security Mechanism,” *PacNet Newsletter*, no. 13, 24 March 2005. See also, Kun Young Park, “Preparing for a Peace Process on the Korean Peninsula,” *Asian Perspectives* 33, no. 3, 2009, pp. 183-207.



unproductive payoffs to the regime, which it can use, in turn, to buy off the continued loyalty of political elites, or if the probably huge amounts of economic assistance will be directed to enabling North Korea to escape its “poverty trap” and move into sustainable economic development. As expressed by a Russian economist with diplomatic experience in Pyongyang:

The long history of developed countries’ aid to developing countries suggest that aid can be futile, even counter-productive in the absence of complementary reforms. Therefore, economic assistance to the DPRK, which would be part of the package for the solution of the nuclear problem, should be aimed at assisting system transformation, not a conservation of outdated models by uncritically satisfying North Korean requests.<sup>104</sup>

One of the striking features of the sorts of economic assistance that are featured in requests by, and agreements with, North Korea is that they are huge, multi-billion-dollar infrastructure projects that will take years to build and become operational.<sup>105</sup> But typically, nowadays, large-scale aid projects include conditionalities and provisions related to “good governance.” In the words of a British Korea specialist:

[A] serious negotiating objective of the international community should be to improve human rights conditions in the DPRK as part of a comprehensive security strategy. There are many tried and tested ways of tying human rights into international negotiating packages, one of the most common being the introduction of good governance principles into contemporary multilateral development aid packages.<sup>106</sup>

Further, economic cooperation with the DPRK will likely raise issues related to its relationship with the international financial institutions (IFIs). North Korea has long indicated that an end to U.S. “hostility” includes the end of “sanctions and impediments that deny membership to North Korea in the international development institutions and access to the international trade, investment and assistance it requires to rebuild its shattered economy.”<sup>107</sup> Almost certainly, should the renewed negotiations reach the stage previously envisioned for phase three, the DPRK will ask the United States and other parties to support the initiation of a relationship between North Korea and the global and regional development banks, funds, and trade organizations. The gist of these “relationships” would be a series of grants and long-term loans to North Korea. Probably that would also likely include resolution of (that is, writing off) the DPRK’s considerable debt left over from North Korea’s failed borrowing sprees in the 1970s and 1980s.

As long as the DPRK remained listed as a state sponsor of terrorism, the United States was required by law to oppose North Korea’s membership in the IFIs. Delisting, however, removed only a legal impediment. The real impediments are the fundamental membership requirements, regulations, and procedures of the World Bank, International Monetary Fund, Asian Development Bank, and World Trade Organization, starting with gathering and publishing the fundamental financial and economic statistics (on gross national

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<sup>104</sup> Georgy Toloraya, “The Economic Future of North Korea: Will the Market Rule?” in *On Korea 2008*, Korea Economic Institute, p. 33.

<sup>105</sup> In addition to light-water reactors costing multi-billions of dollars, North Korea’s entire electricity grid would have to be rebuilt to accommodate the massive energy transmissions from the nuclear reactors, at costs of additional billions of dollars. See also the huge, multi-billion dollar bilaterally-provided infrastructure projects featured in the October 2007 Summit Agreement between North and South Korea.

<sup>106</sup> Hazel Smith, “Korean Security: A Policy Primer” in *Reconstituting Korean Security*, p. 258.

<sup>107</sup> Former Special Envoy to the DPRK of the UN Secretary General, Maurice Strong, “What North Korea Wants,” *Toronto Globe and Mail*, 17 October 2006.

production, government income and expenditures, imports and exports, etc.) that would be the very basis of IFI membership and DPRK discussions with IFI officials. Presently, North Korea regards statistics on its economy as military secrets. This secrecy is utterly incompatible with the norms, rules, and transparency on which international trade, finance, and development assistance is based.

Dialogue between the IFIs and North Korea would necessarily involve discussions of a “comprehensive development framework.” Importantly for our present concerns, these discussions would also involve “poverty reduction strategies,” a host of “governance” issues including the elimination of illicit sources of government income, sources of domestic investment capital, “public expenditure reviews,” and the huge misallocation of government resources necessary to sustain North Korea’s enormous military establishment.<sup>108</sup>

In the words of the former World Bank official who previously visited Pyongyang on behalf of the Bank:

[I]nternational concern about human rights is a factor that cannot be ignored. In the economic area, this will be reflected in the focus of the international donors on a pro-poor economic development strategy, priority given to social protection and strengthening the education and health system, and advocacy of good governance principles.<sup>109</sup>

Further, it is now the World Bank’s explicit policy that its officials can consider human rights violations, including violations of civil and political rights, if those violations have economic consequences or implications.<sup>110</sup> The initial series of engagements between the IFIs and the DPRK are likely to be seminars and training programs to introduce North Korean officials to the functions and operation of the banks. The transparency, governance, and other conditionalities related to human rights issues come in more directly when the sorts of financial aid and long-term loan packages that the banks make to countries at the DPRK’s state of development are being considered. But the sooner the North Koreans are familiarized with those conditionalities, the better they will be able to decide whether they want such aid and loan packages and how to prepare for them if they decide they want IFI assistance. The United States and Japan, the largest contributors to the World Bank and Asian Development Bank respectively, can use their influence to ensure that bank officials do not waive or ignore the relevant conditionalities when the aid and loan packages are being developed and negotiated.

### ***Economic Assistance and Food Security***

The UN Special Rapporteur on Human Rights in the DPRK recommends that if a large-scale economic assistance program to the DPRK comes under discussion, food security in North Korea should be a central part of the discussion.<sup>111</sup> Food aid of various sorts was part and parcel of the engagement policies of the Clinton administration, the South Korean engagement policies of Kim Dae-jung and Roh Moo-hyun, and the policy of President Bush during the two years of serious negotiations. The other five parties to the Six Party Talks—China, South Korea, the United States, Japan, and Russia—are the major food donors to North Korea

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<sup>108</sup> Measured in terms of per capita income, North Korea is among the world’s poorest nation-states, yet it is one of nine nuclear weapons states and has the fourth- or fifth-largest standing army.

<sup>109</sup> Bradley O. Babson, “Economic Security in the DPRK,” in *Reconstituting Korean Security*, p. 79.

<sup>110</sup> See Legal Opinion by the General Counsel of the World Bank, January 2006.

<sup>111</sup> Vitit Muntarbhorn, “Report to the UN Human Rights Council,” UN Doc A/HRC/7/20, 15 February 2008.

since programs of bilateral and multilateral food aid began in the mid-1990s. As noted above, the famine relief and humanitarian food aid program for North Korea is now well into its second decade. It seems likely that food aid to North Korea will resume if the DPRK returns to the Six Party Talks and resumes steps toward denuclearization. A renewed multilateral assistance program to the DPRK would seem deeply distorted if it merely resumed food deliveries without tackling North Korea's chronic food insecurity at a more fundamental level, as part of a broader approach to economic and social rights.

### ***People-Centered Economic Cooperation: Development from the Bottom Up***

The UN Special Rapporteur for Human Rights in the DPRK also notes that the generation of food security “is very much linked with the need for a sustainable development process based on broad people’s participation in income ... generation.”<sup>112</sup> That is, beyond what the formal economic assistance package delivers (largely to state-owned and operated infrastructure projects), there are potentially productive economic drivers that involve the participation of the citizenry of the six countries.

If the Six Party Talks revive, two participatory people-centered approaches to sustainable economic development to explore at economic cooperation working group could include: 1) creating a system of normalized and guaranteed remittances from (comparatively wealthy) ethnic Koreans in China, Japan, the United States and South Korea to their relatives in North Korea; and, 2) unfettered “bottom-up” economic cooperation—investment and trade connections—between Koreans in the DPRK and the enterprising and prosperous Korean communities in the other five parties to the talks.

Inevitably, “economic cooperation” is, in part, a polite euphemism for buyouts and payoffs in exchange for steps toward denuclearization. However, what one Korea scholar calls “really cooperative economic cooperation”<sup>113</sup> should at least be proposed for consideration if the talks revive and the aid spigots are reopened.

## **A PEACE REGIME FOR THE KOREAN PENINSULA (AND COMITY BETWEEN THE TWO KOREAS)**

The September 2005 Joint Statement outlining the course for the subsequent Six Party Talks also posits subsidiary or parallel negotiations where the “directly related parties will negotiate a permanent peace regime on the Korean Peninsula.”<sup>114</sup> This would presumably include not only the military, legal, and political provisions necessary to convert the 1953 armistice to a peace agreement, but also a variety of “confidence-building measures,” agreements on various forms of exchanges, and some provisions for tackling the huge conventional weapons systems arrayed on both side of the Korean DMZ.

In international relations “regimes” are “sets of norms, rules, patterns, and principles of behavior guiding the

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<sup>112</sup> “Report to the UN Human Rights Council,” UN Doc A/HRC/7/20, 15 February 2008.

<sup>113</sup> The phrase is suggested by German Korea scholar Rudiger Frank.

<sup>114</sup> The term “relevant parties” was used because there was no agreement on exactly who those parties are. North Korea would prefer negotiations between it and the United States, and for a long period of time previously insisted that South Korea could not participate because the South Korean president at the time, Syngman Rhee, refused to sign the 1953 armistice agreement. The United States, properly, will not negotiate on the Korean War without the participation of China and South Korea as well as North Korea.

pursuit of interests, around which actors converge.”<sup>115</sup> “Regimes are not as formal as institutions ... and can also be quite expansive.... [It] can be a process or a destination that will codify or institutionalize a particular outcome.”<sup>116</sup>

North Korea has long insisted that the armistice be replaced with a peace agreement or treaty in order to fully end the legal “state of war” with the United States.<sup>117</sup> And the United States has long expressed a willingness to replace the fifty-year-old Korean War armistice arrangements. Such negotiations, should they take place,<sup>118</sup> would likely resurrect the December 13, 1991, “Agreement on Reconciliation, Non-Aggression and Exchanges, and Cooperation between North and South Korea” popularly known as the “Basic Agreement.” This agreement—of potentially extraordinary import—was scheduled to take effect in 1992. But it was never implemented, perhaps, in large part, because it was overtaken by the first North Korean nuclear crisis.

North Korea recently renounced or “nullified” all previous agreements, so even its formal, if unimplemented, assent to the 1991 Basic Agreement is shrouded in doubt. However, the DPRK’s omnibus renunciation of prior agreements—undertaken to protest the unanimous UN Security Council disapproval of its 2009 missile and nuclear weapons tests—can, perhaps, be lifted or rescinded.

The 1991 Basic Agreement has huge potential value for human rights as it contains many of the same “confidence-building measures” and “people-to-people” contact and exchange provisions as are found in Baskets One and Three of the 1974 Helsinki Final Act setting up the Conference on Security and Cooperation in Europe. Example articles of the Basic Agreement include:

Article 12. Establish a South-North Joint Military Commission to discuss problems and carry out steps to build up military confidence and realize arms reduction, including:

- mutual notification and control of large-scale movement of military units and major military exercises;
- exchanges of military personnel and information; and
- phased reduction in armaments including the elimination of weapons of mass destruction and attack capabilities, and verifications thereof.

Article 15. Engage in economic exchanges and cooperation, including the joint development of resources, the trade of goods as intra-Korean commerce and joint ventures.

Article 16. Carry out exchanges and promote cooperation in various fields including science and technology, education, literature and the arts, health, sports, the environment, journalism and the media, including newspapers, radio, television broadcasts, and other publications.

Article 17. Implement freedom of intra-Korean travel and contact among the members of

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<sup>115</sup> Stephen Krasner, *International Regimes*, Cornell University Press, 1983, cited in James Schoff and Yaron Eisenberg, “Peace Regime Building on the Korean Peninsula: What Next,” Institute for Foreign Policy Analysis, May 2009, p. 5.

