

**HUMAN RIGHTS IN THE DEMOCRATIC
PEOPLE'S REPUBLIC OF KOREA**

THE ROLE OF THE UNITED NATIONS



DAVID HAWK



**HUMAN RIGHTS IN THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA:
THE ROLE OF THE UNITED NATIONS**

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ABOUT THE COMMITTEE FOR HUMAN RIGHTS IN NORTH KOREA

The Committee for Human Rights in North Korea (HRNK) is the leading U.S.-based nonpartisan, non-governmental organization (NGO) in the field of North Korean human rights research and advocacy, tasked to focus international attention on human rights abuses in that country. It is HRNK's mission to persistently remind policymakers, opinion leaders, and the general public that more than 20 million North Koreans need our attention. Since its establishment in October 2001, HRNK has played an important intellectual leadership role in North Korean human rights issues by publishing 50 major reports (available at <https://www.hrnk.org/publications/hrnk-publications.php>). Recent reports have addressed issues including the health and human rights of North Korean children, political prison camps, the dominant role that Pyongyang plays in North Korea's political system, North Korea's state sponsorship of terrorism, the role of illicit activities in the North Korean economy, the structure of the internal security apparatus, the *songbun* social classification system, and the abduction of South Korean and foreign citizens.

HRNK is the first and only NGO that solely focuses on North Korean human rights issues to receive consultative status at the United Nations (UN). It was also the first organization to propose that the human rights situation in North Korea be addressed by the UN Security Council. HRNK was directly and actively involved in all stages of the process supporting the work of the UN Commission of Inquiry (COI) on North Korean human rights. Its reports have been cited numerous times in the report of the COI, the reports of the UN Special Rapporteur on North Korean human rights, a report by the UN Office of the High Commissioner for Human Rights, two reports

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of the UN Secretary-General António Guterres, and several U.S. Department of State Democratic People's Republic of Korea Human Rights Reports. HRNK has also regularly been invited to provide expert testimony before the U.S. Congress.

ABOUT THE AUTHOR: DAVID HAWK

For over two decades, David Hawk has investigated and reported on the Democratic People's Republic of Korea's (DPRK's) vast system of unlawful imprisonment. His 2003 report, *The Hidden Gulag: Exposing North Korea's Prison Camps*, was HRNK's first published report and the first report ever to combine witness testimony with satellite imagery analysis to scrutinize the DPRK's political prison camps. It was translated into Korean and Japanese and published in Seoul and Tokyo. The second (2012) edition of *The Hidden Gulag: The Lives and Voices of "Those Who are Sent to the Mountains"* was also translated into Korean and published in Seoul. Hawk published further reports for HRNK in 2013 and 2015, and in 2017 authored *The Parallel Gulag: North Korea's "An-jeon-bu" Prison Camps*.

Additionally, Hawk has published reports and papers on the DPRK for the U.S. Commission on International Religious Freedom, Freedom House, the U.S.-Korea Institute at the John's Hopkins School of Advanced International Studies, and contributed chapters to academic publications.

David Hawk is a former Executive Director of Amnesty International, USA and a former UN human rights official in charge of the Cambodia Office of the UN High Commissioner for Human Rights. He has written numerous reports on other human rights issues, most notably on genocide in Cambodia and massacres in Rwanda. Hawk has taught at Hunter College, City University of New York and the University of South Florida, and reviews books for *Human Rights Quarterly*.

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FOREWORD

The Democratic People's Republic of Korea's (DPRK's) human rights practice is perhaps the quintessential case of tension between the international human rights system and state sovereignty. The DPRK views human rights as a Western concept designed to threaten its legitimacy as a state. Its own notion of human rights, in which rights are bestowed upon people based on the benevolence of the Kim regime, directly contradicts established human rights treaties and norms, which recognize the existence of fundamental and inherent human rights. Nevertheless, the DPRK is a State Party to five core human rights treaties.

What does this mean? The DPRK is playing both sides of the coin: at once, voluntarily obligating itself to uphold and not violate human rights according to international treaties, presumably for the benefit of legitimacy on the international stage; yet, holding itself domestically to a different standard based on its own practice of state-imposed "Kimilsungism." Bear in mind that the DPRK has been publicly denounced as "a state that does not have any parallel in the contemporary world" due to the "gravity, scale and nature" of its human rights violations by Justice Michael Kirby, former chair of the Commission of Inquiry on human rights in the DPRK.

Without question, this tension comes at a time when there is a broader challenge to a rules-based international order. The United Nations, although well intentioned to provide mechanisms that protect human dignity worldwide, is generally unable to enforce its own internationally-accepted treaties. This, in a sense, leaves the door open for bad actors to take what has been referred to as a 'might is right' approach.

Mercifully, human rights advocates, civil society organizations, Member States, and academics continue to push for human rights compliance on behalf of

silenced North Koreans. Among them, distinguished author and advocate David Hawk stands out. As a thought leader and expert, David provides a quintessential case of his own on the United Nations' role in DPRK human rights issues. David comprehensively addresses historical developments and the United Nations' efforts to apply human rights law, international criminal law, and various protection mechanisms to the DPRK. He explores the impact of the DPRK's responses to human rights activities given the current détente as well as changes in the DPRK economy and society over the last three years. We would be wise to consult his recommendations that constitute a United Nations roadmap for a "normal" DPRK, "one that seeks the improved realization of the human rights of its people."

David reminds us that we must work together to ensure a global future that upholds human dignity and advocates the importance of fundamental human rights for all, despite certain state practices that threaten an international rules-based order. His work is a treasure for human rights practitioners, investigators, and researchers as well as the United Nations.

Through his efforts as well as the contributions of the Committee for Human Rights in North Korea to maintain focus on human rights for the betterment of North Koreans, we can continue to be informed and adapt to the continued but changing demands of upholding universal human rights values and dealing with the difficult situation of the DPRK. I wish to thank David for his invaluable service through the publication of "Human Rights in the Democratic People's Republic of Korea: The Role of the United Nations."

 PRESIDENT, UNICEF/KOREA

Sang Hyun Song
President, International Criminal Court (2009–2015)
June 10, 2020

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Special thanks to Greg Scarlatoiu for accepting and supporting this project, and Rosa Park for her support, editing, and design. Thanks always and most to Joan Libby Hawk for her tolerance, patience, and editorial support.

ACRONYMS

AI: Amnesty International
ASEAN: Association of Southeast Asian Nations
CAT: Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment
CEDAW: Convention on the Elimination of All Forms of Discrimination against Women
COI: Commission of Inquiry on human rights in the Democratic People's Republic of Korea
CRC: Convention on the Rights of the Child
CRPD: Convention on the Rights of Persons with Disabilities
DPRK: Democratic People's Republic of Korea
DRL: Bureau of Democracy, Human Rights, and Labor (U.S. Department of State)
EAP: Bureau of East Asia and Pacific Affairs (U.S. Department of State)
ECOSOC: United Nations Economic and Social Council
EU: European Union
FAO: Food and Agriculture Organization
FIDH: International Federation for Human Rights
GONGO: Government-Organized Non-Governmental Organization
HRBD: Human Rights-Based Approach to Development
HRC: Human Rights Council
HRNK: Committee for Human Rights in North Korea
HRW: Human Rights Watch
ICC: International Criminal Court
ICCPR: International Covenant on Civil and Political Rights
ICERD: International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR: International Covenant on Economic, Social and Cultural Rights
ICJ: International Court of Justice
ICNK: International Coalition to End Crimes Against Humanity in North Korea

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ICPPED: International Convention for the
Protection of All Persons from
Enforced Disappearances
ICRC: International Committee of the Red Cross
ICTY: International Criminal Tribunal for the
former Yugoslavia
ICTR: International Criminal Tribunal for Rwanda
ILO: International Labour Organization
JCPOA: Joint Comprehensive Plan of Action
KBA: Korean Bar Association
KCNA: Korea Central News Agency
KINU: Korea Institute for National Unification
KWP: Korean Workers' Party
NGO: Non-governmental organization
NKDB: Database Center for North Korean
Human Rights
OHCHR: Office of the High Commissioner for
Human Rights
PDS: Public Distribution System
R2P: Responsibility to Protect
ROK: Republic of Korea
SPA: Supreme People's Assembly
UDHR: Universal Declaration of Human Rights
UN: United Nations
UNDP: United Nations Development Programme
UNESCO: United Nations Educational, Scientific
and Cultural Organization
UNFPA: United Nations Population Fund
UNICEF: United Nations Children's Fund
UNO: United Nations Organizations
UPR: Universal Periodic Review
WFP: World Food Programme
WGAD: Working Group on Arbitrary Detention
WGEID: Working Group on Enforced or
Involuntary Disappearances
WHO: World Health Organization

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CHAPTER I. INTRODUCTION

A. The Centrality of the United Nations in Promoting Human Rights in the Democratic People's Republic of Korea

The most important proponents of human rights are often *local* advocates: individuals seeking to promote and protect their own rights and that of those around them. However, because of the Democratic People's Republic of Korea's (DPRK's) regimented, surveilled, and closed society, few to none of the usual or customary avenues to promote and protect human rights—the means and methods that are utilized in almost every other nation-state in today's world—are available in the DPRK. This stark reality makes action by the United Nations (UN) particularly important for addressing the serious and widespread human rights violations occurring in the DPRK, which is also known as North Korea.

In most nation-states, even those with significant human rights issues, there are usually a number of elected and appointed officials who tackle human rights problems. Many UN Member States have national human rights institutions, often called human rights commissions.¹ These institutions are designed to promote and protect human rights, offering legal assistance to citizens who feel that their rights have been violated. There are also judges, prosecutors, defenders, and lawyers, who want to improve the application and implementation of the rule of law. Journalists, scholars, teachers, writers, artists, and bloggers also work to protect and extend freedoms of speech and expression. There is an astonishing variety of individuals who make full use

of their freedoms of expression and association to pursue issues of mutual interest and concern.

In virtually all other UN Member States, these defenders and advocates participate in national and global networks, which have been greatly enhanced with the spread of the Internet and the rise of social media. They exchange “best practices” and “lessons learned” from their respective successes and failures. They provide encouragement and support for one another. Lastly, they can help protect each other when local advocates are threatened or suppressed by the regime in power.

This is virtually impossible in the DPRK. In very limited areas of health and humanitarian food assistance—relating to the right to the highest attainable standard of physical and mental health, and the right to food—there are North Koreans who cooperate with foreign organizations and networks with state approval.² The same cannot be said of any other area of human rights.

At the national, provincial, and local levels, there are surely numerous North Koreans who would very much like to curb the power of the internal security agencies and enlarge the sphere of fundamental rights, liberties, freedoms, and protections in the DPRK. However, they remain trapped in an environment that is still rigorously controlled by the Korean Workers' Party (KWP) and a plethora of overlapping surveillance networks. Moreover, citizens' access

¹ These are statutory bodies with independent mandates to monitor state action.

² Although, as recently as 2016, 2017, and 2018, successive Secretaries-General have noted “significant constraints” on UN humanitarian agencies' access to aid beneficiaries and ability to “effectively target and reach the most vulnerable.” UN General Assembly, Situation of human rights in the Democratic People's Republic of Korea—Report of the Secretary-General, UN Doc. A/71/439 (October 7, 2016), ¶ 69; UN General Assembly, Situation of human rights in the Democratic People's Republic of Korea—Report of the Secretary-General, UN Doc. A/72/279 (August 3, 2016), ¶ 69.

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to information or communication with the outside world remains highly circumscribed.³

Due to this, the primary avenues for the promotion and protection of human rights in the DPRK have been and continue to be the mechanisms and procedures of the UN. There are, to be sure, critical activities occurring outside of the UN system. This includes the NGOs and individuals who provide food and shelter to North Korean refugees; disseminate information from the outside world into the DPRK; gather and publish information about the situation in the DPRK; and seek to persuade other governments to take bilateral or multilateral action with respect to the DPRK.

Nevertheless, it is largely through the mechanisms and procedures of the UN that international public opinion about norms and standards about human rights intersect with the government of the DPRK. This report addresses the interaction between the DPRK and the various UN mechanisms and procedures that seek to promote and protect fundamental human rights.

B. United Nations Roadmaps for Human Rights Improvements in the Democratic People's Republic of Korea

Virtually all of the UN's human rights mechanisms generate recommendations on what a particular Member State should do to improve its human rights situation. These mechanisms include the

Treaty Bodies that review the implementation of the international human rights conventions, Special Procedures, such as thematic or country-specific rapporteurs, and the UN Human Rights Council's Universal Periodic Review (UPR). The General Assembly and the Human Rights Council (HRC) also make recommendations via resolutions that are approved by the voting majorities of UN Member States. This report provides examples of and analyzes the various recommendations that have been made to the DPRK over the last two decades.

Whether the recommendations have come from UN officials, independent experts, or other Member States, they have been remarkably clear and consistent. As such, they provide a roadmap for the steps that the DPRK must take if it wishes to bring its human rights policies and practices in line with international norms and standards. This report explains how these recommendations were developed.

C. Structure of the Report

Following a brief historical overview, this report proceeds with a juxtaposition of the formation and the role of international human rights norms and standards (Chapter II) and the DPRK's official approach to human rights (Chapter III).

Chapter II examines international human rights norms and standards, which were promulgated at and through the UN. It explains how universal values were crafted through prolonged negotiations between a constantly growing number of states into international standards and codified into contemporary international human rights law. This section examines how various international legal instruments operate in general and also for the DPRK, in particular.

Chapter III is not a survey of the DPRK's human rights violations, on which there is already

³ Many of the North Korean refugees now living in the ROK maintain contact with families and friends still in the DPRK through cell phones that operate through transmission towers in China. This conduct is illegal and highly dangerous for participating North Koreans. Likewise, information from the outside world now enters the DPRK through new technologies, but accessing such information from inside the DPRK is illegal and dangerous. Amnesty International, *Connection Denied: Restrictions on Mobile Phones and Outside Information in North Korea* (London: Amnesty International Ltd., 2016).

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voluminous literature.⁴ Instead, it provides an account that is largely drawn from studies of the DPRK's archives, demonstrating how Supreme Leaders Kim Il-sung, Kim Jong-il, and Kim Jong-un explained their approach towards human rights to KWP cadre. The Supreme People's Assembly (SPA) enacted these policies and directives into the DPRK's laws and institutions.

Chapter IV examines the tangled history of the DPRK's ratification of international human rights treaties, which began in the 1980s. It also addresses the DPRK's sporadic participation, which continues up through 2019, in the UN human rights treaty system.

Chapter V discusses the disconnect between the legal-diplomatic proceedings in Geneva and New York, and the human rights realities on the ground in the DPRK in the 1990s. The chapter then details the efforts, starting in 2003, to deal with the "situation of human rights in the DPRK" at the UN Commission on Human Rights, the General Assembly, and the Security Council—efforts that continue to this day.⁵ The chapter also reviews the DPRK's refusal to cooperate with any of the UN's "charter-based" human rights mechanisms until late 2014 and its uneven cooperation thereafter.

The shift in DPRK policy towards the UN human rights system in 2014 came about because of the

considerable support among UN Member States for the findings and recommendations of a high-level UN Commission of Inquiry (COI) report. Chapter VI describes how the COI came about, how it worked, what it determined and recommended, how governments around the world followed up, and how the DPRK responded to the COI.

One step that the DPRK took in response to the COI report was to reverse its previous refusal to cooperate with the UPR, a key UN mechanism for monitoring human rights. This process and its outcome are examined in Chapter VII. The way in which the DPRK responded to recommendations made by other governments during the UPR provides a telling snapshot of the DPRK's approach towards international human rights norms and standards.

The concluding Chapter VIII surveys recent developments on the ground in the DPRK in light of Kim Jong-un's efforts to normalize economic and political relationships with the outside world. The chapter explores whether such normalization will be possible without becoming a more "normal" country. It posits that complying with the recommendations to the DPRK from UN human rights organs and mechanisms provides a potential roadmap for the DPRK.

D. Historical Overview

The interaction between the DPRK and the UN human rights mechanisms can be divided into four phases:

- (I) The DPRK's approach to international human rights law via human rights conventions it has ratified or acceded to;
- (II) Considerations of the DPRK human rights situation at the HRC and General Assembly;

⁴ UN Human Rights Council, *Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea*, UN Doc. A/HRC/25/CRP.1 (February 7, 2014). See also the DPRK chapters in Annual Reports and other publications on the DPRK by Amnesty International (AI) and Human Rights Watch (HRW). Three Seoul-based organizations, the Korean Institute for National Unification (KINU), the Database Center for North Korean Human Rights (NKDB), and the Korean Bar Association (KBA) have published comprehensive and detailed White Papers on human rights in North Korea. The Washington-based Committee for Human Rights in North Korea (HRNK) has published an extensive series of reports, including several by this author.

⁵ The UN Commission on Human Rights was replaced by the HRC in 2006.

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- (III) Applying international criminal law to the DPRK; and
- (IV) The DPRK's response following the 2014 COI.

1. Phase I: The Democratic People's Republic of Korea and International Human Rights Law

The first phase began in 1981, when the DPRK acceded to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁶ a set of multilateral treaties that convert the rights enumerated in the landmark 1948 Universal Declaration of Human Rights (UDHR) into the clearly defined language of international law. It ratified or acceded to additional human rights treaties, including the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities (CRPD). The DPRK's interaction with the international human rights treaty system continued sporadically into 2019.

When a state ratifies or accedes to a treaty that codifies norms and standards into international law, that "State Party" has agreed to the standards elaborated therein. In more precise terms, the ratifying State Party agrees to be "legally bound" by the "obligations" set forth in that particular convention. This means that the citizens of that State and the rest of the international community—other States Parties to that convention, other UN Member States, or non-governmental organizations (NGOs)—can

hold the ratifying State to the standards set forth in that convention and criticize the State Party for its failure to uphold international law.

Crucially, following ratification or accession, the State Party is obligated to submit periodic reports to the UN through the treaty bodies regarding the measures it has taken to implement the rights enumerated in that particular convention. Following a rigorous review, the UN then makes recommendations to that State Party on measures that should be taken to bring policy and practice into fuller compliance with the rights set forth in that convention and thus with international law.

However, the DPRK delayed for almost two decades before submitting an adequate report on its implementation of the ICCPR.⁷ Even then, the UN Treaty Committee expressed its regret about the relative lack of information about the actual situation on the ground in the DPRK. The Committee also expressed doubts about many of the DPRK's unverifiable assertions that its citizens fully "enjoyed" the stipulated rights. As a result, the Committee focused on the extent to which the DPRK's Criminal Code and Code of Criminal Procedure, which Pyongyang had provided to the Committee, were consistent with international legal standards.

These Geneva-based treaty review proceedings were far removed from what was happening on the ground in the DPRK. The breakdown of agricultural and industrial production in the DPRK in the 1990s had a devastating impact. Foreign assistance was greatly reduced due to the collapse of the Soviet Union, and China temporarily charged market prices rather than "friendship prices" for its oil exports to the DPRK.

⁶ The DPRK and the ROK did not become UN Member States until 1991. However, starting with the proclamation of the Universal Declaration of Human Rights, it was made clear that human rights belonged to all peoples regardless of the legal or political status of the place where they resided.

⁷ In the interim, as described below, the DPRK initially submitted a convention implementation report. The report was notable mostly for its critique of human rights violations in the ROK. Subsequently, the DPRK unsuccessfully sought to renounce its accession to the treaty and withdraw from the ICCPR (See Chapter IV).

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The loss of much-needed support from its allies, along with the DPRK's own malfeasant agricultural policies, precipitated the horrendous DPRK famine of the 1990s.⁸ In turn, this resulted in an enormous refugee outflow from the DPRK to China, with a much smaller stream of North Korean refugees making the long and dangerous trek from northeast China to the Republic of Korea (ROK).

Food shortages in the DPRK began in the late 1980s, caused by the failures of previous "Five-Year Plans," as evidenced by Pyongyang's "Let's eat two meals a day" campaign of the early 1990s. Subsequently, a combination of drought and floods in the mid-1990s led the DPRK authorities to appeal for international famine relief, including from its sworn enemies: Japan, the United States, and the ROK.

This plea for help opened the door to UN humanitarian food and famine relief agencies, along with a large number of humanitarian aid NGOs from Europe, North America, Japan, and the ROK. The information that became available to the relief agencies and NGOs, along with personal accounts from North Korean refugees in China and the ROK, revealed the dire situation of the North Korean populace.

As such information accumulated, human rights advocates and UN Member States realized that the established mechanisms were inadequate to address the real situation of the North Korean citizenry. They, therefore, sought to apply the international human rights norms and standards to the DPRK through the more direct "Charter-based" approaches enabled through the UN HRC and the General Assembly.

2. Phase II: Considering the Democratic People's Republic of Korea's Human Rights Situation at the Human Rights Council and the General Assembly

A second phase of interaction between the DPRK and the UN human rights mechanisms began in 2003, when the European Union (EU) sponsored a resolution at the UN Commission on Human Rights—a subsidiary organ of the General Assembly—singling out the DPRK for its consistent pattern of gross human rights violations. In UN parlance, such an initiative is deemed a "country-specific" resolution. The EU's resolution called on the DPRK to take certain actions, including steps to cooperate with the UN, such as a comprehensive dialogue with the UN High Commissioner for Human Rights. Being designated in a country-specific resolution effectively puts a Member State on a list of 'gross violators,' as perceived by a voting majority of fellow governments at the UN.