<sup>116</sup> Schoff and Eisenberg, *ibid.* p.5.

<sup>117</sup> Technically, the state of non-peace is with the fig leaf “UN Command.”

<sup>118</sup> Almost certainly including North and South Korea, China, and the United States—the four primary combatants in the Korean War. These negotiations could also stumble or stalemate, as did comparable four party discussions in the late 1990s, particularly if North Korea is unhappy with the stance of the South Koreans, or if North Korea raises issues that South Korea and the United States regard as strictly bilateral matters.

the Korean people.

Article 18. Permit free correspondence, movement between the two sides, meetings, and visits between dispersed family members and other relatives, promote their voluntary reunion, and take measures to resolve other humanitarian issues.

Article 20. Establish and link facilities for exchanges by post and telecommunications, and guarantee the confidentiality of intra-Korean mail and telecommunications.

The human rights implications and potential of a negotiated peace regime for the Korean peninsula are enormous.<sup>119</sup> Despite the current breakdown in negotiations, the United States continues to reiterate that “full normalization of relations, a *permanent peace regime*, and significant economic and energy assistance are all possible in the context of full and verifiable denuclearization” (emphasis added).<sup>120</sup> North Korea presently maintains that a peace accord with the United States is one of the most reasonable and practical ways to rid the peninsula of nuclear weapons, provided it leads to the end of America’s hostile policy and replaces the armistice.<sup>121</sup> So there remains mutual interest in peace regime negotiations, though as peace regime advocate James Schoff warns, “nobody really knows what this means.”<sup>122</sup>

During the Clinton administration, four party negotiations to replace the Korean War armistice were initiated between China, the United States, and the two Koreas. At that time North Korea was reluctant to deal with the South Korean government of President Kim Young-sam.<sup>123</sup> But, as part of the implementation of the Agreed Framework, the United States tied its overall discussions with North Korea to resumed discussions and improved relations between North and South Korea. Recently, relations between North and South Korea have deteriorated drastically, this time initially because the Lee Myung-bak administration decided to end South Korea’s unconditional aid to and investment in North Korea, tying it to North Korean progress toward denuclearization.

It is hard to imagine productive four party talks on replacing the Korea War armistice with a peace regime on the peninsula with North and South Korean relations as strained as they were throughout 2009. A peace agreement or treaty to conclude the Korean War and establish a peace regime will require working through the leftover issues from the intra-Korean components to the Korean War, as well as the issues that stem from the United States’ entry into the conflict following the June 1950 North Korean armored column attack

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<sup>119</sup> In essence, at the 2000 and 2007 Inter-Korean Summits, South Korean presidents Kim and Roh resuscitated Article 15 of the Basic Agreement in promising billions of dollars of aid to and investment in North Korea. But as part of the “Sunshine” and “Peace and Prosperity” policies of “economic development without human rights” described above (pp. \*17-20), no interest was given or mention made of the issues raised in the other articles of the Basic Agreement shown above. Given the obvious partisan political and electoral aspects of the 2007 summit—Roh’s political party was in tatters and appeared about to be repudiated at the polls, which it was, so there was no way possible for Roh to deliver the billions he promised—the landslide election victory for the conservative Grand National Party found the Summit commitments uninteresting. But there is nothing fundamentally wrong with the joint development projects outlined therein, despite their partisan political motivations. In any bilateral North-South Korean component to the “peace regime” negotiations, President Lee could reconsider Roh’s Article 15-type grand projects, but link them to the reconfirmation and implementation of the other Basic Agreement articles cited above.

<sup>120</sup> Hillary Clinton, Remarks at the ASEAN Regional Forum, Laguna Phuket, Thailand, 23 July 2009, as cited in James Schoff, “Broaching Peace Regime Concepts to Support North Korean Denuclearization,” Institute for Foreign Policy Analysis, November 2009, p. 3.

<sup>121</sup> “North Korea Sees Peace Pact with U.S. as Key to Disarmament,” AFP, 14 October 2009, as cited in Schoff, *ibid.*, p. 3.

<sup>122</sup> *Ibid.*, p. 3.

<sup>123</sup> Primarily because the North Koreans were upset by the South Korean expectation that following the demise of communist regimes in Europe, the Kim dynasty would also collapse and that North Korea would be absorbed by the South.

across the 38<sup>th</sup> parallel, and Chinese entry into the war as U.S. troops approached the Korean-Chinese border. But for the prior five years, ever since the United States installed a right-wing Korean nationalist in its zone of control and the Soviet Union installed a communist anti-Japanese partisan in its zone, Koreans north and south, left and right, had been fighting each other in brutal armed political conflict.

Not only have human rights concerns been factored into the resolution of Cold War conflict almost everywhere else in the world other than, so far, the Korean conflict. So too, nowadays, human rights concerns are factored into the resolution of civil war conflicts. Korea should not be an exception as there are unresolved human rights issues that have been put on hold for decades. Resolving these now should be part and parcel of the effort to achieve peaceful coexistence between the two Koreas.

It is hard to imagine the Lee Myung-bak administration, or any other leader of the Grand National Party (GNP or *Hannaradang*) not raising with North Korea the return of South Korean POWs from the Korean War still being held in the North, or an accounting for their deaths, along with the South Korean POWs who fought on the U.S. side in Vietnam, were captured by the North Vietnamese, and were turned over to the North Koreans.<sup>124</sup>

There are also several hundred South Koreans being held in North Korea; some of whom may have been abducted by the North Koreans in the same way that Japanese citizens were abducted, but most of whom were fishermen whose boats drifted into North Korean waters. Some may have ended up in the DPRK's prison camps, but others acquired North Korean wives with whom they had families. Still, these former ROK citizens most likely still have family members in the South, and have the right to return to South Korea. It is hard to imagine any South Korean government of the GNP not seeking their right of return.

There are a host of human rights issues associated with separation of families, the currently dismally small and slow family reunification meeting process, and the inability of once-reunified family members to remain in touch with each other by mail or phone, which the DPRK currently, cruelly, does not allow.

Currently both Koreas have legal provisions requiring government approval before Korean citizens from one side can visit or meet Korean citizens from the other side. At present, this is not much enforced in South Korea. But North Koreans are brutally interrogated and harshly punished for meeting South Koreans, even in a third country, and particularly in China, where most meetings of Koreans from north and south of the 38<sup>th</sup> parallel take place. Previous center-left governments in Seoul made an (unfortunately unsuccessful) unilateral attempt to abolish or reform South Korea's infamous National Security Law, which apart from the usual prohibitions on espionage, contains the provisions requiring permission to meet North Koreans.<sup>125</sup> During the discussions between the two Koreas on improving relations toward peace on the peninsula, both governments could negotiate a mutual revision of their respective laws and regulations that would effectively decriminalize communications between Koreans north and south of the 38<sup>th</sup> parallel.

Of course, working toward a peace regime on the peninsula requires reactivation of "hot lines" and confidence-building measures, draw-downs or draw-backs between the armed forces on the peninsula, a mutually agreeable resolution of maritime boundaries in the West Sea, and other such issues. But what kind

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<sup>124</sup> South Korean government sources indicate some 560 unaccounted-for Korean War-era POWs still in North Korea, and some 500 abducted and/or unreturned South Korean civilians.

<sup>125</sup> This is also the law under which many South Korean human rights and democracy advocates were imprisoned in the 1970s and 1980s when protesting the ROK military dictatorships.

of peninsular peace would it be if Koreans from north and south of the 38<sup>th</sup> parallel, even family members, cannot talk to each other unless surveilled and monitored by North Korean police agencies?

Legitimate areas of human rights discussion between the two Koreas also certainly include protection for North Korean refugees, the labor rights of North Korean workers at South Korean companies operating in North Korea, and the free flow of information.<sup>126</sup>

## **NORTH KOREA–JAPAN RELATIONS**

The Six Party Talks have a bilateral Working Group on Normalization of Relations between the DPRK and Japan. Relations between Japan and the DPRK have obviously been worsened by North Korea's most recent nuclear explosion and missile tests, the latter of which, of course, fly over the Japanese islands. Yet, bilateral discussions had already been completely seized and frozen by a human rights issue: the unwillingness, as yet, of North Korea to provide a credible accounting for the fate of the Japanese citizens abducted in the 1970s and 1980s—a profound and overriding concern of large segments of the Japanese public.

Two recent Japanese prime ministers, in fact, rose to their positions of political leadership because of their close association with the issue of the Japanese abductees. Additionally, what the Japanese saw as insufficient U.S. support on this matter caused ill will at the tail end of the Bush administration as the United States delisted the DPRK as a state sponsor of terrorism without the North Koreans' accounting for Japanese abductees, which President Bush apparently had agreed to with Japan's Prime Minister Koizumi in exchange for Japanese support for U.S. war polices in Iraq.

The new, and seemingly quite different, government of Japan under Prime Minister Yukio Hatoyama is no doubt considering how it will tackle and approach the unresolved abduction issues in its North Korea policy, and how this fits into its concerns over the DPRK's missile and nuclear weapons programs. Progress on further clarifications in the accounting of the fates of the Japanese abductees will likely encompass some step-by-step progress on the normalization goals and processes outlined in the September 2002 Pyongyang Declaration.

## **II. THE MAIN EVENT: U.S.-DPRK RELATIONS AND THE ROLE OF HUMAN RIGHTS DIALOGUE IN THE DECENT BURIAL OF “HOSTILE INTENT”**

Apart from the relatively recent danger that North Korea has transferred, and may again transfer, nuclear know-how and/or missile technology to U.S. adversaries elsewhere in the world, “American interest never

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<sup>126</sup> For an excellent summary of these issues see the 1 December 2009 “Joint Letter to South Korean Government Regarding South Korean Policies on North Korean Human Rights and Refugees” by the Asia Division of Human Rights Watch, Citizens Alliance for North Korean Human Rights, Life Funds for North Korean Refugees, and the Society to Help Returnees to North Korea. Available at <http://www.hrw.org/en/news/2009/12/01/joint-letter>.

extended to the northern half of the Korean peninsula.”<sup>127</sup> The U.S. “issues” with the DPRK derive from the U.S. alliance relationships with South Korea and Japan, and North Korea’s conventional and nuclear threat to these allies.

North Korea, on the other hand, has a host of historical, contemporary, and, they seem to insist, existential “issues” with U.S. policy in Northeast Asia, or American imperialism, as they prefer to call it.<sup>128</sup> North Korean claims against the United States are most often denominated and discussed in terms of the present-day diplomatic dispute over the DPRK’s nuclear weapons programs. These immediate issues include non-diplomatic recognition, economic sanctions, the absence of a Korean War peace treaty, and the imposition of unacceptable sea boundaries between North and South Korea, military training exercises in South Korea, reputed conventional and nuclear threats against the North, and more. However, North Korea’s own “narrative” of hostile actions against it by the United States is considerably more historical and existence-threatening.