This push to hold the DPRK accountable at the Human Rights Commission stemmed from the substantial amount of newly available information from North Korean refugees, who had fled famine and repression to China. A smaller number of refugees made their way from northeast China across the Gobi Desert to Mongolia or to southern China and southeast Asia until they could claim asylum at the ROK consulate in Bangkok.⁹ The

⁸ Estimates of deaths from the famine range from 800,000 to 2 million. Andrew Natsios, *The Great North Korean Famine: Famine, Politics and Foreign Policy* (Washington, D.C.: U.S. Institute of Peace, 2001) and Stephan Haggard and Marcus Noland, *Famine in North Korea: Markets, Aid, and Reform* (New York: Columbia University Press, 2007).

⁹ Melanie Kirkpatrick, *Escape from North Korea: The Untold Story of Asia's Underground Railroad* (New York: Encounter Books, 2012). Kirkpatrick offers a thorough description of the North Korean refugee flow. A number of memoirs and NGO reports describe the acute difficulties of the North Korean refugees, women refugees in particular, while hiding in China. China does not recognize their refugee status despite longstanding and numerous findings by the UN refugee agency and other UN officials. See also: Human Rights Watch, *The Invisible Exodus: North Koreans in the People's Republic of China* (New York: 2002); Stephan Haggard et al., *The North Korea Refugee Crisis: Human Rights and International Response* (Washington, D.C.: Committee for Human Rights in North Korea, 2006); and Hae-young Lee, *Lives for Sale*.

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ROK government then transported the North Korean refugees to Seoul, where they were granted ROK citizenship.

By 2002, there were some 3,000 North Korean refugees resettled in the ROK, where they were accessible to journalists, scholars, and human rights investigators. The information provided by the refugees continues to be published in an ongoing series of memoirs and NGO reports.¹⁰ There are now over 33,700 North Korean refugees in the ROK as of September 2020,¹¹ with smaller numbers in the United States, United Kingdom, EU, and Japan.

Rather than cooperate with the minimal and reasonable recommendations specified in the 2003 resolution, the DPRK continued to state that “there are no human rights issues or problems in our country.” There are no UN Member States that have a perfect human rights record. Only a country that has widespread and serious human rights problems would insist that it does, not have any, and this is precisely the position that the DPRK’s diplomats held—whether at formal sessions of the UN or informal discussions in the corridors and coffee shops at the UN in Geneva and New York.

Faced with the DPRK’s complete and adamant refusal to cooperate, the EU, joined by Japan, which has its own bilateral human rights issues with the DPRK,¹² began to include additional provisions in its

yearly resolution at the UN Commission on Human Rights on the situation of human rights in the DPRK. These additions included the appointment in 2004 of a Special Rapporteur tasked with preparing annual or semi-annual reports; in 2005, the submission of the DPRK human rights resolution to the General Assembly and the request that the UN Secretary-General also report annually on the DPRK to the General Assembly; and, in 2013, the creation of a COI to conduct a thorough, year-long investigation of the human rights situation in the DPRK.

Each of these measures was intended to increase diplomatic pressure on the DPRK to address the concerns of the international community about its human rights situation. Yet, the DPRK refused to respond or demonstrate any interest in cooperating with the UN on any of the initiatives by the HRC and General Assembly.

3. Phase III: Applying International Criminal Law to the Democratic People’s Republic of Korea

The mandate from the HRC to the 2013 Commission of Inquiry was to determine if any of the DPRK’s “gross human rights violations” reached the legal threshold necessary to constitute “crimes against humanity.”¹³ In its exhaustive report, the COI determined that this, indeed, was the case, and it

Personal Accounts of Women Fleeing North Korea to China (Washington, D.C.: Committee for Human Rights in North Korea, 2009).

10 An early popular biography is Chol-hwan Kang and Pierre Rigoulot, *Aquariums of Pyongyang: Ten Years in the North Korean Gulag*

(New York: Basic Books, 2001). An early NGO report by this author is David Hawk, *The Hidden Gulag: Exposing North Korea’s Prison Camps, Prisoner Testimonies and Satellite Photographs* (Washington, D.C.: Committee for Human Rights in North Korea, 2003).

11 “북한이탈주민정책,” Ministry of Unification, accessed January 7, 2021, <https://www.unikorea.go.kr/unikorea/business/NKDefectorsPolicy/status/lately/>.

12 In the 1970s and 1980s, the DPRK abducted an unknown (and contested) number of innocent Japanese citizens and held them

incommunicado in the DPRK to provide Japanese-language training to DPRK spies. By the early 2000s, these abductions became a serious political issue in Japan. Robert S. Boynton, *The Invitation-Only Zone: The True Story of North Korea’s Abduction Project* (New York: Farrar, Straus and Giroux, 2016) and Yoshi Yamamoto, *TAKEN! North Korea’s Criminal Abduction of Citizens of Other Countries* (Washington, D.C.: Committee for Human Rights in North Korea, 2011).

13 UN Human Rights Council, *Situation of human rights in the Democratic People’s Republic of Korea*, UN Doc. A/HRC/RES/22/13 (April 9, 2013).

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recommended that pertinent steps be taken under international criminal law.¹⁴

The COI's report and its conclusions were overwhelmingly endorsed by the Member States serving on the UN HRC. This, along with the COI's recommendation that the UN Security Council refer the DPRK's leadership, including Kim Jong-un, to the International Criminal Court (ICC) to be prosecuted for crimes against humanity, initiated the third phase in the long interaction between the UN and the DPRK on human rights issues.

Prior to the COI's report, the DPRK had indignantly rejected a decade's worth of resolutions by the HRC and the General Assembly; a decade's worth of reports and recommendations by the Special Rapporteur and the Secretary-General; a decade's worth of requests for human rights dialogues with the Special Rapporteur or the High Commissioner for Human Rights; and a decade's worth of polite requests that Pyongyang consider a program of "technical cooperation" in the area of human rights.¹⁵ At the time, the DPRK had been the only UN Member State to refuse to cooperate with the most important part of a recently-initiated UN human rights mechanism termed the UPR.

Faced with the overwhelming endorsement among the international community of the COI's report and the prospect of action by the Security Council, the DPRK substantially changed its approach towards the UN human rights system. The way in which the

DPRK responded to the COI reveals the regime's awareness that international concerns over its abysmal human rights record could no longer simply be ignored. The DPRK's responses following the COI report have initiated a new phase that opens up the possibility, however tenuous, of tangible improvements in the human rights situation in the DPRK.

4. Phase IV: The Democratic People's Republic of Korea's Human Rights Policy Posture after the Commission of Inquiry

One of the DPRK's responses to the COI was a shift in its policy toward the UPR. The DPRK signaled its "acceptance" or "rejection" of the many recommendations for human rights improvement that it had previously ignored. The regime's classification of accepted and rejected recommendations provide valuable insight into the situation of and prospects for human rights in the DPRK.¹⁶

E. The United Nations Human Rights Mechanisms and the Democratic People's Republic of Korea's Tactical Openings

There are several ways in which the DPRK could further increase its engagement with the UN's human rights mechanisms, including:

- The ratification of additional human rights conventions;
- Renewed cooperation with the treaty committees for some of the human rights conventions ratified by the DPRK;
- Cooperation with one of the "thematic" Special Rapporteurs;

¹⁴ UN Human Rights Council, *Report of the commission of inquiry on human rights in the Democratic People's Republic of Korea*, A/HRC/25/63 (February 7, 2014) and A/HRC/25/CRP.1.

¹⁵ "Technical cooperation" refers to a wide variety of human rights education and training programs that are organized and implemented by the Office of the High Commissioner for Human Rights (OHCHR) with, and only with, the approval, and cooperation of the government of the participating UN Member State. The OHCHR operates technical cooperation projects in Member States, pursuant to Articles 55 and 56 of the UN Charter.

¹⁶

See Chapter VII.

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- Declaring “acceptance” of further recommendations in future rounds of the UPR;
- Issuing an oral invitation to the UN High Commissioner for Human Rights to visit Pyongyang;¹⁷
- The inclusion of a “rights-based approach to development” in the document known as the “Strategic Framework for Cooperation between the UN and the DPRK 2017–2021;” and
- The participation of DPRK officials in a training program by the OHCHR in Geneva related to the UPR.

The importance of these actions should not be exaggerated. They are all considered common practice by most Member States, even among those whose own human rights records might be considered questionable. Moreover, these largely tactical maneuvers may not result in meaningful improvements in the quality of life for people in the villages, towns, and cities of the DPRK. Even if there were progress, it would be difficult to accurately measure or monitor without access.

Nevertheless, human rights issues in the DPRK have attained a higher degree of international prominence. Global concerns about the DPRK jostle with other domestic and foreign policy crises and priorities. Human rights and humanitarian concerns jostle with cycles of provocation and détente amidst bouts of increased pressure, engagement, and negotiation. Whether the higher salience of DPRK human rights issues, achieved, in part, through the course of events described in these pages, will be factored into the changing geopolitical relationship with the DRPK remains to be seen.

17 Not accomplished as of 2020.

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CHAPTER II. INTERNATIONAL NORMS, STANDARDS, AND HUMAN RIGHTS LAW

Before examining how the norms, standards, and international laws of human rights have been applied to the DPRK through the UN, this chapter outlines the history of international human rights law and its contemporary practice.

A. International Human Rights

Since the very beginning of the modern international order, human rights issues were factored into the resolution of conflicts between sovereign 'states.'¹⁸ In the mid-20th century, recognizing the failures of the League of Nations and the terrible atrocities that occurred before and during World War II, the victorious powers from that global conflict tried again to form an international organization that would preserve international peace and security.¹⁹ One of the core aspirations for the UN was the promotion of human rights, and another was to promulgate international law.

The preamble of the UN Charter proclaims as one of its four stated goals "to reaffirm faith in fundamental human rights, in the dignity and worth of the

human purpose, and the equal rights of men and women."²⁰ Another is "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained."²¹

Furthermore, Article 13 of the Charter authorizes the UN General Assembly to:

*initiate studies and make recommendations for the purpose of ... encouraging the progressive development of international law and its codification; [and] promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.*²²

Articles 55 and 56 of the Charter enjoin all UN Member States to:

*pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.*²³

Originally, the "United Nations" was the name of the coalition of states that fought the Axis powers in World War II. With the failures of the League of Nations keenly in mind, the victorious powers met in San Francisco in mid-1945 at the same time

¹⁸ Many accounts of the history of modern international relations begin with the 1648 Treaties of Westphalia (Münster and Osnabrück), which sought to end the Thirty Years' War between Catholic and Protestant principalities that substantially depopulated much of Central Europe in the 16th century. The agreements stipulated limited freedom of religion, at least for Catholics, Lutherans, and Calvinists. Other historic peace treaties also had "human rights" provisions. For example, the 1815 Congress of Vienna (Final Act) that settled the Napoleonic wars condemned the trans-Atlantic slave trade.