While American policy analysts frequently date U.S.-DPRK enmity to the 1945 U.S.-USSR division of the peninsula, the 1948 proclamation of the South Korean republic, or the 1950 North Korean invasion of South Korea, the DPRK holds that Pyongyang has been subject to unremitting hostility and attack by the United States since 1866, when a U.S.-flagged, private commercial ship disregarded Chosun dynasty orders to stay out of the “hermit kingdom” and attempted to sail up the Taedong River to Pyongyang before it was set aflame and all passengers were killed by a stalwart band of Korean patriots led, it is claimed, by Kim Il-sung’s great-grandfather. A second wave of U.S. attack is said to have come shortly thereafter in the form of Protestant missionaries who sought to poison the minds and steal the body parts of Korean people.<sup>129</sup> American imperialism then delegated the occupation of Korea to Japanese colonialism in exchange for a free hand in the Philippines.<sup>130</sup> After Kim Il-sung liberated Korea from Japanese occupation, the United States severed the Korean nation at the 38<sup>th</sup> parallel to create a puppet colony under its control. And determined to crush Korean socialism, in 1950 the United States initiated the Korean War. Then, following Kim’s heroic victory against American imperialist aggression, the United States, in violation of the Korean War armistice, stationed nuclear weapons in South Korea. The United States and its South Korean puppet state constantly prepare and practice attack plans, and continue to threaten the very existence of the Korean People’s Democratic Republic. Even though the U.S. nuclear weapons were removed from the Korean peninsula by President George H.W. Bush in 1991, “the U.S. continues to threaten us with nuclear weapons,” said the DPRK ambassador to London in September 2009.<sup>131</sup>

Girded by this historical narrative, as aptly described by political economist Nicholas Eberstadt, the Kim family dynasty’s North Korea is a profoundly revisionist state, deeply dissatisfied with the present international environment in East Asia largely constructed by the United States after WWII. The DPRK dislikes U.S. alliances, formal and informal, and the U.S.-erected security architecture in the region. North

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<sup>127</sup> Straub, “United States North Korea Policy.”

<sup>128</sup> “The essence of the U.S. hostile policy against the DPRK, which continues to be maintained [by President Obama], is to obliterate the idea and the system of the DPRK.” So Ki-sok (an official for the DPRK Institute of Disarmament and Peace), “Situation in the Korean Peninsula—A North Korean Perspective,” *PacNet Newsletter*, no. 55, 6 August 2009, p. 1.

<sup>129</sup> A jaundiced reference to the educational and medical-surgical programs and projects introduced in Korea by Protestant Christian missionaries. As recently as August 2003, the same month as the start of the Six Party Talks, North Korea reprinted its 1951 screed, *Jackals*, in which Korean children are injected with poison by American Protestant missionaries, in three North Korean magazines, *Chollima*, *Andong Munhak*, and *Choson Munhak*. Cited in Myers, *The Cleanest Race*, pp. 150, 176.

<sup>130</sup> A less jaundiced reference to the 1905 Taft-Katsura Agreement.

<sup>131</sup> “U.S. Threats Rule out Peace in North Korea: North’s Envoy,” AFP, 9 September 2008.



Korea dislikes the functioning of the global and regional capitalist economy with its threat of ideological and cultural infiltration and subversion against “our style socialism” in the Democratic People’s Republic. The Democratic People’s Republic fundamentally objects to the “puppet state,” otherwise known as South Korea, created and occupied by U.S. imperialism south of the 38<sup>th</sup> parallel. “The nuclear option,” and the coercive diplomacy that option allows, is “North Korea’s best—and today, perhaps its only—hope for successfully pursuing any of its breathtaking revisionist objectives.”<sup>132</sup>

The DPRK’s nuclear weapons strategy against the United States is summarized by Peter Hayes, another longtime analyst of North Korean policy. The DPRK:

... adopt[ed] a nuclear weapons proliferation strategy that was aimed at compelling the United States to change its policy toward the DPRK.

The North Koreans used [their] nuclear threat, at first in ways highly opaque, then ambiguously, and finally explicitly and on display, to attempt to make the United States accept the legitimacy and sovereignty of the North Korean state and leadership; to change its policies of containment and sanctions that kept the DRPK isolated from the world, particularly economically; to bring the U.S.-Korean War to an end with a peace treaty; and perhaps even to enlist the United States as a security partner.

Consequently, the DPRK and the United States have spent two decades in a slow motion confrontation over North Korea’s nuclear proliferation activity, testing each other’s intentions, creating confidence, and then rapidly demolishing it, but always managing the risks at each stage of the DPRK breakout to preserve the possibility of reversing the latest gain of the DPRK’s incremental nuclearization and weaponization.<sup>133</sup>

This is where the Obama administration’s North Korea policy picks up the pieces put in place by North Korea’s most recent missile and nuclear tests.

## **THE UNAVOIDABLE TRIANGLE: DENUCLEARIZATION, IMPROVED U.S.-DPRK RELATIONS, AND HUMAN RIGHTS DIALOGUE**

For the United States, North Korea policy is about nonproliferation and arms control. For the DPRK, it is (or was) fundamentally about its relationship with the United States. In the oft-repeated words of a former State Department official long concerned with North Korea, “It’s all about the relationship.”<sup>134</sup>

As restated recently by Robert Gallucci, the lead U.S. negotiator with North Korea for the 1994 Agreed Framework, there is not going to be a nonnuclear North Korea until there is a fully normal relationship with the United States. Until full and final normalization, North Korea will retain nuclear weapons as a hedge

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<sup>132</sup> Nicholas Eberstadt, “Pyongyang Has a Strategy — Do We?” Commentary, *Forbes Magazine*, 26 May 2009, accessible at <http://www.forbes.com/2009/05/26/north-korea-strategy-opinions>.

<sup>133</sup> Peter Hayes, “Extended Nuclear Deterrence: Global Abolition and Korea,” Nautilus Policy Forum Online, 09-096A, 17 December 2009, pp. 1 and 7 respectively.

<sup>134</sup> Robert Carlin, a longtime North Korea watcher for the CIA and Department of State.

against a U.S. return to “regime change” politics.<sup>135</sup>

At this time, improving relations with the North Koreans requires tackling the concerns held by many American citizens about North Korea’s severe human rights violations. In Gallucci’s words:

[I]t is going to be very hard to have political and other relations with a country guilty of gross human rights violations. Imagine what it would be like to have robust communications and cultural exchanges with a country that has gulags, forced labor and a dictatorial cult for a government. It will be very hard for the US government to sustain that sort of relationship.<sup>136</sup>

Normalization of relations with North Korea will not likely be achievable without tackling human rights concerns because the reality is that, since at least the early 1970s, factoring human rights considerations into U.S. relations with other nation-states—be they allies, adversaries, or neutrals—is now standard U.S. practice. It is the normal U.S. practice because, irrespective of lapses, failings, inconsistencies, or what some call “double standards,” U.S. foreign policy is based on a projection of values as well as on the protection and advancement of interests.

Factoring human rights concerns into U.S. foreign policy has been driven by the elected representatives of the American people, sometimes over the opposition of officials in the Departments of State and Defense, the intelligence agencies, and the National Security Council. By virtue of congressional control on the authorization and appropriation of U.S. government funding, the confirmation of diplomatic postings, oversight hearings, and other handles, elected representatives have inserted human rights concerns into the policymaking process. Even when U.S. diplomats or executive branch policymakers found it inconvenient, Congress has pushed for it. Congress forced human rights issues into détente with the Soviet Union and Eastern Europe. Congress forced human rights concerns into the U.S. relationship with its allies and client states in Asia, Africa, and Latin America during the Cold War, and into the relationship with former adversaries, such as China and Vietnam, in the process of establishing friendly relations.<sup>137</sup> It is hard to imagine that human rights considerations will not factor into any future reconciliation with Cuba.

With respect to North Korea policy, for Congress as well as the executive branch, the priority concern will remain nonproliferation and denuclearization. But twice the human rights situation within North Korea has been the subject of specific congressional legislation. If a deal is to be made on North Korea’s denuclearization, Congress will not reject or unmake such a deal on human rights grounds. On the other hand, no potential nuclear deal with North Korea is likely to be so good that Congress will accept completely ignoring human rights issues.

North Korea will insist on a great deal more than mere diplomatic relations. In the various iterations by North Korea, their demands have included a peace treaty; “negative security guarantees;”<sup>138</sup> an end to all U.S. sanctions;<sup>139</sup> support for the DPRK’s membership in and benefits from the international financial

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<sup>135</sup> Robert Gallucci, “The Six Party Talks: Getting to Phase Three.” The Heritage Foundation, 1 July 2008.

<sup>136</sup> Ibid.

<sup>137</sup> Although less, it could be noted, than human rights advocates and their strongest congressional supporters would have preferred.

<sup>138</sup> Of the sort contained in the September 2005 Joint Statement of the Six Party Talks, in which “The U.S. confirmed that it has no nuclear weapons on the Korean peninsula and has no intention to attack or invade the DPRK with nuclear or conventional weapons.”

<sup>139</sup> To which the DPRK attributes its poverty and even its famine.

institutions;<sup>140</sup> ongoing humanitarian food and medical supplies; trade, aid, and investment from and with the United States; noninterference with investment, trade, and aid from South Korea, Japan, and elsewhere; a so-called replacement nuclear reactor or two;<sup>141</sup> fuel oil and other economic assistance; possibly the removal of the U.S. “nuclear umbrella” over South Korea and Japan;<sup>142</sup> possibly a fundamental redraft of the U.S.-ROK alliance; and perhaps what is often termed a “positive security guarantee” in the form of a “strategic relationship...that makes room for the DPRK, (including ‘its system and leadership’) in an American vision of the future of Northeast Asia.”<sup>143</sup> These demands will be difficult for Congress to accept if any and all human rights concerns are abjectly rebuffed, or if some grand bargain is offered to North Korea without even taking up the human rights concerns shared by a broad sector of American public opinion.

Discussion of human rights issues—on the basis of “equality and noninterference in each other’s internal affairs” is a normal and routine part of diplomatic discourse between nation-states in the contemporary world. This is now a common, if not entirely consistent, practice in bilateral relations with the United States. And, as noted at the outset, factoring human rights issues into conflict resolution, peacekeeping or peacemaking has become the standard practice, whether conflict resolution is being attempted in Central Europe, Central America, Southeast Asia, or South Asia.<sup>144</sup> Taking human rights issues into account has become standard practice at the United Nations, despite the objections of an active coalition of repressive member states.

In short, normalization of relations with North Korea will require relating to the DPRK in the United States’ normal fashion, which should include discussions about norms of state behavior in the modern world, including the universal norms and international standards of human rights. All of the other nation-states at the Six Party Talks engage in a variety of human rights discussions with UN officials and with each other. Other nation-states subjected to criticism or UN resolutions regarding human rights nonetheless engage in discussions of human rights issues. What is surprising is the extent to which it is thought that North Korea can or should be excluded or exempt from such discussions, even if it is, presumably, potentially contentious.<sup>145</sup>

Obfuscating or playing down North Korea’s human rights situation cannot be sustained. Human rights issues will continue to emerge, as even the nomination of a human rights envoy for North Korea provokes DPRK charges of U.S. hostile intent.<sup>146</sup> Remaining mum or paying insufficient attention to the North Korea human

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<sup>140</sup> Even perhaps including a *de facto* initial waiver of the conditionalities usually required by the World Bank, IMF, and Asian Development Bank.

<sup>141</sup> Normally, countries finance the construction of nuclear reactors for generating electricity by borrowing from a consortium of lender agencies. They then sell the generated electricity to municipalities and industrial plants to pay back the loans needed to construct the reactor and make a profit for the utility operators. The DPRK wants the United States to “provide,” that is, give, them a nuclear reactor or two as a token of “non-hostility.”

<sup>142</sup> See Peter Hayes, “Extended Nuclear Deterrence: Global Abolition and Korea,” Nautilus Policy Forum Online 09-96A, 17 December 2009, p. 11.

<sup>143</sup> Robert Carlin and John Lewis, “What North Korea Really Wants,” Policy Forum Online 07-009A, Nautilus Institute, 2 February 2007.

<sup>144</sup> For further elaboration, see David Hawk, “Factoring Human Rights into the Dismantlement of Cold War Conflict on the Korean Peninsula,” in *Human Rights in North Korea: Toward a More Comprehensive Understanding*, ed. Park Kie-duck and Han Sang-jin, Sejong Institute, 2007, pp. 337-79.