¹⁹ When drafting the 1919 Charter for the League of Nations, U.S. President Woodrow Wilson sought to explicitly recognize freedom of religion, but this was dropped when the Japanese sought to also inscribe racial equality and non-discrimination. The Versailles settlement, however, did set up geographically limited treaties regarding ethnic minorities, most of which were unsuccessful. It also established the International Labour Organization (ILO) to promote workers' rights.

²⁰ United Nations, "Preamble," *Charter of the United Nations*, 1 UNTS XVI (June 26, 1945).

²¹ Ibid. The other two stated goals of the UN are "to save succeeding generations from the scourge of war" and "to promote social progress and better standards of life in larger freedom."

²² United Nations, Article 13 (a) and Article 13 (b), *Charter of the United Nations*, 1 UNTS XVI (June 26, 1945).

²³ United Nations, Article 55 and Article 56, *Charter of the United Nations*, 1 UNTS XVI (June 26, 1945).

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that shocking photographs of the recently liberated concentration and death camps of Nazi-occupied Europe were widely circulated.²⁴ The relationship between respect for human rights and international peace and security, or, conversely, between extreme violations and aggression, was readily understood. Provisions on human rights were added to the basic Charter outline that the United States, Great Britain, China, and the Soviet Union had drafted at Dumbarton Oaks in late 1944.

There had even been talk in San Francisco of including an “International Bill of Rights” within the UN Charter. Drafting and negotiating such an international legal convention, however, would have taken much longer. Thus, once the UN was created, the first step was to draft a clear and definitive declaration of which “human rights and fundamental freedoms” were to be recognized. After two years of negotiations and debate, this was achieved in 1948 with the General Assembly’s proclamation of the UDHR as a “common standard of achievement for all nations and all peoples.”²⁵

This achievement was followed by what one scholar calls “the slow and contested path from human rights declarations to treaties and institutions.”²⁶ There was a long and painfully delayed process of codifying the straightforward principles of the UDHR into the more specific and precise language of law as “legally binding” international obligations. This culminated in the drafting of two multilateral treaties: the ICCPR and the ICESCR.²⁷ Taken together, these twin Covenants “*legislate* essentially what the UDHR had declared” [emphasis added].²⁸

During the prolonged drafting and negotiations, it was decided that a distinction had to be drawn between “negative” and “positive” rights.²⁹ “Negative” rights refer to those such as freedom from torture or arbitrary detention. These are acts that a government *should not* commit against its citizens. It was thought that such rights could be outlawed immediately and enforced without delay. “Positive” rights, such as the right to education and the right to adequate food and healthcare, are rights that governments *should* provide for their citizens. Promoting and protecting positive rights were contingent on the level of economic development. These rights were thought to require sometimes considerable resources and, therefore, could only be “realized progressively” in the sense that a nationwide school system or public health

24 Hence, the unusual language for a treaty between nation-states—to “*reaffirm faith* in fundamental human right and the dignity of the human person [emphasis added].” See Mark Philip Bradley, *The World Reimagined: Americans and Human Rights in the Twentieth Century* (New York: Cambridge University Press, 2016), 70-91 and Roger Normand and Sarah Zaidi, *Human Rights at the UN: The Political History of Universal Justice* (Bloomington: Indiana University Press, 2008), 81-138 for accounts of this process.

25 The “adoption” of the UDHR was in the form of a resolution at the General Assembly that the Member States had the choice to vote for, to vote against, or to abstain from voting. No state wanted to be counted as opposed to human rights, so no Member State voted against the UDHR. A small handful of countries abstained because their governments were either opposed to one or two of the Articles, or because they were dissatisfied with the wording. South Africa abstained because the UDHR posited racial equality. Saudi Arabia abstained because of the articles declaring women’s rights and freedom of religion. The “Soviet Bloc” abstained because they wanted an explicit condemnation of Nazi fascism and more attention to the rights of the state. For excellent accounts of the history of the Universal Declaration, see Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001) and Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia: University of Pennsylvania Press, 1999).

26 Kathryn Sikkink, *Evidence for Hope: Making Human Rights Work in the 21st Century* (Princeton: Princeton University Press, 2017), 99.

27 The archaic term “covenant” was used rather than “convention,” as covenant implies a pact or mutual agreement of the most fundamental—even sacred—sort. In international affairs, the term “covenant” had been popularized by President Woodrow Wilson during and after WWI—the “charter” of the post-World War I League of Nations was called a “Covenant.” Following WWII, the UN retained the use of this formulation. In this sense, the twin “Covenants” are the most basic and fundamental of the international human rights conventions.

28 Louis Henkin, “International Human Rights as ‘Rights,’” in *The Philosophy of Human Rights*, ed. Morton Emanuel Winston (Belmont: Wadsworth, 1989), 131.

29 Normand and Zaidi, *Human Rights at the UN: The Political History of Universal Justice*, 197-242. Initiated in 1949, the drafting of the twin Covenants was not completed until 1966. The former outlines some of the legal issues that had to be negotiated, and the latter explains some of the political complications and machinations.

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system could not simply be legislated into existence in the same way that torture or arbitrary imprisonment could be immediately prohibited.³⁰

What distinguishes a treaty, also known as a convention or a covenant, from a declaration is its legally-binding nature. A treaty requires ratification or accession according to the constitutional provisions of that state. When a government ratifies or accedes to a treaty or convention, the government or governments involved agree to observe their terms and provisions. The most salient and essential characteristic of an international human rights convention is that the act of ratification or accession indicates that the government recognizes and agrees to respect and honor the rights detailed and defined in that treaty.³¹

Finally, most conventions specify that a certain number of states must ratify or accede before “entering into force” or “taking effect” as international law. Once a treaty “enters into force,” its terms and provisions are considered to be “legally-binding obligations” on the states that have ratified or acceded to that treaty. In the case of the ICCPR and the ICESCR, it took an additional ten years for enough nation-states to submit the twin Covenants to and through their respective constitutional processes for accession or ratification. Once a convention enters

into force, the compliance-review mechanisms and procedures for that convention are set in motion.³²

The twin Covenants, which transformed the rights recognized, enumerated, and proclaimed in the 1948 UDHR into international law, became the starting point for the additional codifications of international human rights law that followed. A series of international human rights conventions were laboriously negotiated, also under the auspices of the UN, to deal with the special circumstances of particular groups of people deemed particularly vulnerable to human rights abuses: women, children, racial or ethnic minorities, refugees, migrants, and persons with disabilities.³³ Another set of human rights treaties were negotiated by an expanding number of UN Member States to further define and proscribe particularly egregious phenomena of repression, such as torture, crimes against humanity, racial discrimination, and enforced disappearances.³⁴

The following conventions comprise the modern system of international human rights law.³⁵ Even a

30 In reality, this distinction is not so clear-cut. Some civil and political rights, such as “fair trial” or “due process” rights, require a legal and court system that can take considerable time and resources to construct. The idea to split the Universal Declaration into two Covenants was originally proposed by India. This was much better than the proposal of Great Britain to include only justiciable civil and political rights in the International Bill of Rights. Today, the Treaty Bodies promote the justiciability of economic, social, and cultural rights through the principle that states must apply maximum available resources.

31 There are formal procedures by which a government can explain its “understanding” or “reservation” to a particular article or provision of a particular treaty, although such reservations or understandings are not supposed to contradict or subvert the fundamental purposes of the treaty.

32 Chapter IV describes the review process and outcomes as applied to the DPRK.

33 Regarding the rights of women, it was recognized that discrimination can be based on deeply embedded cultural or religious traditions. In these cases, governments have the responsibility to address and eliminate culturally-embedded gender discrimination. With regard to the special needs of persons with disabilities in promoting and protecting citizens’ access to cultural rights, it was recognized that libraries, museums, and concert halls with only an embankment of steps rendered such cultural institutions inaccessible to persons whose mobility was limited.

34 It was widely regarded that abhorrent violations, such as torture, required further definition. It was recognized that the violation of “enforced disappearances” that emerged in Latin America’s “dirty wars” during the 1970s was not recognized, defined, or outlawed in the human rights conventions drafted in the 1950s and 1960s. There are also other Conventions, such as the Mine Ban Treaty, the Convention on Cluster Munitions, and the Arms Trade Treaty, that are often regarded as arms-control treaties. However, these are strongly supported and closely monitored by human rights NGOs because of the effects that these weapons have on vulnerable civilian populations. There are also ILO Conventions that elaborate on more specific human rights related to the right to work as well as the freedom of assembly and association.

35 There are also important regionally-based human rights conventions. There are, however, no regional human rights conventions for the region designated at the UN as the “Asia-Pacific,” although there

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partial list of their formal titles conveys the breadth and reach of the contemporary international law on human rights:

- International Covenant on Civil and Political Rights (ICCPR);
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- Convention on the Rights of Persons with Disabilities (CRPD);
- Convention on the Rights of the Child (CRC);
- International Convention on the Rights of All Migrant Workers and Their Families;
- Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT); and
- International Convention for the Protection of All Persons from Enforced Disappearances (ICPPED).³⁶

Most of these multilateral treaties have become widely accepted by governments across the world. For example, as of early 2018, the ICCPR has 169

ratifications, the ICESCR has 166, CERD has 179, CEDAW has 189, CRC has 196, CAT has 162, and CRPD has 175.

The DPRK has ratified or acceded to five of these conventions and this report examines these decisions. In the late 1990s, developments in international humanitarian law and criminal law were incorporated into international human rights laws that the UN formally applied to the DPRK in 2013 and 2014.³⁷

B. The Capacities and Limitations of International Human Rights Law

The “legal rights” specified in international human rights law are considered “international rights” since they have become a factor in international relations and “an ingredient of the peace structure of the modern world.”³⁸ International human rights law is now a fundamental framework for how states act in the international arena. The essential characteristic of international human rights law is that it provides the most authoritative and precise definitions of what constitutes human rights and, conversely, human rights violations. As noted above, when a state ratifies or accedes to a particular human rights convention, that government formally agrees with the rights set forth in that convention. Thereafter, it is entirely appropriate for its own citizens, other States Parties to that convention, representatives of civil society around the world,³⁹ and UN officials to ascertain and query a State Party’s adherence to the terms and provisions of that convention.⁴⁰

is a sub-regional human rights body associated with the Association of Southeast Asian Nations (ASEAN).

36 This list is schematic. Historically, the Genocide Convention came first, drafted after it was recognized that acts of “genocide” were not included in the Nuremberg convictions because there had been no previously existing law proscribing the intentional destruction of religious, ethnic, or racial groups. The convention against racial discrimination came next in response to sustained pressure in the 1960s from the newly independent African states. The other human rights conventions followed as various groups of victims of violations, such as the relatives of disappeared persons or persons with disabilities, persuaded a sufficient number of UN Member States that remedy, relief, and future prevention would be advanced by additional international legal codifications.

37 This process is outlined in Chapter VI.

38 Vratislav Pechota, “The Development of the Covenant on Civil and Political Rights,” in *The International Bill of Rights: The Covenant on Civil and Political Rights*, ed. Louis Henkin (New York: Columbia University Press, 1981), 32.

39 Since they are widely recognized for their expertise and information, NGOs have an internationally-accepted role in this process.

40 There are also human rights standards that are internationally regarded as so fundamental that they are deemed to be part of what is termed “customary international law.” This, in theory, is applicable to all

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However, it is critical to note that international human rights law is implemented *voluntarily* by states. International human rights law has no meaningful enforcement authority. If such mechanisms did exist, it seems likely that far fewer nation-states would ratify or accede to these conventions.⁴¹ Furthermore, human rights treaty regimes do not involve reciprocal compliance, as is the case with trade agreements or the mutually self-interested reciprocal benefits of arms-control agreements.⁴²

Notwithstanding the emergence of international human rights law, world politics remains dominated by sovereign states that operate according to time-honored *realpolitik* and the relentless pursuit of perceived interests. Despite its provisions on human rights, the UN Charter also provides that “nothing contained in the present Charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state.”⁴³ Within the UN framework, sovereign states can make recommendations to one another, and, on occasion, such recommendations can create diplomatic pressure. But one sovereign state or a group of sovereign states cannot *enforce* the law of another sovereign state or the international ‘law of nations’ on another sovereign state.⁴⁴

sovereign states, irrespective of participation in any particular treaty regime.

41 Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge: Cambridge University Press, 2009), 114.

42 *Ibid.*, 129.

43 United Nations, Article 2.7, *Charter of the United Nations*, 1 UNTS XVI (June 26, 1945).

44 International legal thinking and doctrine have long had a tenuous “humanitarian intervention” exception to doctrines of state sovereignty in the event of mass atrocities. Following the international community’s abject “peacekeeping” failures in the former Yugoslavia and Rwanda, the legal doctrine of humanitarian intervention was updated as the “Responsibility to Protect” (R2P), which was endorsed at the 2005 UN World Summit. R2P is occasionally referenced regarding the DPRK’s crimes against humanity, although not with respect to armed humanitarian intervention. Moreover, R2P does not generally apply to the large number of provisions of international human rights law that are contained in the ICCPR and the ICESCR.

Some scholars refer to international human rights treaty regimes as the “international human rights legal system.”⁴⁵ But this terminology promises more than what a “legal system” without courts or sheriffs can deliver.⁴⁶ What international human rights law has in lieu of courts and sheriffs is *periodic review mechanisms*. And, as public awareness of and support for human rights has grown in recent decades, the strategic application of international public pressure can cause states to refrain from further abuses or be used to hold abusers to account.

C. The Review Process

Countries that are States Parties to a convention are required to submit periodic reports to official UN committees of experts. These committees are known as “Treaty Bodies” in UN parlance. These Treaty Bodies are composed of independent human rights experts from a wide range of countries, often professors of international or constitutional law who have been elected by the States Parties to that Convention.⁴⁷

The reports submitted by each state articulate the measures that have been or claim to have been taken

45 Emilie M. Hafner-Burton, *Making Human Rights A Reality* (Princeton: Princeton University Press, 2013), 29–40. There are, as noted earlier, *regional* “human rights legal systems,” such as the European Court of Human Rights, the Inter-American Court, and the African Court on Human and People’s Rights. Respectively, these courts have transnational authority and jurisdiction for countries that have ratified the 1953 European Convention on Human Rights, the American Convention on Human Rights (entered into force in 1978), and the 1998 Protocol to the African Charter on Human and People’s Rights, which entered into force in 2005. There is no comparable *international* human rights court.

46 There is an International Court of Justice (ICJ), but it mostly adjudicates disputes between states. The ICJ sometimes issues advisory legal opinions at the request of the General Assembly. Since 2002, the ICC is also able to assess individual accountability, but only for the most egregious atrocities—genocide, war crimes, and crimes against humanity. The jurisdiction of the ICC is constrained to states that have acceded to the Statute of the ICC, or to cases referred to it by the UN Security Council.

47 While these experts have been nominated by governments, they are expected to operate “independently”—that is, not under instruction from their government or high-level UN officials. Most of the experts on the review committees do indeed operate as independent experts.

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to implement the rights detailed in that particular convention. The experts on the treaty committees usually also review “stakeholder reports”—colloquially termed “shadow reports”—submitted by national and international NGOs. These reports challenge or supplement the information submitted by the States Parties.⁴⁸ The committees also consider relevant inputs from the UN system in both written and oral form. The committee members then closely study the reports of the participating State Party on a provision-by-provision, article-by-article, and clause-by-clause basis.

The State Party under review usually sends a team of representatives to Geneva for detailed discussions, called an “interactive dialogue,” with the treaty committees. The UN now provides webcasts of these sessions. Following the formal interactive dialogue session, the treaty committees issue “Concluding Observations” that provide advice on how to improve compliance with the provisions of the convention.⁴⁹ If taken seriously, these recommendations can serve as a practical roadmap for human rights improvements for both government officials and the citizenry.

D. Importing International Human Rights Law Domestically: How It Is Supposed to Work

The objective of the international human rights system is to positively impact the domestic human

rights policies and practices of the State party. How do human rights conventions affect the behavior of the ratifying State Party, and how does accession to an international human rights convention benefit the citizens of that country?

Some international treaties are considered “self-executing,” since they automatically become part of domestic law. Other treaties require “implementing legislation” to incorporate their provisions into domestic law. Once incorporated into domestic law, the treaty provisions can be enforced by domestic courts.

More generally, legal scholars outline a “transnational legal process” in which “global norms of international human rights law are debated, interpreted, and ultimately internalized by domestic legal systems.”⁵⁰ In the words of a major study:

*If international human rights treaties have an important influence on the rights practices of governments that commit to them, it is because they have predictable and important effects on domestic politics. Like other formal institutions, treaties are causally meaningful to the extent that they empower individuals, groups or parts of the state with different rights preferences that were not empowered to the same extent in the absence of the treaty.*⁵¹

There are three ways in which international human rights law can empower domestic actors:

⁴⁸ Citizens, as “rights-holders,” have a recognized “stake” in the operation of international human rights law.

⁴⁹ Hafner-Burton, *Making Human Rights A Reality*, 86-1343. These conventions, as can be seen in the long list of recommendations to the DPRK, cover a wide range of human rights. The conscientious preparation of State Party implementation reports can be a considerable undertaking that requires input from many government ministries and departments, particularly for Member States that have ratified multiple conventions. Some State Parties, including the DPRK, are considerably behind schedule in their submission of implementation reports. Additionally, some of the treaty bodies are considerably behind schedule in their review of reports submitted to them by the States Parties.

⁵⁰ Harold Hongju Koh, “How Is International Human Rights Law Enforced?” in *Human Rights in the World Community: Issues and Action*, eds. Richard Pierre Claude and Burns H. Weston, 3rd ed. (Philadelphia: University of Pennsylvania Press, 2006), 306. The project is not without its critics. One notes that at best “a small number of treaty provisions may have improved human rights outcomes in a small number of countries by a small, possibly trivial amount.” Posner, *op. cit.* 78.

⁵¹ Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics*, 125.

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- (1) altering the national agenda, especially, an effect on national legislation;
- (2) utilizing international law in domestic judicial processes or court decisions; and
- (3) empowering political mobilization.⁵²

Of course, these avenues are readily available and can be most effectively pursued in stable democratic countries. They can also work importantly in partially democratic or transitional regimes, but they work least well in stable autocracies.⁵³ The DPRK unambiguously falls into the last category.

Consider, for instance, the second and third avenues mentioned above. It is difficult to imagine international human rights law being used in judicial processes or court decisions in the DPRK based on how those judicial processes have been described by North Korean refugees. Given the DPRK's closed and opaque society, it is unclear how widely or how well the international human rights law that the DPRK has subscribed to is recognized or understood outside of government and legal circles in Pyongyang. There are no independent civic associations in the DPRK that could serve as a platform for human rights advocacy.

In theory, organizations under the KWP, such as the Women's Union, could act in conjunction with the CEDAW Committee to raise issues of women's rights regarding matters that do not directly threaten the regime's political control. Indeed, Article 7 of the DPRK's 2010 Women's Rights Law seems to mandate this. Similarly, religious

federations or associations could, in theory, expand the social or legal space for religious belief. However, such organizations continue to function mostly as transmission belts to educate their respective sectors of the citizenry on the political directives of the KWP, and to mobilize citizen labor for "volunteer" construction or other projects.

Given humankind's proclivity to form all manner of groups and associations, it is not impossible for some form of independent civil society to emerge in the DPRK in the future. Marketplaces function as public squares, and the spread of legal domestic cell phone networks allow North Koreans to talk to each other.

For the moment, however, it is possible to imagine international human rights law having any effect on the DPRK only through the first channel: altering the national agenda and influencing national legislation. Even if there is such an effect, it is unclear what, if any, impact will be felt by individual North Koreans.⁵⁴

In the DPRK, laws are promulgated by the SPA, a unicameral legislature that meets only for several days every year, or the Presidium of the SPA, which is authorized to adopt legislation when the SPA is not in session. On paper, a fair number of laws in the DPRK correspond to various provisions in the international human rights treaties.⁵⁵ The laws of the DPRK, including its Constitution, are revised frequently.⁵⁶ Following the DPRK's

⁵² Simmons' empirically-minded review provides scores of examples of how human rights treaties have brought concrete improvements in a wide variety of countries. Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics*, Cambridge: Cambridge University Press, 2009.

⁵³ Ibid., 148-55.

⁵⁴ It could be asserted that the DPRK's ratification of the CRPD, and Pyongyang's cooperation with the Special Rapporteur on the rights of persons with disabilities (see Chapter V), were part of an effort to recognize the rights and address the special needs of persons with disabilities in the DPRK. In this case, the UN human rights instruments and mechanisms were working as they are meant to. However, the DPRK remains a closed society, and it is difficult to assess cause and effect with confidence.

⁵⁵ Han Dong-ho et al., *White Paper on Human Rights in North Korea 2014* (Seoul: Korea Institute for National Unification, 2014), 83-84. Han et al. has a listing aligning DPRK laws with the provisions of the core UN human rights conventions that the DPRK has ratified.