<sup>145</sup> Raising human rights issues with South Korea, when they were raised over the years with Syngman Rhee, Park Chung-hee, and Chun Doo-hwan, was not uncontentious, even though the United States and South Korea were staunch allies. Why should North Korea be different, or exempt? See, for example, David Steinberg, “U.S. Policy and Human Rights in the Republic of Korea,” in *Implementing U.S. Human Rights Policy*, ed. Debra Liang-Fenton, U.S. Institute of Peace, 2004.

<sup>146</sup> *Minju Jason*, a North Korean newspaper, as cited in “N. Korea Slams New U.S. Human Rights Envoy,” AFP, 7 October 2009.

rights situation only invites domestic criticism and opposition to negotiations and engagement. Obligatory *sotto voce* statements at congressional hearings about the human rights situation in North Korea, while not talking to the North Koreans about human rights, will not work either. That is merely a softer version of the Bush administration's initial North Korea policy.

The bottom line is that there will not be denuclearization or even progress toward denuclearization without improvements in U.S.-DPRK relations. The gross violations of human rights in the DPRK are an impediment to better relations—an impediment that has to be tackled proactively by U.S. diplomacy.

### ***The Sooner the Better***

Oddly, both the implementation of the 1994 Agreed Framework during the 1990s and the negotiations at the Six Party Talks after 2005 got bogged down in the technicalities of arms-control trade-offs, and did not soon enough tackle the improvement of U.S.-DPRK relations. While the Agreed Framework was signed in 1994, opposition to it by the newly Republican-controlled Congress led the Clinton administration to let the “relationship” aspects languish until the Perry Process was initiated four years later following North Korea's 1998 missile test. Similarly, according to one close student of the Six Party Talks, “the U.S.-DPRK political relationship...was not well defined by earlier Six Party Agreements.”<sup>147</sup>

In neither case did the parties get to the core issue between the United States and North Korea: would North Korea trade off its nuclear weapons and nuclear weapons programs for a new relationship with America, and, if so, what would that entail? Discussions of establishing or normalizing relations—whether essentially bilateral discussions, or in the guise of the U.S.-DPRK Working Group at the Six Party Talks—are also the most direct and immediate circumstance for discussing North Korea's human rights issues.

The U.S. side will likely seek to withhold full and final diplomatic normalization, as well as the signing of a Korean War peace treaty or agreement, until North Korea actually parts with its nuclear arsenal, as those are among the most important of the few bargaining chips deemed available to the United States. But that need not preclude a series of discussions on what is desired and envisioned by both sides with respect to the substance and circumstance of removing antagonisms and working toward normal relations.<sup>148</sup> This could be included at an early stage of renewed negotiations between the United States and the DPRK, rather than waiting, again, until after the next confidence-building measure, or, waiting again, until the next step of a very long list of technical arms-control details is hammered out and implemented. Nor can antagonisms be removed by avoiding them. The unavoidable reality is that addressing human rights concerns is part and parcel of any process of removing antagonisms and moving toward more normal relations between North Korea and the United States.

A recent report on rebuilding dialogue and engagement with North Korea suggests that serious or “sensitive”

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<sup>147</sup> James Schoff, “Broaching Peace Regime Concepts to Support North Korean Denuclearization,” National Committee on North Korea, November 2009, p. 2.

<sup>148</sup> As these discussions have yet to take place, there may be a lot to talk about. Many of the attributes of a normalized relationship between the two countries either are unknown or are not part of the public record. For example, do the North Koreans even want a liaison office or resident ambassador in Pyongyang? What kind of visa and cash transfer arrangements are possible or desired for the American citizens most anxious to visit or send funds to the DPRK, Korean Americans who have family members still in the North? Will North Korean and American citizens be able to correspond and communicate with each other? Under what circumstances will North Koreans be able to visit the United States and vice versa?

human rights concerns be taken up with the DPRK only when a “degree of trust has developed.”<sup>149</sup> This is a wrong approach. Human rights issues cannot be postponed until the two sides trust each other. Trust between and among nation-states is an exceedingly rare commodity, even among allies. Between the United States and the DPRK, North Korea’s National Defense Commission’s “trust” in American imperialism is likely to occur about the same time that U.S. arms-control specialists are willing to dispense with verification protocols.<sup>150</sup> Working toward a new relationship with the DPRK requires addressing core issues. North Korea’s misperceptions and misrepresentations of criticisms of its human rights record are core issues. Until this is tackled, human rights criticism of North Korea—which will not stop—will continue to be deliberately misconstrued by the DPRK as hostility.

Like other areas of diplomacy, even the most serious human rights concerns can be presented and discussed in nonconfrontational, non-insulting, and non-accusatory ways. Reluctance to discuss directly, sincerely, and frankly the variance between international human rights norms and the voluminous testimony about DPRK practice patronizes North Koreans rather than treating them as the smart, sophisticated, and tough, skillful negotiators they have proven themselves to be. If improving relations is seen as an essential part of achieving denuclearization, there is no reason not to start tackling the human rights issue.

If the DPRK is unwilling to discuss human rights with the United States, it is a good indication that they are not really serious about wanting a new, nonhostile, nonconfrontational relationship. In all probability, the North Koreans are rather more likely to say “not yet” as opposed to “no” or “absolutely not”—which is why it should be indicated to them without delay that at a point not much further down the road, a human rights dialogue, at a variety of levels, will have to be part of an improved relationship. Putting off a discussion of human rights with the North Koreans *until this, or after that, or following yet something else* (however intrinsically meritorious *this, that, or the other thing* may be), will enable the North Koreans to then allege that the United States has again “moved the goalposts,” bringing up new obstacles when the relationship was finally moving ahead.

### ***Human Rights Discussion with North Korea is Doable***

Human rights dialogue with the North Koreans will not be easy. The DPRK refused a half-dozen requests for a visit from the UN Special Rapporteur on the Right to Food, even when the UN was providing food to almost a third of the North Korean people, and even prior to the UN resolutions on human rights in North Korea. The DPRK denied repeated requests for meetings from the UN Special Rapporteur on Human Rights in North Korea.<sup>151</sup> (Regrettably, the DPRK missed opportunities, as both of these rapporteurs would have made excellent interlocutors, and the UN would have paid close attention to these discussions in its approach

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<sup>149</sup> Joel Wit, “U.S. Strategy Towards North Korea: Rebuilding Dialogue and Engagement.” U.S.-Korea Institute at SAIS and Weatherhead East Asian Institute at Columbia University, October 2009, p. 72. While proposing a slew of otherwise interesting ideas for rebuilding dialogue, achieving an initial nuclear agreement, and accomplishing nuclear elimination, the report suggests a strategy toward human rights issues—based on a quirky portrayal of past and present human rights approaches toward the DPRK—that would, in the name of an ersatz pragmatism, substitute a truncated and cauterized version of human security (that is, without “human security’s” usual concerns about “freedom from fear” or “security against persecution”) in which purportedly “noncontroversial” human rights measures are reconfigured as aid-giving and investment opportunities.

<sup>150</sup> The National Defense Council is the group of geriatric military officials for whom “military first” politics, it is often thought, has replaced the Standing Committee of the Central Committee of the Korean Workers Party, as the *de facto* highest political organ of the DPRK.

<sup>151</sup> The United Nations is an association of governments. Unless covered by preexisting agreements between the United Nations Organization and a UN Member State, UN officials cannot enter the territory of a Member State without the approval of that government. Most Member States, however, routinely agree to requests for visits by UN officials.

to North Korea.) The DPRK is, to my knowledge, the only Member State, so far, to refuse to cooperate with the new procedure at the UN Human Rights Council known as the “Universal Periodic Review.”<sup>152</sup>

But it has been possible, in other circumstances, to discuss human rights with North Koreans in Pyongyang and elsewhere. Reportedly, Congressmen Tom Lantos and Jim Leach raised human rights issues in Pyongyang,<sup>153</sup> as have key staff from the Senate Foreign Relations Committee. British Foreign Service officials and parliamentarians have also repeatedly raised human rights concerns, reportedly based on presenting to the North Koreans accounts documenting severe violations, including reports prepared by the present author that have been published in Korean translation.<sup>154</sup>

More formally, the DPRK agreed to a structured human rights dialogue with the European Union modeled on the China-EU human rights dialogues in place since 1997. Two sessions were conducted in 2001 and 2002. The DPRK, however, discontinued this dialogue in 2003, after the EU sponsored a resolution on North Korea at the UN Commission on Human Rights (later renamed as the UN Human Rights Council).<sup>155</sup> Evaluating the two dialogues that did take place, a member of the European Parliament noted that sometimes the North Koreans “seemed to accept international human rights norms and instruments as universal standards,” but at other times, “they displayed hard line positions on sovereignty... and argued that international human rights standards, especially individual rights, are illegitimate, alien and subversive to the goals of state and Party.”<sup>156</sup> On this experience, given the DPRK’s accession to core human rights conventions, it would seem that interlocutors need to ask the North Koreans how they see, define, and understand international human rights.

### ***Human Rights Dialogue between the United States and the DPRK***

Approached positively and proactively, human rights issues arise organically between the United States and North Korea in ways large and small, including: 1) responding to the DPRK report recently submitted to the United Nations as part of the Universal Periodic Review; 2) discussing the possible removal of sanctions and reporting provisions that stand in the way of improving and normalizing relations, including sanctions and the reporting provision that derive from congressionally-imposed human rights conditionalities; and 3) probing what North Korea is really looking for by way of security assurances from the United States.

The recent submission by the DPRK to the UN Human Rights Council calls for substantive dialogue with other UN Member States in general and the United States in particular. This official North Korean report to the UN explicitly claims, “The DPRK has taken into serious consideration the observations and

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<sup>152</sup> After an open, on the record, presentation by each UN Member State in turn, other UN Member States make recommendations as to how the presenting Member State could improve the promotion and protection of human rights in that country. At a subsequent meeting, after the home government has had time to consider the recommendations from other Member States, the presenting Member State is required to inform the Council on which recommendations by fellow Member States the presenting Member State accepts. The DPRK refused to do this, in effect, rejecting every recommendation made to it at the previous Council meeting.

<sup>153</sup> See Karin Lee and Adam Miles, “North Korea on Capitol Hill,” in *The Future of U.S.-Korean Relations*, ed. John Feffer, Routledge, 2006, p. 171.

<sup>154</sup> *Ibid.*, p. 170.

<sup>155</sup> It is not clear if the DPRK ended the dialogue because of a diplomatic *faux pas* (the revolving EU chair was not one of the EU Member States to have a permanent representative in Pyongyang, and the EU failed to give the DPRK advance warning that they were going to introduce the resolution) or if the DPRK would have ended the dialogue even if that diplomatic courtesy had been extended.

<sup>156</sup> Glyn Ford, *North Korea on the Brink: Struggle for Survival*, Pluto Press, 2008, p. 171.

recommendations made by the treaty bodies, and accepted and implemented them.”<sup>157</sup> This assertion is the basis for a sustained discussion between the U.S. Special Envoy for North Korean Human Rights and the relevant authorities in North Korea.<sup>158</sup> What could be the objection to asking for information about the measures that the DPRK says it has made to implement the international human rights norms and standards that North Korea has formally endorsed and acceded to?

The North Korean report, however, goes on to assert in detail that the “hostile policy” of the United States is the “greatest obstacle and challenge to the protection and promotion of human rights [in North Korea].”<sup>159</sup> This claim will not enjoy credibility in the international community. And the United States does not discuss its “hostility” in those terms, as the United States stops “short of accepting a definition of itself as a special threat.”<sup>160</sup> However, the DPRK’s claim should be seen as a North Korean invitation to “talk about talking about human rights” as part and parcel of clearing away North Korea’s spurious accusations about U.S. “hostile policy” which the DPRK *both* attributes its need for nuclear weapons *and*, as noted above, considers the obstacle to promoting and protecting human rights.

The North Korean claim that human rights concerns are part and parcel of the United States’ “hostile policy” is not new. The 2004 North Korean Human Rights Act was denounced as “an inducement to government collapse and a ‘doomed to failure’ attempt to change our political system according to the American norm.”<sup>161</sup> President Obama’s nomination of a Special Envoy on North Korean Human Rights was denounced by the DPRK newspaper *Minju Joson* as a stepping up of Washington’s hostile policy.<sup>162</sup> Again, while the United States will not likely discuss its “hostile policy” with the DPRK in those terms, until a human rights dialogue with North Korea, the DPRK will continue to cite human rights as an example of why it needs nuclear weapons, rather than the now normal interstate discussion topic that human rights dialogue currently is.

The lifting or suspension of sanctions against North Korea has long been part of arms-control negotiations and the denuclearization process as signs of diminishing antagonism, or “hostile intent” as the North Koreans like to put it. Certainly that has been the case in the recent past with respect to both sanctions with bite, such as the financial sanctions against the Macao-based Banco Delta Asia, and sanctions of primarily symbolic value, such as the DPRK’s former listing as a “state sponsor of terrorism.” Presently, the North Koreans request the suspension of sanctions levied in UN Security Council resolutions.

Alongside the dozen or so sanctions and aid conditionalities against the DPRK that remain in place for proliferation, for nuclear detonations, and for “status as a communist state,” are several that relate directly to human rights.<sup>163</sup> The DPRK is listed as a “tier three” country under section 110 of the Trafficking Victims

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<sup>157</sup> “National Report submitted in accordance with paragraph 15(A) of the annex to Human Rights Council 5/1,” UN Doc A/HRC/WG.6/6/PRK/1, 27 August 2009, para. 29, p. 7. This is part of the relatively new process at the United Nations called the Universal Periodic Review, in the course of which the human rights records of each and every UN Member State are examined and reviewed on the basis of a report submitted by the Member State being reviewed. The “treaty bodies” mentioned above by North Korea are the UN review committees for each of the four human rights conventions that the DPRK has ratified.

<sup>158</sup> See pp. \*50-52 below for an outline of a human rights dialogue with North Korea based on exactly this claim.

<sup>159</sup> “National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1—Democratic People’s Republic of Korea,” UN Doc A/HRC/WG.6/6/PRK/1, 27 August 2009, section V, paras. 79-83, pp. 15-16.

<sup>160</sup> Henry Kissinger, “How to Make Progress on North Korea,” *Washington Post*, 18 December 2009, p. A31.

<sup>161</sup> Statement by Pak Tok-hun at the Third Committee of the UN General Assembly, New York, October 26, 2004 (Juche 93).

<sup>162</sup> “N. Korea Slams New U.S. Human Rights Envoy,” AFP, 7 October 2009.

<sup>163</sup> For an overview of sanctions in place against North Korea see Lee Sang-hyun, “North Korea and International Financial Organizations: Political and Economic Barriers to Cooperation,” *Korea’s Economy 2009*, Korea Economic Institute and the Korea Institute for International Economic Policy, pp. 76-88. Other overviews of sanctions such as Karin Lee and Julia Choi, *North Korea: Unilateral and Multilateral Economic Sanctions and U.S. Department of Treasury Actions 1955-April 2009*, National Committee on North

Protection Act of 2000, which may affect participation of DPRK officials in cultural exchanges. The DPRK is designated as a “country of particular concern” under the International Religious Freedom Act of 1998, which carries with it restrictions under the Jackson-Vanik legislation of the 1970s.<sup>164</sup> North Korea remains covered by the prohibitions on development assistance to countries that engage in “a consistent pattern of gross violations of internationally recognized human rights” under section 116(a) of the Foreign Assistance Act.<sup>165</sup>

What these (and the other non-human-rights-related sanctions) mean, how they work, and how they could be removed is quite complicated. But the salient point is that removing these U.S.-imposed strictures limiting U.S. government interaction with the DPRK would seem a likely and reasonable part of any bilateral process to reduce antagonism between North Korea and the United States.

Perhaps now, as a self-proclaimed proud and dignified nuclear weapons state, the DPRK no longer cares to be bothered by these and other U.S. sanctions. However, the political reality is that there are congressional committees and public constituencies in the United States that do care. If negotiations resume, it is quite possible that continued or renewed sanctions removal will be part of the process. It would certainly seem reasonable for the U.S. side to propose to North Korea that these legacies of past antagonisms and present impediments to improved relations could be addressed, including the sanctions and aid conditionalities related to human rights.

Following some semblance of recommitment to the goals set forth in the 2005 Joint Statement of the Six Party Talks, renewed discussions between the United States and the DPRK may well start off with small steps related to the re-disabling of the Yongbyon reactor complex. At some point, however, if serious negotiations move along, the question of what security assurances North Korea is really seeking or will accept from the United States will reemerge. Previously, at the outset of serious negotiations at the Six Party Talks, the United States provided what is commonly called a “negative security assurance” when the United States formally affirmed that it “has no intention to attack or invade the DPRK with nuclear weapons or conventional weapons.”<sup>166</sup> Yet, apparently, this is not nearly sufficient, as North Korean diplomats continue to allege U.S. hostile intent and continuing, even increasing, U.S. threats against the security (and sometimes the existence) of the DPRK. North Korea apparently wants something more and different.

One astute interlocutor with the DPRK advises that “North Korea will demand comprehensive and irreversible guarantees for the preservation of its system and its elite.”<sup>167</sup> Other interlocutors with the DPRK identify this something more as a “positive security guarantee” or “strategic relationship” or even “alliance.” A strategic relationship with the United States was formerly, for nearly two decades now, explained by DPRK diplomats in terms of counterbalancing the influence of China, Japan, and Russia, but, in practice,

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Korea, 2009, do not include the human rights listings imposed by Congress or the Department of State, as these can be regarded as aid conditionalities rather than broader prohibitions against economic interaction with the DPRK by other entities. U.S. government publications, however, couple congressionally-inspired aid conditionalities with sanctions.

<sup>164</sup> “Existing Sanctions and Reporting Provisions Related to North Korea,” Fact Sheet, Office of the Spokesman, Washington D.C., 11 October 2008, accessible at [http://seoul.usembassy.gov/nk\\_101108b.html](http://seoul.usembassy.gov/nk_101108b.html).

<sup>165</sup> This amendment to the Foreign Assistance Act and comparable provisions in U.S. military assistance authorization legislation were initially imposed by Congress in the mid-1970s during the Ford administration, as part of the initial congressional push to incorporate human rights concerns into U.S. foreign policy. As is further examined below, the UN-derived approach regarding “consistent pattern of gross violations of internationally recognized human rights” has particular, and “dialogue opening,” application to the DPRK.

<sup>166</sup> 2005 Joint Statement, para. 1, clause 3.

<sup>167</sup> Georgy Toloraya, “Continuity and Change in Korea: Challenges for Regional Policy and U.S.-Russia Relations,” The Brookings Institution, February 2009, p. 24.



it would more likely function as a *de facto* joint Chinese-American commitment to underwrite and ensure the preservation of the North Korean state.

In describing what North Korea really wants, former U.S. Deputy Negotiator Victor Cha describes a “positive security assurance” as that in which the United States will not allow the house of Kim Jong-il—that is, Kim Jong-il or his son, Kim Jong-un, who many believe is being groomed for succession—to collapse as Pyongyang partially denuclearizes and “goes through a modest reform process to absorb the economic assistance and opening to the outside world that would come with a grand deal.”<sup>168</sup> Thus, Professor Cha testified to the Senate Foreign Relations Committee on the DPRK’s fundamental dilemma. It needs to open up to survive, but the process of opening up risks the regime’s demise: “[W]hat Pyongyang wants is an assurance from the United States that it will not allow the regime to collapse during a reform process.”<sup>169</sup>

A South Korean analyst makes the same point, juxtaposing the North Korean problem for other states—the DPRK nuclear weapons and missile programs—with North Korea’s concern for itself:

Japan, South Korea and the United States hope that a “stick and carrot” approach will elicit concessions from North Korea during the process of [arms-control] negotiations, but North Korea will not take steps toward giving up its nuclear program, unless its leaders feel sure that they are being given reliable, material guarantees for the survival of their entire regime, system and state. Because their nuclear program is their ultimate bargaining chip, “sticks and carrots” focusing only on specific issues of the [arms-control] negotiations will be far short of solving the problems of North Korea as a whole.

North Korea developed a nuclear program and pursued militaristic diplomacy as the most plausible shortcuts to solve the problems indicated by [the] questions: How will North Korea survive in the post-Cold War world, in which most socialist countries are no longer socialist? What kind of regime and system can North Korea sustain in this environment? How will North Korea compete with South Korea and resist absorption by the South?<sup>170</sup>

North Korea’s answer to the last question, according to several of its interlocutors, is to have an “alliance” with the United States. That is, while North Korea formally demands an end to the U.S.-South Korean alliance, their diplomats also reportedly state that the United States can keep its alliance with South Korea and even some troops stationed there, but that the United States should in this case, then, also have an alliance with North Korea that would, in the event of North Korean instability stemming possibly from chronic economic malfunction, or the uncertainties of a genuine economic reform process, or possibly some sort of succession crisis, assure that the DPRK would not be absorbed into the ROK.

Whether expressed in terms of a positive security guarantee, a strategic relationship, or an alliance, these formulations may strike many as far-fetched. One former State Department official writes, “US administrations, have never, and will never consider, establishing a strategic relationship with the DPRK.”<sup>171</sup> However, for our present purposes, it should be noted that any such relationship with North Korea has even greater import for human rights concerns than that which former negotiator Gallucci posited for mere

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<sup>168</sup> Victor Cha, “What Do They Really Want?: Obama’s North Korea Conundrum,” *Washington Quarterly*, October 2009, p. 126.

<sup>169</sup> “North Korea: What Do They Want,” Testimony of Victor D. Cha, Senate Foreign Relations Committee, 11 June 2009.

<sup>170</sup> Chaesung Chun, “Moving From a North Korea Nuclear Problem to the Problem of North Korea,” *Nautilus Policy Forum Online*, 09-047, 11 June 2009. (Originally published in the *East Asia Initiative*.)

<sup>171</sup> Straub, “United States North Korea Policy,” p. 6.

diplomatic normalization.<sup>172</sup> Former negotiator Cha emphasized the human rights implications of a North Korean desire for a positive security assurance:

[A] guarantee of U.S. support for a crumbling Kim Jong-il regime would run anathema to every American value and human rights principles. Without any significant improvement in human rights in the country, it is difficult to imagine any president agreeing to pro-actively support the Kim's family's continued rule.<sup>173</sup>

The closer and deeper the U.S. relationship with the DPRK is deemed to be necessary to bring about their denuclearization, the more reason there is for talking to North Korea about human rights, and the sooner the better.

### III. TALKING ABOUT TALKING ABOUT HUMAN RIGHTS

At the outset of diplomatic discussions between states, it is common for both sides to make “opening statements” outlining issues that each side wishes to address. Judging from previous statements by North Korean officials, it may well be that, prior to taking up the substantive core of human rights issues with the DPRK, it may be necessary to preface a substantive human rights dialogue by clearing away the underbrush of potential misconception; that is, to talk about talking about human rights before getting to talk about human rights substantively. Following are several points that are prologue to substantive discussions.

#### DEFINING HUMAN RIGHTS

##### *Human Rights Is Not “Regime Change”*

It may well be that North Korean diplomats conflate observations of human rights violations with the politics of “regime change.” Certainly in recent years many South Koreans associated human rights advocacy about North Korea with coercive or forced regime change, seeking to suborn and bring about the collapse of the Kim family regime in North Korea. But fundamentally, the promotion and protection of human rights pertains to the extent to which each and every government observes various norms and standards of government policy and practice towards its citizens in the modern world. Human rights advocacy aims to change a government’s policy and practice with respect to the specific rights recognized or set forth in international standards—not the overthrow of governments themselves.