⁵⁶ For example, in April 2009, the Constitution was revised to include a reference to respect for human rights. In 2012, the Constitution

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ratification of the conventions on the rights of children, women, and persons with disabilities, the relevant domestic laws were updated to incorporate a number of provisions from these conventions. In at least four cases, the DPRK has also incorporated recommendations of the UN human rights treaty committees into its legislation.⁵⁷

These steps suggest that there may be officials in the SPA Presidium who want to align the DPRK's written law with international standards, but not much else.⁵⁸ It is sometimes alleged that some of the changes in the law are only "declaratory" or "nominal," without implementation or enforcement ordinances.⁵⁹ Moreover, in practice, the DPRK's laws, its legal system, and even its Constitution are subordinate to the directives of the KWP and even more subordinate to the dictates and "guidance" of the successive Supreme Leaders.⁶⁰ According to a South Korean legal study, "the teachings of Kim Il-sung, the words of Kim Jong-il, and the principles and precepts of the Party have come to function as supra-legal structures ... The directives of the

official successor Kim Jong-un have also taken on supra-legal applications."⁶¹

In terms of law enforcement, the most powerful police agency, the secretive Ministry for State Security, seems to operate entirely outside of the law—or at least outside the strictures of the DPRK Criminal Code and Criminal Procedure Code. At the level of law courts, Article 162 of the Constitution, as amended in 2009, stipulates that the duties of the court are to "ensure that all organs, enterprises, organizations, and citizens precisely observe the laws of the state and struggle actively against class enemies and all law offenders."⁶² There is little reason to doubt that Kim Il-sung's injunction still applies:

*To reiterate the demands of the Party from the class struggle point of view ... we should interpret the laws accurately from the viewpoint of proletariat dictatorship.*⁶³

Before examining in detail the interaction between the DPRK and international human rights law, we look briefly at the formidable headwind faced by international norms and standards due to the guidance from and the directives of the three successive Supreme Leaders of the Kim dynasty.

was revised to declare the DPRK to be a nuclear state. In 2013, the Constitution was revised to include a reference to the Kumsusan Palace of the Sun, where the embalmed bodies of Kim Il-sung and Kim Jong-il lie in state as "an everlasting sacred site for all Korean people."

57 This is described in more detail in Chapter IV.

58 This would seem to be a likely point of discussion in the event that the DPRK agrees to engage in dialogue with the UN Special Rapporteur on the situation of human rights in the DPRK.

59 Chul-soo Lee, "Trends in North Korea's Social Welfare Legislation since 2000" in *Review of North Korea Studies* (2016), 246. Lee is quoted in Mi Jun Kim and Yung Sun Song, "Examining North Korean Law and Government Directives in Regards to Changes in Human Rights Policies," *Movies, Markets and Mass Surveillance: Human Rights in North Korea After a Decade of Change* (London: Christian Solidarity Worldwide and Handong Global University, 2018), 43.

60 Article 11 of the DPRK Constitution posits that the "DPRK shall conduct all activities of under the leadership of the Workers' Party." The bylaws of the KWP posit that "the Workers' Party takes the revolutionary thought of the great leader, Kim Il Sung, and the Juche ideology as the one and only leading guideline." Ken E. Gause, *Coercion, Control, Surveillance and Punishment: An Examination of the North Korean Police State* (Washington, D.C.: Committee for Human Rights in North Korea, 2012), 14.

61 Lee Kyu-chang and Chung Gwang-jin, "The North Korean Criminal Trial System: Characteristics and Actual Practices," KINU Research Abstract (2011), quoted in Gause, *Coercion, Control, Surveillance and Punishment: An Examination of the North Korean Police State*, 14.

62 Robert Collins, *Pyongyang Republic: North Korea's Capital of Human Rights Denial* (Washington, D.C.: Committee for Human Rights in North Korea, 2016), 123.

63 Kim Il Sung, "In order to Carry Out Our Party's Judicial Policies" (speech, National Conference of Judicial Workers, April 28, 1958) in *Kim Il Sung's Collected Works*, vol. 12 (Pyongyang: Foreign Languages Publishing House, 1981), 221, quoted in Collins, *Pyongyang Republic: North Korea's Capital of Human Rights Denial*, 122.

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CHAPTER III. HOW THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA APPROACHES HUMAN RIGHTS

This chapter examines the DPRK's internal approach to the idea of "citizens' rights." Despite often repeated claims by the government that its citizens' rights are ensured and protected, and that "the DPRK has no human rights problems or issues," the DPRK's approach towards human rights has, from the outset, seriously constrained the political space available for the domestic application of international human rights norms and standards.

Proclaiming the DPRK to be "exploitation-free and repression-free,"⁶⁴ with a population whose hearts beat as one with the thoughts and desires of the Great Leader (Kim Il-sung) and Dear Leader (Kim Jong-il), the DPRK has long deprived North Korean society of the civil and political rights set forth in international human rights law and the successive DPRK Constitutions. In the words of a recent study:

*The idea of the rights of man has been void in the DPRK from the very beginning of its establishment ... The DPRK has devised extreme forms of institutionalized collectivism while suppressing individual freedom in every social sector of peoples' daily lives.*⁶⁵

A. The Initial Exception to Citizens' Rights

Following Japan's surrender in 1945, the Soviet Union initiated a "people's democratic revolution" in Korea north of the 38th parallel. The "people's democratic republic" replaced Japanese colonial occupation and the feudal Korean society under the Chosun dynasty that preceded it by about 500 years. The "people's democratic revolution" introduced a semblance of modern republicanism, including a constitution, national assembly, elections, political parties, a court and legal system, labor and land reform, compulsory education, and an end to feudalism repression of women, including a series of constitutionally stipulated civil rights and personal freedoms.⁶⁶

These measures, including the DPRK Constitution of 1948, may have been drafted almost word-for-word in Moscow,⁶⁷ but these "people's democratic" reforms were quite popular in the DPRK. However, the "people's democratic revolution" also included, in the 1946 Twenty Point Workers' Platform, the concept of "enemies of the People." This referred to collaborators during the Japanese occupation and "reactionary, fascist, anti-democratic" segments of the population who were not entitled to the rights and protections elaborated on the Party platform.⁶⁸

B. No to "Socialist Legality"

Following the Korean War, Premier Nikita Khrushchev delivered his "secret speech" denouncing

⁶⁴ Kim Il Sung, *Works of Kim Il Sung 37: January 1982 – May 1983* (Pyongyang: Foreign Languages Publishing House, 1983), 183–84, quoted in Jiyoung Song, *Human Rights Discourse in North Korea: Post-colonial, Marxist and Confucian perspectives* (New York: Routledge, 2011), 136.

⁶⁵ Ibid., 183.

⁶⁶ Charles K. Armstrong, *The North Korean Revolution: 1945–1950* (Ithaca: Cornell University Press, 2003) presents a good description of these developments and stipulations.

⁶⁷ Based substantially on the 1936 "Stalin Constitution" adopted on the eve of the "Great Terror" in the Soviet Union, where those rights and freedoms remained a dead letter until the death of Stalin.

⁶⁸ Jiyoung Song, *Human Rights Discourse in North Korea: Post-colonial, Marxist and Confucian perspectives*, 78. This volume contains many official documents not previously translated into English.

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Stalinism at the Twentieth Party Congress of the Communist Party of the Soviet Union in 1956. Soviet leaders began to introduce what became known derisively in Asia as “revisionism.” Revisionist ideas included the restoration of “socialist legality,” an end to the “cult of personality,” and the possibility of “peaceful co-existence” with the capitalist-democratic world. As these ideas circulated in the communist world, North Korean advocates of revisionism raised issues of “equality before the law” and “protection of human rights.” By doing so, they “introduced a human rights discourse into [North Korean] domestic politics.”⁶⁹

In response to these challenges to his increasingly personalized rule and appalled by any suggestion of “peaceful co-existence” with the ROK, Kim Il-sung carried out a ruthless purge of the Party, army, and ministries of elements who spread “revisionist internationalism disguised with the protection of human rights.” Kim “condemned North Korean cabinet members and especially the Ministry of Justice for ‘abandoning the seriousness of revolution and giving up the inalienable fight against anti-revolutionary forces in the guise of human rights protection.’”⁷⁰

C. Expanding the Exception to Rights

Kim Il-sung also initiated the citizen classification process known as *songbun*, which divided citizens into three broad categories based on their presumed loyalty to the regime: core, wavering, or hostile. According to some estimates, nearly a third of the population was deemed antagonistic to the regime,

thereby expanding the number of persons to whom non-discriminatory human rights protection was denied. “Members of the ‘hostile strata’ [were] denied rights in such areas as education, employment, housing, and medical benefits.”⁷¹

Furthermore, Kim Il-sung defended the use of imprisonment and forced labor to “protect the country’s democracy from hostile and impure elements”:

*Our communists are not hiding the Party’s identity or class-consciousness ... Socialist democracy is not supra-class democracy that can provide freedom and rights to hostile elements who oppose socialism or impure elements who act against the interests of the People ... The type of democracy which can guarantee freedom and rights to the People ... and at the same time can punish a small number of class enemies is the type of socialist democracy we have in our country.*⁷²

Subsequently, Kim Jong-il extended the perversion of socialist democracy, claiming that dictatorship against hostile forces is the “protection of human rights”:

*The fact that the People’s regime uses dictatorship against the forces violating the interests of the People is indeed the protection of human rights, not violation of human rights ... The original meaning of People’s Democratic Dictatorship is a powerful function of the People’s regime in an aim to guarantee democratic rights and freedoms for the People as the master of state and society.*⁷³

69 Ibid., 97.

70 *Works of Kim Il Sung 11, January–December 1957* (Pyongyang: Foreign Languages Publishing House, 1982), 159 quoted in Song, *Human Rights Discourse in North Korea: Post-colonial, Marxist and Confucian perspectives*. See Andrei Lankov, *Crisis in North Korea: The Failure of De-Stalinization, 1956* (Honolulu: University of Hawai’i Press, 2005) for a description of these events and the subsequent purges of the party, army, and administration.

71 Jiyoung Song, *Human Rights Discourse in North Korea: Post-colonial, Marxist and Confucian perspectives*, 103.

72 *Works of Kim Il Sung 32, January – December 1977* (Pyongyang: Foreign Languages Publishing House, 1988), 535–7 quoted in Song, *Human Rights Discourse in North Korea: Post-colonial, Marxist and Confucian perspectives*, 104.

73 Kim Jong Il, *Selected Works of Kim Jong Il 13, February 1992 – December 1994*, 274 (Pyongyang: Foreign Languages Publishing House, 1994), quoted in Song, *Human Rights Discourse in North Korea: Post-colonial, Marxist and Confucian perspectives*, 156.