The international norms and standards of human rights in the twentieth and twenty-first centuries, from the 1948 Universal Declaration of Human Rights, through the negotiated drafting of a series of international human rights treaties, conventions, and declarations, up to the recent 2008 Convention on the Rights of Persons with Disabilities, were established in negotiations between nation-states with all kinds of

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<sup>172</sup> See p. \*41 above.

<sup>173</sup> Cha, Senate testimony.

regimes and political systems: constitutional monarchies, absolute monarchies, parliamentary democracies, presidential democracies, people's democracies, military dictatorships, proletarian dictatorships, and so on. The conventions, declarations, and accords that define what human rights are in the modern world were deliberately designed to apply to nation-states irrespective of the huge variety of social and political systems that exist within the international community. UN resolutions, passed by overwhelming majorities, explicitly posit that "it is the duty of all states, regardless of their political, economic or cultural systems, to promote and protect all human rights and fundamental freedoms."<sup>174</sup>

Put differently, there is nothing in the Universal Declaration of Human Rights that prohibits or precludes the idiosyncrasies of the North Korean state such as dynastic succession, the fervent veneration of the founder of the state and his family, the ideology of "*Juche* thought," "military first" politics,<sup>175</sup> "socialism in our style," and so on. From the perspective of human rights it does not matter whether Kim Jong-il continues to rule for decades hence, is succeeded by his first, second, or third son, or by a collective leadership arrangement. What matters is whether the present administration or the next one, however it is comprised or organized, respects, or does not respect, the specific rights explicitly prescribed in the international human rights declarations and conventions, particularly the human rights conventions that North Korea has formally endorsed and acceded to.

### ***Concern about Human Rights Is Not Slander or Vilification***

There has been concern in some circles, particularly in South Korea, that the North Korean human rights issue has been "politicized." But what does this really mean? The deprivation of civil and political rights is, by definition, political. Protesting the deprivation of civil and political rights is also, by definition, political. Inevitably and unavoidably, geopolitical conflict has ideological components, and adversaries of the DPRK cannot be expected not to include severe human rights violations, along with counterfeiting and illicit drug manufacture and export, in criticisms of the North Korean regime. But using these issues for a variety of purposes is not the same as advocating a distinctive and clear human rights policy toward the DPRK. To seek to lessen potential misunderstandings, the United States, Japan, the South Korea, and groups of UN Member States, such as the EU, could explicitly posit to North Korea that their approach is based on the approach endorsed by the UN General Assembly:

[T]he promotion and protection of human rights should be based on the principles of cooperation and genuine dialogue and aimed at the strengthening of the capacity of Member States to comply with their obligations for the benefit of all human beings.<sup>176</sup>

To demonstrate concretely that its approach to human rights is intended to be cooperative and is not intended as slander or political attack, the United States should offer to engage in technical cooperation with the DPRK in the area of human rights. One such suggested area could be in the rights of persons with disabilities, wherein it could be proposed that U.S.-based disabled persons' organizations could cooperate on developing programs with the Korean Federation for the Protection of Persons with Disabilities that

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<sup>174</sup> Vienna Declaration, para. 5, and again more recently in General Assembly Resolution 60/251, UN Doc A/Res/60/251, 3 April 2006.

<sup>175</sup> An oft-proclaimed North Korean doctrine that apparently asserts the primacy of the National Defense Commission over the Korean Workers Party.

<sup>176</sup> UN Doc A/RES/60/251.

was founded in 2005. Another area for proposed technical cooperation could be with respect to children's rights. While the Convention on the Rights of the Child works rather differently from the other core UN human rights conventions, UNICEF, which already has a substantial program in North Korea, works as an implementing agency for the children's rights convention. Developing a trilateral program between the United States, UNICEF, and the relevant North Korean institutions could be proposed for consideration, as part and parcel of an improved U.S.-DPRK relationship.

### ***Not an Infringement of Sovereignty or Interference in Internal Affairs***

Many states accused of human right violations, including North Korea, contend that such accusations constitute interference in their internal affairs. But, in reality, it is quite simple to make a list of overt and covert actions that are widely recognized as interference in the internal affairs of a sovereign state. Calling attention to the variance between international standards and national practice or the discrepancy between state obligations and state practices in the field of human rights is simply not one of those actions. The only difference between human rights and democracy promotion by the United States and previous North Korean efforts to promulgate "*juche* ideology" globally is that human rights has more resonance globally, whereas "*juche* thought" had such a Korean nationalist core that few other societies found it applicable to their situation.<sup>177</sup>

It is sometimes averred that the DPRK has a hyper-Westphalian notion of sovereignty. More commonly the DPRK refers to its "sovereignty and dignity" or refers to itself as a "dignified sovereign state." Even when it speaks of its sovereignty, it is clear from the usage that disparagement of the dignity of the North Korean state is what is at issue. But with respect to human rights matters, it is entirely possible to raise the most serious of violations in a non-disparaging and respectful manner. Discussing the variance between international standards and national practice entails no denial that the DPRK fully possesses the attributes of sovereignty. In fact, it is exactly the opposite.

In a similar vein, it may have to be iterated and reiterated that North Korea is not being singled out by the United States, or anyone else, and that human rights is a two-way street—with the United States itself having been subjected to considerable criticism on human rights grounds by U.S. allies, adversaries, and neutrals over the last several years.

## **THE NORMATIVE AND ANALYTICAL BASIS FOR HUMAN RIGHTS DIALOGUE WITH NORTH KOREA**

The DPRK declares that it "attaches importance to dialogue and cooperation in the area of human rights."<sup>178</sup> The basis for a human rights dialogue between the United States and North Korea is that both states are signatories to the same core international human rights conventions. Both states have signed the International

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<sup>177</sup> See for example, *Juche: Banner of Independence*, Papers and Speeches presented at the International Scientific Seminar on the *Juche* Idea, Tananarive, Madagascar, 28-30 September 1976.

<sup>178</sup> Statement by the Delegation of the Democratic Peoples Republic of Korea at the Fourth Session of the Human Rights Council (un-dated). "However," DPRK diplomats go on, "we have no intention to beg for them [human rights dialogue and cooperation] when our sovereignty and dignity are being infringed upon by deliberate hostile provocations." (It is, of course, as posited above, entirely possible to raise human rights matters without hostility, condescension, or sovereign infringement.)

Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).<sup>179</sup> These twin conventions convert the provisions of the Universal Declaration of Human Rights into the language of international law. Between them they cover the full range of human activities that are recognized as “rights” in the international community. These conventions specify in considerable detail what signatory governments *should not do to* their citizenry and what signatory governments *should do for* their citizens to the extent that resources allow.

These conventions provide both the analytical framework and the terminology for discussions between signatory states. It is perfectly normal for co-signatories or states parties to discuss between themselves how the various articles and provisions are interpreted and/or implemented (or not).

Further, these conventions have implementation review mechanisms in which North Korea participates. Indeed, prior to the Universal Periodic Review of December 2009, these were the only part of the UN human rights system with which the DPRK cooperated.<sup>180</sup> States parties to the human rights conventions send reports on the measures that have been taken to implement the provisions of the convention. These reports are examined by UN “expert committees”<sup>181</sup> that call in the States Parties for discussions in Geneva of the implementation reports. Following the deliberations between the UN implementation review committee and the representatives of the State Parties, the review committees then issue “Concluding Observations and Recommendations”—the steps that the States Party should take to improve their implementation of the provisions of the convention, to better comply with what lawyers call its “binding legal obligations” under the terms of the convention.

The DPRK has submitted its implementation report under the ICCPR to the UN Human Rights Committee, and its implementation report under the ICESCR to the UN Committee on Economic Social and Cultural Rights. And in 2001 and 2003, respectively, these committees issued their reports on North Korea’s implementation of its obligations under both Covenants.<sup>182</sup> These reports, with their series of expert recommendations, constitute a veritable UN roadmap for improving human rights in North Korea.<sup>183</sup>

It is these recommendations, *inter alia*, that should form the substantive core of discussions between the United States and North Korea as co-signatories to these conventions.

North Korean officials from Kim Jong-il on down use the stock formulation: “There can be no human rights problems in our people-centered socialism.” However, the oft-repeated assertion that, by definition, there cannot be human rights problems cannot be true or accepted. No nation-state is without human

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<sup>179</sup> The DPRK has also acceded to the Convention on the Elimination of Discrimination against Women and the Convention on the Rights of the Child.

<sup>180</sup> Apart from submitting its implementation reports and attending the implementation review sessions in Geneva, the DPRK has invited UN human rights treaty body officials and staff to Pyongyang. And there are indications that North Korea incorporated a recommendation (though not one of the most consequential), from the UN Human Rights Committee into its revised legal code.

<sup>181</sup> The committee members—usually genuine experts in international or constitutional law—are nominated by States Parties and then elected by the States Parties to that convention. These experts serve the UN in an individual capacity, and unlike diplomats at the Human Rights Council or General Assembly, the experts on the “treaty bodies” do not speak or vote under instructions of the foreign ministries of the State Party government that nominated them.

<sup>182</sup> These committees, termed “treaty bodies” in UN parlance, should not be confused with the UN Commission on Human Rights, now renamed as the Human Rights Council, which is a subsidiary organ of the General Assembly, where ambassadors or other representatives speak and vote on behalf of their respective governments on the instructions of their respective foreign ministries.

<sup>183</sup> “Concluding Observations of the Human Rights Committee: Democratic Peoples Republic of Korea,” 27 August 2001, UN Doc CCPR/CO/72/PRK, and “Concluding Observations of the Committee on Economic, Social and Cultural Rights: Democratic Peoples Republic of Korea,” 12 December 2003, UN Doc E/C.12/1/DD.95.

rights problems. Even the best socio-political-legal systems can have miscarriages of justice. Most nation-states have holdover issues from insufficiently resolved social problems. Other states sometimes adopt ill-considered responses to unanticipated events. However, for the DPRK in particular, the observations and recommendations by the two UN expert committees cited above list no fewer than sixty areas where human rights in North Korea can be improved.

The UN Human Rights Committee report has twenty such recommendations in the area of civil and political rights.<sup>184</sup> The UN Committee on Economic, Social, and Cultural Rights report enumerates seventeen “subjects of concern” and twenty-three “suggestions and recommendations.”<sup>185</sup> As noted, in their recent submission to the UN Human Rights Council, the DPRK claims that it “has taken into serious consideration the observations and recommendations made by the treaty bodies, and *accepted and implemented them...*” (emphasis added).<sup>186</sup> There is nothing accusatory or hostile for the U.S. special envoy to sit down with various DPRK counterparts and go through these recommendations one by one, seeking information on the implementation measures that the North Koreans contend they have taken. This is an example of seeking to pursue what is elsewhere called “knowledge sharing.”

Seeking such a dialogue, or having such a dialogue, is unlikely to wreck the chances for a nonproliferation or arms-control agreement.

Most of the dialogue suggested above would be the responsibility of the Special Envoy for North Korean human rights issues, as it is the first point of the ambassador’s congressionally-mandated job description. The door to human rights dialogue has to be opened by the Special Envoy for North Korea Policy, who is presently the only interlocutor between the United States and the DPRK.<sup>187</sup> Once Ambassador Stephen Bosworth, the current U.S. Special Envoy for North Korea Policy, is sufficiently sure there is enough common ground with the DPRK on denuclearization issues to resume negotiations, he will have to make the initial case to North Korea that improving relations and the road to diplomatic normalization with the United States will be facilitated by a human rights dialogue.

What is less obvious is that there are substantial discussions than need to be had, and can be had, on human rights matters at the technical or sub-ambassadorial level, just as there was a substantial amount of technical discussion between U.S. and DPRK scientists and engineers on what exactly was involved in the “disabling” process at the Yongbyon nuclear facility.

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<sup>184</sup> These include, for example, eliminating the requirement for the “travel certificates” system that controls and prohibits travel within the country, ending the requirement for “exit visas” to leave the country, instituting a system of independent (domestic) oversight of all places of detention and custody, bringing prison facilities up to the level of the UN Standard Minimal Rules for the Treatment of Prisoners, ending public executions and executions for “political” crimes, granting access to the country to international human rights organizations and other international bodies, and eliminating measures that restrict the availability of foreign newspapers to the public.

<sup>185</sup> Such as joining the International Labor Organization (ILO) and ratifying the main ILO Conventions on labor rights, allowing independent labor unions, increasing budgetary allocations for social expenditure, eliminating penalties against those who traveled abroad in quest of employment, and guaranteeing the right of everyone to choose his/her career and workplace.

<sup>186</sup> “National Report,” UN Doc A/HRC/WG.6/6/PRK/1, 27 August 2009, para. 29, p. 7.

<sup>187</sup> The Obama administration has organized itself rather differently than the Bush administration did regarding approaches to the DPRK. Under Bush, the assistant secretary of state for East Asia and the Pacific (EAP) did virtually all of the nuclear negotiating with the DPRK. Presently, the assistant secretary for EAP retains an oversight role, the Special Envoy for North Korea Policy coordinates policy, and there are separate special envoys for the Six Party Talks negotiations, if or when they are resumed, and a now full-time Special Envoy for Human Rights Issues.

## TYPES OF HUMAN RIGHTS DIALOGUES

### *Knowledge-Sharing Dialogues*

Two examples of technical human rights dialogue are as follows. In 2004 and 2007 the DPRK revised its Criminal Code and Criminal Procedures Code. These revisions included a number of improvements from a human rights point of view, incorporating, it is said, several recommendations made to the DPRK by the UN human rights treaty bodies referred to above. There are North Korean officials, it should be recognized, who have worked to bring DPRK law up to international standards. But there is a lot about the functioning (or malfunctioning) of the DPRK legal system that is not clearly understood.

The United States could seek meetings with the North Korean officials responsible for legal revisions for purposes of genuine dialogue and knowledge-sharing regarding the legal/social system of the DPRK. From the testimony of former detainees in the North Korean *kwon-li-so* (political penal labor colonies), it appears to be the case that these prison labor camps—holding an estimated 150,000 to 200,000 persons<sup>188</sup>—operate entirely outside North Korea’s court system and legal codes. If so, by definition, these detentions are “arbitrary.” The punishments and executions that occur in the camps are, by definition, “extra-judicial.” So a question to ask North Korean law officials is: What provisions in the constitution or institutional framework preclude the jurisdiction of the courts, the criminal codes, and criminal procedures codes from what the North Koreans call “managed places” or “total control zones”?<sup>189</sup>

Similarly, while the revised North Korean criminal codes and criminal procedure codes now prohibit the use of torture and prohibit confessions obtained under torture from being used in court, there is a large body of very recent testimony from former North Koreans who were beaten and/or systematically tortured upon forced repatriation from China. So it would seem entirely appropriate to ask DPRK legal authorities in Pyongyang what measures are being taken to ensure that articles prohibiting torture and prohibiting the use of confessions obtained under duress are being implemented in the police interrogation and detention facilities that abut the corridors from which North Koreans are being forcibly repatriated from China.

In the area of freedom of thought, conscience, and belief, there are knowledge-sharing questions that could be asked of the leaders of the various “religious federations” in North Korea. For example, North Korea has churches only in Pyongyang.<sup>190</sup> It is well known that following the Korean War and into the 1960s, many families of Protestant Christian believers were transferred from Pyongyang to the industrial cities along North Korea’s east coast, such as Hamhung and Chongjin. Given the proclivity of Christian believers all over the world, including certainly Korea south of the 38<sup>th</sup> parallel, to gather in congregations to pray, sing hymns, and read scripture together, why is it, the leaders of the DPRK “Protestant Christian (*Kiddokyo*) Federation,” could be asked, that Christian believers in Pyongyang have, or want to have, churches but those in Hamhung, Chongjin, or, say, Hoeryong, Onsong, or Sinuiju, do not?

Similarly, across the globe and certainly in South Korea, Protestant Christian churches have, ubiquitously,

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<sup>188</sup> See David Hawk, *Hidden Gulag: Exposing North Korea’s Prison Camps*, U.S. Committee for Human Rights in North Korea, 2003, page 24.

<sup>189</sup> These are the literal translations of the terms that North Korea uses for its political prison camps. See pp. \*59-60 below.

<sup>190</sup> Specifically, two Protestant churches, one Catholic church, and one Orthodox church. There are also a small number of Buddhist temples (often maintained as cultural heritage sites) and meeting rooms for *Chbondokyo*, an indigenous religion.

educational programs popularly known as “Sunday school.” Why, the *Kiddokeyo* Federation leaders could be asked, do the members of their federation not want these kinds of educational programs?

The list of these kinds of knowledge-sharing questions about the DPRK legal and social system can easily be extended. But the above questions provide concrete examples of human rights dialogue at the levels of knowledge-sharing that would enable the U.S. side to have a much better understanding of the North Korean legal and social system while preparing the way for even more extended human rights dialogue.

### ***Policy Dialogues***

North Korean authorities at a variety of levels could also be asked about current DPRK policies that result in widespread and unnecessary suffering. Two examples are outlined below: violence against women and the prison-labor camps.

#### **Violence against Women**

The North Korean policy of severe punishment for persons repatriated from China, along with the Chinese policy of repatriation for many North Koreans caught in China, set up a situation that leads to trafficking and violence against women. A large portion—perhaps 70 to 80 percent—of North Koreans who flee to China for food or employment (to earn money for food and/or medicines for their families back in Korea) are young women. Many of those women, who have entered China without documentation, are apprehended by traffickers. Knowing the punishment awaiting them if turned over to the Chinese police and repatriated to North Korea, the women have no protection against being sold as “brides” to men, often rural Chinese farmers, desperate for wives owing to the shortage of women resulting from China’s longtime one-child policy.<sup>191</sup>

To curb the trafficking of young women along China’s southwest borders, the governments of China, Vietnam, Cambodia, Laos, Thailand, and Burma cooperate with UN agencies, official women’s organizations, and Chinese and Southeast Asian NGOs.<sup>192</sup> Why not initiate discussions on combating trafficking and sexual violence against North Korean women? Why, on a humanitarian basis, could not a comparable cooperative program such as what exists in Southeast Asia be proposed and considered for Northeast Asia?

Sometimes the trafficked relationships described above work out and the North Korean women have children and try to make do the best they can. But often it does not work out, and the women run away from the men who bought them and are subsequently caught by the police or turned in by neighbors. The women are then forcibly repatriated and turned over to DPRK police authorities at the various repatriation corridors along the DPRK-China border. Women repatriated while pregnant are frequently subjected to forced abortion, as the North Koreans do not want what they call “half Chinese” babies. At some places along the DPRK-China border, repatriated Korean women too far along in pregnancy have been forced to witness the infanticide of

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<sup>191</sup> See *Lives for Sale: Personal Accounts of Women Fleeing North Korea to China*, U.S. Committee for Human Rights in North Korea, 2009, for a description of trafficking and some 70 case studies of trafficked North Korean women in China.

<sup>192</sup> Named COMMIT, the Coordinated Mekong Ministerial Initiative against Trafficking. The ILO is a key intergovernmental agency in this effort. A key participant is the All China Women’s Federation. Donor agencies to these anti-trafficking efforts have included USAID.



their prison-born babies.<sup>193</sup> Whether trafficked or pregnant or not, Korean women repatriated from China are subjected to brutal interrogation, sexual humiliation, and violence, followed by imprisonment and/or forced labor.

It is possible to see the persecutions of forcibly repatriated women and girls as one among many repressive phenomena inflicted on its citizenry by the DPRK police agencies. North Korea formally justifies the violence and punishments by claiming that these persons, a substantial majority of whom are women, have colluded with “hostile forces” (meaning they met South Koreans) while outside North Korea

Many women thusly brutalized conclude that they will always face suspicion, surveillance, and persecution if they remain in the DPRK, so they again flee to China, but now with the intent of defecting to South Korea. These persons are fully entitled to international protection once again outside North Korea. The sexual violence meted out to forcibly repatriated North Korean women also spills across national borders, as these women cross China and enter Mongolia or one or more countries of Southeast Asia in search of safety and asylum in South Korea. The contemporary violence against North Korean women described above has been part of North Korea’s conflict with South Korea and the United States for a good fifteen years now. By dint of Security Council Resolution 1325, one might even posit that Korean women’s organizations deserve a place and a hearing in a peace process with the DPRK:

*Reaffirming* the important role of women in the prevention and resolution of conflict and in peace-building, and *stressing* the importance of their participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution, ... [the Security Council] *Urges* Member States to ensure increased representation of women at all decision-making levels in national, regional, and international institutions and mechanisms for the prevention, management and resolution of conflict.<sup>194</sup>

### **Dismantling the North Korean Gulag: How to Talk to the North Koreans about the Prison Camps**

A North Korean official recently proclaimed to the United Nations Human Rights Council, “The term ‘political prisons’ does not exist in the DPRK’s vocabulary, and therefore the so-called political prisoner’s camps do not exist.”<sup>195</sup> While, inevitably, the North Korean *kwon-li-so*, political penal labor colonies, are termed “political prison camps” in shorthand English, there is no need to be deterred or deferred by an unnecessary semantic dispute.

The camps certainly do exist.<sup>196</sup> But they do not look like what people normally call in English “prisons,” “penitentiaries,” or “jails.”<sup>197</sup> Further, virtually none of the persons held in these camps have been subjected

<sup>193</sup> See Hawk, *The Hidden Gulag*, pp. 56-69, for a description of the brutal mistreatment of forcibly repatriated Koreans.

<sup>194</sup> 4<sup>th</sup> preambular and 1<sup>st</sup> operative paragraphs, UN Security Council Resolution 1325, 31 October 2000.

<sup>195</sup> Draft Report of the Working Group on the Universal Periodic Review: DPRK, UN Doc A/HRC/WG.6/6L.12, 9 December 2009.

<sup>196</sup> There are presently five or six of them, depending on how they are variously defined, holding some 150,000 to 200,000 persons. The sprawling encampments, one of which is the size of the District of Columbia, are located in the valleys of mountainous areas of north and north central North Korea. As can be seen from the satellite photographs, they are comprised of multiple “villages” or “work camps” for different types and categories of detainees.

<sup>197</sup> The North Koreans have those too, commonly termed *kyo-hwa-so* and *kyo-yang-so*, which also include persons detained for political reasons, but these prison facilities work differently than the *kwon-li-so*.

to legal or judicial procedures: no arrests, charges, trials, convictions, or sentences as these are defined and described in the DPRK Criminal Procedures Codes. In human rights terms, persons in the *kwon-li-so* encampments are more precisely and accurately described as “disappeared persons” who have been “forcibly deported from the places where they were lawfully present” and deposited “incommunicado” in places where they are “removed from the protection of law;” “severely deprived of their physical liberty in violation of the fundamental rules of international law;” routinely subjected to beatings and systematic tortures and punishments without any, let alone due, process of law; “deprived of [adequate] access to food or medicines;” and subjected to forced labor in mines, timber logging, state farming, or various manufacturing plants.<sup>198</sup> The combination of below-subsistence-level food rations and forced hard labor in mines, forests, fields, and factories results in extremely high rates of deaths in detention, possibly reaching the level now defined in international law as extermination.