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This perversion endured. In 1995, the KWP made the point even more bluntly in *Rodong Sinmun*, the Party's official newspaper, in an article entitled "For True Human Rights":

*With regards to anti-revolutionary forces in socialist states, they are rebels and traitors against the People's interests and the scum of society, violating the human rights of the People. To these anti-revolutionaries, the term human rights itself is completely inappropriate ... [W]e do not obscure our class-consciousness in the context of human rights. Socialist human rights are not class-transcending human rights to grant freedom and human rights to hostile enemies who oppose socialism, or to disobedient traitors who stand against the People's interests. Our human rights are the rights that legitimize the persecution of enemies of class, violating the rights of the People.*⁷⁴

This viewpoint stands in stark contradiction to the conception of human rights as proclaimed in the UDHR and the subsequent International Covenants. Article 2 of the Universal Declaration states:

Everyone is entitled to all the rights and freedoms ... without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

This approach is reiterated in Article 2 of the ICCPR:

Each State Party ... Undertakes to respect and ensure to all individuals within its territory and subject to its jurisdiction, the rights recognized in the present Covenant without distinction

of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property birth or other status.

D. Extreme Collectivization

Kim Il-sung, and Kim Jong-il as he rose to power, embarked upon an extensive program of extreme collectivization of social, economic, and political life that left little to no room for individual rights. Underwritten by Soviet, Chinese, and Eastern European economic aid, the DPRK's first Five-Year Plan succeeded and the DPRK was able to construct its self-proclaimed "workers' paradise" that rigorously suppressed civil and political rights—notwithstanding their provision in the Constitution—but promised housing, food, employment, health care, education, and culture to the "rights-deserving" portion of its citizenry.

In the words of a leading DPRK scholar, "[i]n the decades during Kim Il-sung's rule, the DPRK became a society where the level of state control over the average citizen's public and private life reached heights that would be almost unthinkable in any other country, including Stalin's Russia ... Kim Il-sung and his supporters managed to out-Stalin even Stalin himself."⁷⁵

E. No to Civil Society

Following the Stalinist playbook, the KWP under Kim Il-sung created a series of Party-controlled associations or federations for women, young people, farmers, certain professions, sports, some of Korea's traditional religions, and other pursuits.⁷⁶ There

⁷⁴ "For True Human Rights," *Rodong Sinmun*, June 24, 1995, quoted in Song, *Human Rights Discourse in North Korea: Post-colonial, Marxist and Confucian perspectives*, 151-52.

⁷⁵ Andrei Lankov, *The Real North Korea: Life and Politics in the Failed Stalinist Utopia* (New York: Oxford University Press, 2013), 34.

⁷⁶ Following the promulgation of *juche* ideology, religious federations faded from the scene for several decades. They were revived in the

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were and are Party-controlled neighborhood and enterprise work unit associations. Given the extensive array of associations or organizations for many social endeavors, the state prohibited the formation of any other groups. There are no civic groups that are not under the control and direction of the KWP. Thus, there is no civil society beyond the control of the state.⁷⁷

F. Monolithic Ideology and Dynastic Leadership Worship

During Kim Jong-il's rise to power in the 1980s, the DPRK began to supplement and replace Marxism with what it called "*juche* ideology" or "Kim-Il-sung-ism." Philosophically banal and arcane to the point of solipsism, Kim-Il-sung-ism, numerous scholars suggest, re-instituted many features of Korean neo-Confucian feudalism, not the least of which was dynastic succession. It also includes self-isolation of the citizenry, the suppression of private commerce, and a system of guilt-by-association (*yeon-jwa-je*) that extends to three generations that sends family members to forced labor camps along with the accused.

Juche ideology inculcated a semi-divine theory of leadership (*Suryong*), the likes of which has not been seen in modern world history other than the "Emperor-worship" of Imperial Japan. *Juche* ideology or Kim-Il-sung-ism proclaimed itself to be a "monolithic ideology system" under which North Koreans were required to worship their "benevolent" Great Leader. While retaining some of the nomenclature of classic republicanism and socialism, North Koreans became the "subjects" of

their *Suryong*, who granted or bestowed rights on only those subjects who ably performed their "duties" to the regime.⁷⁸

G. Semi-Hereditary, Discriminatory Caste Structure

As noted above, after the Korean War and stretching into the mid-1960s, Kim Il-sung instituted *songbun*, the three-tier, semi-hereditary citizen classification system—'core' (or 'nucleus'), 'wavering' (also called 'basic'), and 'hostile' (or 'antagonistic') classes—all based on the paternal ancestor's (a grandfather or great-grandfather of the current young generation) political leanings at the end of Japanese occupation.⁷⁹ A family's *songbun* classification can determine the quality and location of residence and housing, access to higher education, employment, eligibility for Party membership, the quality and quantity of food provided by the Public Distribution System (PDS) when it was operating,⁸⁰ and even marriage prospects.⁸¹ This is obviously incompatible with international human rights legal prohibitions on discrimination based on race, religion, social class, political opinion, or sex.

1990s following the World Youth Festival in Pyongyang in 1989.

⁷⁷ Such total control of the citizenry is sometimes referred to as "totalitarian," and constitutes a severe restriction on the freedoms of association and assembly. When foreign organizations meet with their DPRK counterparts, they are, in fact, meeting with KWP-controlled entities, whose members cannot deviate from the "Party line."

⁷⁸ In the modern approach to human rights, and in modern international human rights law, "rights" are "recognized" to be the inherent and inviolable birthright of all individuals, not blessings bestowed on loyal subjects by a semi-divine or divinely legitimated monarch.

⁷⁹ Reportedly, there are 53 subcategories within this structure. Recent research indicates that there may have been a very small and elite 'special' classification, and that a 'complex' category (between the 'wavering' or 'basic' and the 'hostile' or 'antagonistic' classes) was added in the 2000s. Fyodor Tertitskiy, "*Songbun* and the five castes of North Korea" *NK News*, February 26, 2015, <https://www.nknews.org/2015/02/songbun-and-the-five-castes-of-north-korea/>. Some have noted that Chosun dynasty feudalism also featured a three-tiered hereditary caste structure along with "out-caste" slaves, who, like Kim Il-sung's *kwan-li-so* prison camp inmates, were banished from society to lifetime slave labor in the mountains.

⁸⁰ The quantity of food distribution also factored in an individual's occupation.

⁸¹ Few families want their children to marry into a lower *songbun* family as it might adversely affect their grandchildren's opportunities.

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H. “Human Rights in Our Style”

Following the death of his father, Kim Jong-il introduced “our style human rights” as a subsidiary of “our style socialism.”⁸² “Our style human rights” carries on the duty-based, leader-bestowed, and welfare-centered approach to rights projected by Kim-Il-Sung-ism. “Our style human rights” introduced the now oft-repeated claim that “defense of state sovereignty is the highest and most important protection of human rights.”⁸³ This is a proposition that stands in complete opposition to modern human rights law and practice, which posits human rights as citizens’ protection against the arbitrary exercise of state authority. The rights that are recognized in international law as inherent in persons and peoples are reserved only, as in the days of royal absolutism, for the sovereign who personifies the state.

Additionally, Kim Jong-il introduced *songun* or “Military-First” politics. In a narrow sense, *songun* politics reduced the power and authority of the KWP. Narrowly defined, *songun* politics meant that Kim Jong-il governed through the National Defense Commission, instead of using the KWP’s Central and Standing Committees. Government ministries were relegated even further away from the center of power.

In a larger sense, “Military-First” politics was the ideological and political rationale for the prioritization of scarce national resources to the expensive development of nuclear weapons and missile systems. This decision was made in the midst of a complete breakdown in industrial and agricultural production and the breakdown of the public food distribution

and health systems, which claimed the lives of some 800,000 to 1.2 million North Koreans. This economic catastrophe resulted in large part from the cutbacks in Soviet and Chinese financial assistance that had previously underwritten the DPRK political economy, and from the failure of successive socialist-style, multi-year economic plans.

The consequences of *songun* politics were enormous. Nevertheless, the DPRK continued to boast of its human rights record on account of its efforts to fulfill economic, social, and cultural rights through the provision of food, housing, employment, education, health services, and cultural festivals for its citizenry. With the substantial breakdown of agricultural and industrial production, the DPRK became unable to fulfill the economic and social rights about which it had long boasted.

Following the collapse of communist rule in Eastern Europe and the Soviet Union, many also predicted the collapse of the DPRK during the 1990s. Notwithstanding what was happening to its economy and its people, the DPRK was never a “failed state.” State censorship organs retained control over the information available to its citizenry. The overlapping systems of internal surveillance remained in place, as did the guarantee of severe punishments for non-compliance, dissent, or actual or alleged complaints about the totalitarian policies of the regime.

I. The Old Prevarications and Exemptions to Citizens’ Rights Continue

The policies instituted under Kim Il-sung and Kim Jong-il may appear to reflect outdated thinking from a bygone era, but they still apply in substantial measure under Kim Jong-un. Notwithstanding the changes in the DPRK’s economy and society, some of which are outlined in Chapter VIII, the wholesale deprivation of human rights persists to this day. Specified “rights” remain so highly circumscribed so as to render them meaningless in practice.

82 This is sometimes translated as “human rights in our style” and “socialism in our style.”

83 In the DPRK, since the State “guarantees” human rights, protection of the State is the highest aspiration and form of human rights.

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For example, in 2014, DPRK authorities widely distributed to the UN General Assembly a report proclaiming the following:

- There is freedom of religion, but “Especially, the Government prevents religion from being used to draw in foreign forces or harm the state or social order ... or to instill reactionary or degenerated ideas and culture into our people.”
- Freedom of assembly and association are fully allowed, but “Associations with the purpose of committing hostile acts against the State are absolutely prohibited.”
- The criminal law of the DPRK “strengthens the class struggle against anti-socialist crimes while thoroughly frustrating the ideological and cultural infiltrations and psychological smear campaigns ... to disrupt the country from within.”⁸⁴

standards, and international law of human rights. How the DPRK has attempted to manage these discrepancies is examined in Chapter IV.

In 2014, Kim Jong-un stated in a speech to the KWP that:

*We should take initiatives to reduce to ashes the imperialist ideological and cultural infiltration, and set up double or triple ‘mosquito nets’ to stop the viruses of capitalist ideology from infiltrating our border.*⁸⁵

Such limitations cannot be squared with the norms,

⁸⁴ Korean Central News Agency, *Report of the DPRK Association for Human Rights Studies* (Pyongyang: 2014). This report was distributed by the DPRK Mission to the UN to all Member States at the General Assembly in 2014. This “association” is what is frequently termed a GONGO, a Government-Organized Non-Governmental Organization.