For obvious reasons, this mouthful of repressive acts is shortened in English to “political prisoners” or “political prisons” or “prison camps” or sometimes, “concentration camps.”<sup>199</sup> However, when talking to the North Koreans, rather than using semantics the North Koreans will object to, or the precisely detailed repressions depicted above, it will suffice to use the literal English translation “managed places” for the North Korean term *kwon-li-so* for the political penal labor colonies.<sup>200</sup> Thus, an English-speaking interlocutor addressing North Korean officials could raise concerns about the situation of the “residents” of the “managed places.” If the terms *ju-min* (for resident)<sup>201</sup> and *kwon-li-so* (for managed places) are used by the interpreter, the North Koreans will know exactly what is being talked about.

Thus, it can be said to the North Koreans that there are members of Congress and many other Americans who are concerned about the situation of the “residents” of the “managed places.” (A statement of fact.) North Koreans can be asked if they have given any thought to disabling and dismantling the “managed places” (an easier process than might be imagined, given that North Korea assigns residence and work site to most all its male residents).<sup>202</sup>

Or, it could be said to the North Koreans that in recent years the United States had been heavily criticized internationally for not allowing the International Committee of the Red Cross (ICRC) access to places of detention in the U.S. “war against terror.” The policy was changed and ICRC access was allowed, and the

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<sup>198</sup> Respectively, Articles 7.2(i), 7.2(d), 7.2(i), 7.1(e), 7.1(f) and 7.2(e), 7.1(b)(Element 1), and 7.1(c)(Element 1) of the Rome Statutes of the International Criminal Court.

<sup>199</sup> In fact, there is nothing concentrated about these sprawling encampments other than the inhumanity within them.

<sup>200</sup> In South Korea, *kwon-li-so* was sometimes translated into English as “management camp.”

<sup>201</sup> According to a former prisoner from Camp No. 18, the term used for prisoners was *e-ju-min*, which translates as “migrant.” But this is a dishonest euphemism. The prisoners did not migrate to the camps. They were abducted and forcibly deported, without any judicial process, from their previous residences by the North Korean state police agency.

<sup>202</sup> For example, the way to end the slave labor is to pay the workers whatever wage, salary, or public distribution system allotment for food and clothing is paid to miners, loggers, farm workers, and workers in comparable occupations elsewhere in the DPRK. The way to end the “incommunicado” aspect of the detention is to allow the residents to send and receive letters (something most persons deprived of their physical liberty around the world are allowed). The way to end the “extra-judicial” and “beyond the protection of the law” nature of the encampments is to allow the DPRK court system, criminal code, and criminal procedure codes to operate within the camps. The way to end the starvation and malnutrition inside the camps is to allow this extremely “vulnerable group” to be provided foodstuffs by the WFP, as are hospitals and nursery schools. There is a “re-revolutionizing” or “re-education” area with Camp No. 15 (Yodok) where detainees are presently able to watch the one North Korean TV station on Sundays. It is not such a stretch to extend this policy to the whole population within the *kwon-li-so*. The residents could be allowed the same regulated “internal travel” arrangements that all North Koreans are subjected and limited to. And so on. In the end, these become the assigned places of employment and residence, the same as is done for nearly all DPRK male citizens. The electrified barbed-wire fences can come down, and the large number of guards and prison officials can be reassigned to more productive employment elsewhere in the country.

United States found the new policy to be workable. (Again, all statements of fact.) The North Koreans could be asked if they would give consideration to allowing ICRC access to places of detention within the republic, including the “managed places” (*kwon-li-so*) and including the detention and interrogation facilities for North Koreans repatriated from nearby countries.

Or it could be said that reports have been received about the acute hunger faced year-in and year-out by the “residents” of the “managed places.” (Indeed, one of the main complaints of former prisoners is that they were always seriously hungry, or sometimes that there were more days when they didn’t eat than days when they did.) The United States has been a major provider of humanitarian food aid to “vulnerable groups” in North Korea. In the event of improved relations between the United States and the DPRK, it is highly likely that humanitarian food aid deliveries will be resumed. It would not be inappropriate for the United States to ask if the “residents” of the “managed places” could be one of the vulnerable groups to which U.S. food aid could be supplied.

## INITIATING THE DIALOGUE

These kinds of questions can be asked at the human rights envoy and special envoy levels so that the North Koreans know that these are among the concerns of the American side.<sup>203</sup> However, it is very much the case that there is only one person who can order the North Korean prison camps to be disabled and dismantled, and only one person who can order an end to the brutal mistreatment of North Koreans forcibly repatriated from China. That person is Kim Jong-il. In all likelihood, the Chairman of the National Defense Commission, Kim Jong-il, will be willing to meet U.S. officials only at the secretary of state or presidential level. At this stage, it is barely conceivable that the secretary of state or the president would go to Pyongyang to meet with the North Korean leadership without an overriding arms-control purpose, and a considerable likelihood of success.<sup>204</sup>

Kim Jong-il is unlikely to say “yes” to parting with North Korea’s nuclear weapons arsenal unless he can say “yes” in person to the president or secretary of state who, in demonstration of the new and improved U.S.-DPRK relationship, is willing to travel to Pyongyang to hear firsthand the North Korean “yes.” Meetings at this level are always much more wide-ranging than affixing signatures to the immediate protocols on the table. There is ample room and opportunity to raise the human rights issues suggested above in the ways suggested above.

No one would be the slightest bit surprised if Secretary of State Clinton raised the issues of trafficking and violence against women with her male counterparts in North Korea and China. And some would be disappointed if she did not. President Obama would likely face criticism if he returned from Pyongyang without being able to say that he discussed arbitrary detention with the Great General/Dear Leader.

As noted, it is unlikely that a U.S. secretary of state or president would ever go to Pyongyang without a

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<sup>203</sup> As phrased above, these matters could also be raised by unofficial visitors to Pyongyang. DPRK officials have responded harshly to accusations that they have political prisoners or political prison camps. To my knowledge, they have not been asked about these matters in the terms that the North Koreans themselves use.

<sup>204</sup> The Six Party Talks process envisions a ministerial level (foreign minister and secretary of state) meeting to cap off “phase two” and signal that the talks are moving on to “phase three.” At the end of the Clinton administration, when the United States was considering a “buyout” of the North Korean missile program, President Clinton was to have gone to Pyongyang to seal the deal.

compelling arms-control or nonproliferation purpose. But there is, it should also be noted, a very strong human rights rationale, purpose, and justification for direct dialogue with the North Korean leadership by the president and secretary of state. Again, if the kinds of conversations suggested above cannot be had with the North Koreans, it is hard to imagine that they would agree to the intrusive verification protocols that most arms-control experts insist are necessary. And again, there is no evidence that the North Koreans would scrap arms-control or nonproliferation measures that they would otherwise agree to just because human rights concerns have been raised.



# CONCLUSION

## AND IF THE SEARCH FOR PEACE WITH NORTH KOREA FALTERS (AGAIN)?

The reason why security concerns will continue to dominate the U.S. approach to the DPRK is straightforward. North Korea has the capacity to proliferate missile and fissile material technology and know-how to U.S. adversaries around the world. North Korea has done so in the past, and threatens from time to time to do so again.

Additionally, if Japanese and South Korean policymakers and politicians come to believe that North Korea has the capacity to detonate nuclear weapons over cities in South Korea and Japan, both countries will regard this as an unacceptable deterioration of the regional balance of power, and both countries will seek more advanced weapons systems to counter North Korea's nuclear weapons capability, possibly including their own nuclear "deterrent" under the control of their own national authorities. Up to now, independent nuclear weapons systems by Japan and South Korea have been deemed by the United States to be incompatible with the U.S. defense alliances. Thus, North Korea's nuclear weapons program threatens to undo the security architecture of Northeast Asia that has been in place since WWII, a regional security arrangement that is more or less acceptable to other regional powers, including China and Russia, as neither wants additional nuclear armed neighbors, especially Japan.

North Korea is still several tests away from having either sufficiently reliable multi-stage missiles or the capacity to miniaturize a weaponized nuclear device to put inside a nose cone. However, as the DPRK moves steadily in the direction of acquiring these geopolitically destabilizing weapons systems and capacities, it has been willing intermittently to temporarily slow the development of its nuclear weapons and missile programs. It is likely that the other nation-states whose interests intersect in Northeast Asia will continue to attempt to draw North Korea into further discussions aimed at halting weapons development and securing a peaceful security structure in the region.

It has been argued herein that human rights can and should be part of a search for peace with North Korea.

But at the outset, it was suggested that there was a preliminary question whether or not a peace process with the DPRK was possible.

In fact, many now believe that the DPRK is no longer interested in exchanging its nuclear weapons program for new relations with the United States, South Korea, and Japan. In the words of a leading American nuclear scientist who has with North Korean officials met several times, “Pyongyang may agree to denuclearize in principle, but it will drag out implementation as it did with during the six party process.”<sup>205</sup> In the words of a Korea scholar, “Pyongyang ... negotiates with Washington not to defuse tension but to manage it, to keep it from tipping into all-out war, or an equally perilous all-out peace.”<sup>206</sup>

Where does that leave the prospects for negotiation and engagement with North Korea? And the prospects for including human rights concerns in negotiation and engagement?

In the words of a prominent Russian Korea scholar now teaching in South Korea, “[A]s long as the country remains under the current regime’s control, negotiations are not going to produce a non-nuclear North Korea.” Nonetheless, Prof. Lankov posits four major reasons why North Korea should be engaged.

First, some useful compromises are achievable. It is possible to devise an agreement that would diminish the likelihood of nuclear proliferation by Pyongyang.... North Korean leaders understand that their current stockpile of weapons-grade plutonium is sufficient as a deterrent and blackmail tool. They might even agree to demolish their Yongbyon research facilities, if the promised payoff is sufficiently high.

Second, talks lessen tensions and decrease the likelihood of a confrontation.... Pyongyang diplomats might at any time resort to their favorite trick: walk away from negotiations, launch a chain of provocations to increase tensions, and then return to the negotiations in expectations of greater payoffs. But while the talks are continuing, an accidental confrontation is less likely.

Third, talks will provide a line of communication that might become vital, since big changes are looming in Pyongyang.

Perhaps the most important reason why Pyongyang should be engaged is the long-term domestic impact of talks. Negotiations and aid create an environment where contacts between the isolated population and the outside world steadily increase, exposing the total lie in which North Koreans have to live. In the long run ... bringing the country’s radical transformation—and, probably, a solution to the nuclear issue.<sup>207</sup>

To these reasons a fifth can be added, the rationale specified by President Obama in his Nobel Peace Prize address: “The promotion of human rights cannot be about exhortation alone.... No repressive regime can move down a new path unless it has the choice of an open door.”

The door should be open for officials from the United States and the international community to patiently

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<sup>205</sup> Hecker, “Lessons Learned,” p. 52.

<sup>206</sup> Myers, *The Cleanest Race*, p. 166.

<sup>207</sup> Andrei Lankov, “No Rush to Talk With North Korea,” Nautilus Policy Forum Online 09-067A, 19 August 2009.

and politely explore with North Korean officials on a variety of levels the substance of the reality that President Obama recently posited at Suntory Hall: “Supporting human rights provides lasting security that cannot be purchased in any other way.”<sup>208</sup>

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<sup>208</sup> Suntory Hall, Tokyo, 14 November 2009,





**U.S.-KOREA INSTITUTE AT SAIS**  
JOHNS HOPKINS UNIVERSITY  
1740 MASSACHUSETTS AVENUE, NW  
WASHINGTON, DC 20036  
[WWW.USKOREAINSTITUTE.ORG](http://WWW.USKOREAINSTITUTE.ORG)