⁸⁵ Kim Jong-un, “Speech at the 8th Conference of Ideological Officials of the Korean Workers’ Party” (speech, Pyongyang, February 24, 2014), quoted in Amnesty International, *Connection Denied: Restrictions on Mobile Phones and Outside Information in North Korea*, 13.

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CHAPTER IV. INTERNATIONAL HUMAN RIGHTS LAW AND THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA: ON-AGAIN-OFF-AGAIN, PARTIAL COOPERATION WITH THE UNITED NATIONS

The DPRK has ratified or acceded to several core human rights conventions: the ICCPR, the ICESCR, the CRC, the CEDAW, CRPD, and the Optional Protocol to the Convention of the Rights of Children on the sale of children, child prostitution and child pornography.⁸⁶

Moreover, the DPRK has, on occasion, submitted reports to the treaty committees associated with each convention regarding the measures the government was taking to promote and protect the specific rights enumerated and prescribed in these conventions. Pyongyang has sent delegations to Geneva to engage in detailed discussions of its State reports, and it has not denounced the concluding observations of the review committees. Indeed, DPRK authorities claim that they have implemented at least some of those recommendations.

⁸⁶ Optional protocols are additional stipulations to larger conventions, many of which enable individual complaints to the Treaty Bodies, that require separate ratification. The DPRK has ignored the other optional protocols to human rights treaties. There may well be a possible explanation as to why the DPRK chose only this Optional Protocol: namely, that there are South Koreans and Korean Americans who assist North Korean refugees on their long flight from northeast China to Southeast Asia. The DPRK accuses those who assist the North Korean refugees of “abduction,” partly to counter the well-known and partially-acknowledged charges that the DPRK abducted foreign nationals, including Japanese citizens. As some of the North Koreans seeking asylum are families, including children, the DPRK charges those who assist the refugees of “child trafficking.”

However, the DPRK has also selectively disregarded treaty reporting obligations.⁸⁷ The DPRK initially used the treaty reporting process as a platform to harshly criticize the ROK and then attempted to formally rescind its ratification of one of the two fundamental human rights covenants. It then reversed course to rejoin the reporting process before renouncing it again in 2017. The overall record is one of sporadic cooperation.

A. Brief History of Erratic Cooperation

The DPRK's participation in the international human rights treaty system got off to an uneven start.⁸⁸ Like most Soviet Bloc countries, the DPRK signed the ICCPR and the ICESCR in 1966 as soon as they became “open for signature.”⁸⁹ The DPRK did not, however, ratify these Covenants for another decade and a half. In September 1981, the DPRK acceded to both the ICCPR and the ICESCR.⁹⁰

⁸⁷ It should be noted that the DPRK is not the only State Party to the human rights conventions to be late or malfeasant in submitting its treaty implementation reports.

⁸⁸ The two Koreas did not become UN Member States until 1991. However, it has long been possible for territories that are not yet UN Member States to join the human rights conventions out of concern that non-Member State populations should not be excluded from the international norms and standards promulgated at the UN.

⁸⁹ After a long drafting process, the final text of a convention is adopted by the General Assembly. At that point, the convention is “open for signature.” Many Member States promptly submit their signatures to the Secretary General's office, which is the repository for articles of accession and ratification, to indicate their support. It is understood that ratifications, according to domestic constitutional provisions, will take additional time. In 1948, the Soviet Bloc had voted, en masse, to abstain on the proclamation of UDHR. But the Soviet Union soon realized this mistake and thereafter participated in drafting human rights legal instruments. Unfortunately, the United States realized that these new international laws would be used to attack racial discrimination in the United States and substantially drew back from negotiations to set international human rights standards. To forestall the Senate from enacting the isolationist “Bricker Amendment,” the Eisenhower administration pledged that the United States would not seek to ratify international human rights treaties, a pledge that was not overturned until the Reagan administration.

⁹⁰ The texts of the twin Covenants were adopted by the UN General Assembly in 1966. The Covenants “entered into force” in 1975, when twenty States ratified them. Technically, there are two ways of subscribing to international conventions: “accession” and “signature and ratification.” Signature and ratification is primarily for nation-states

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In 1983, the DPRK submitted its first State Report to the UN Human Rights Committee, the Treaty Body for the ICCPR.⁹¹ That report provided the general assurance that “the working people of the DPRK are the masters of the State and society and the inviolability of their rights are fully guaranteed.” The submission specifies a series of rights-providing legislation that had been passed in the DPRK up to 1983, the veracity of which there is little reason to doubt. Other claims in the submission are more dubious. For example, the report boasts of having repatriated 100,000 maltreated ethnic Koreans from Japan who had been “embraced to the bosom of their homeland.”⁹² This was an odd claim, given that the thousands of the Koreans repatriated from Japan ended up in the DPRK’s notorious prison camps.⁹³

Most notably, the report provided a detailed account of human rights violations in “south Korea.”⁹⁴ It concluded with the “expectation that the Human Rights Committee will pay due attention to the prevailing situation in south Korea and take appropriate measures helpful to eliminating the illegal

and inhuman moves for human rights repression there.”⁹⁵ The ROK faced considerable international criticism during this period, particularly following the suppression of pro-democracy demonstrations in the city of Gwangju in May 1981.

In 1984, the Human Rights Committee considered the DPRK’s initial report, but only on matters pertaining to the situation and citizens within the territory and jurisdiction of the DPRK. It did not follow the DPRK’s “expectation” that the UN would take action at its request against the DPRK’s rival state on the Korean peninsula.⁹⁶ The DPRK did not submit its next state report under the ICCPR for another 17 years that came only after a misbegotten attempt to renounce its accession to the ICCPR.

In the meantime, during an important but short-lived détente on the Korean peninsula,⁹⁷ the DPRK acceded to the Convention on the Prevention and Punishment of the Crime of Genocide in 1989. In September 1990, the DPRK ratified the CRC, just as the convention was entering into force.⁹⁸ The DPRK invited the Chair and a staff member of the Committee on the Rights of the Child to Pyongyang and sent representatives to the UN World Summit for Children in September 1990. Lastly, in February

that have independent legislatures. In this case, the executive branch, a president or prime minister, signs the convention indicating an intent to ratify and sends the signature letter to the UN Secretary-General. The legislative branch must then ratify the convention according to constitutional and political processes. “Accession,” on the other hand, allows a nation-state to join a treaty regime in one action. In effect, there is little difference between ratification and accession, and the two terms are sometimes used almost interchangeably. Only after ratification or accession is that state “legally bound” by the provisions of that convention.

91 UN Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant: Democratic People's Republic of Korea*, UN Doc. CCPR/C/22/Add.3 (November 14, 1983). An additional submission, UN Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant: Democratic People's Republic of Korea*, UN Doc. CCPR/C/22/Add.5 (April 2, 1983).

92 Ibid., 5.

93 A Korean-Japanese individual who escaped the DPRK to China and then returned to Japan, interviewed by the present author in Tokyo and Osaka, claimed that as many as one-third of the Koreans who migrated from Japan to Korea in the early 1960s ended up in prison camps.

94 DPRK publications almost invariably refer to “south Korea” with a lower case “s” rather than a capital “S.”

95 Ibid., 7.

96 UN Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant: Democratic People's Republic of Korea*, UN Doc. CCPR/C/SR.510 (April 12, 1984) and UN Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant: Democratic People's Republic of Korea*, UN Doc. CCPR/C/SR.516 (April 17, 1984).

97 This followed the collapse of the Soviet Bloc in Eastern Europe and also by the announced withdrawal of all U.S. nuclear weapons from the ROK. In December 1991, both Koreas signed the Inter-Korean (Basic) Agreement on Reconciliation, Non-aggression and Exchanges and Cooperation. In January 1992, both Koreas initiated the *Joint Declaration of South and North Korea on the Denuclearization of the Korean Peninsula*. However, the thaw soon ended and neither agreement was implemented.

98 The text of the CRC was adopted by the General Assembly and opened for signature in 1989. The CRC entered into force in September 1990 after 20 states ratified the convention.

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1996, the DPRK submitted its initial State Report on its implementation of the CRC.⁹⁹

1. The Democratic People's Republic of Korea's Attempt to Renounce Its Accession to the International Covenant on Civil and Political Rights

In 1997, as the famine in the DPRK gave rise to a massive refugee outflow to China and increasing international concern about the situation in the DPRK, a resolution at the “Sub-Commission” of the UN Commission on Human Rights urged the international community to respond to the DPRK’s appeal for famine relief.¹⁰⁰ Moreover, it also urged the DPRK to respect Article 12 of the ICCPR—the right of its citizens to leave and return to their country of origin. The resolution further urged the DPRK to submit its then long-overdue report on the implementation of the ICCPR to the Human Rights Committee.¹⁰¹ Pyongyang responded by announcing its withdrawal from ratification of the ICCPR and

postponing its participation in the review of its report to the Committee on the Rights of the Child.¹⁰²

Subsequently, the Human Rights Committee ruled that a State Party could only withdraw its recognition of the competence of the Committee to hear an “interstate complaint.”¹⁰³ It noted that there was no provision for withdrawing from the Covenant itself because the “Covenant has no temporary character typical of treaties where a right of denunciation is deemed to be admitted.”¹⁰⁴ Underlining the substantive importance of the contemporary international human rights regime—the embodiment of the UDHR’s principles in positive international law—the Committee stated that:

*The rights enshrined in the Covenant belong to the people living in the territory of the State party. The Human Rights Committee has consistently taken the view that once the people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them.*¹⁰⁵

In 2000, the DPRK temporarily halted its withdrawal attempt and agreed to submit its second State Report under the ICCPR.¹⁰⁶ It also agreed to cooperate with the review of its CRC compliance with the Committee on the Rights of the Child.

⁹⁹ This was four years after the initial report was due, although many other States Parties submitted their reports after the deadline.

¹⁰⁰ The “Sub-Commission” is a subsidiary group of experts that prepares studies and other matters for the Commission on Human Rights, which has since been renamed as the HRC. The Sub-Commission, formally known as the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, was initiated at the urging of African UN Member States to address problems related to minority rights protection. Subsequently, the Sub-Commission expanded its focus to other human rights matters. Chang On Han, *Letter dated 97/08/18 from the Chargé d'affaires a.i. of the Permanent Mission of the Democratic People's Republic of Korea to the United Nations Office in Geneva addressed to the Chairman of the 49th session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities*, UN Doc. E/CN.4/Sub.2/1997/43 (August 18, 1997).

¹⁰¹ While the members of the Sub-Commission serve as individual experts and not representatives of their governments, the American expert on the Sub-Commission, David Weissbrodt, a Law Professor at the University of Minnesota, was one of the primary co-authors of a 1988 report entitled “Human Rights in the DPRK” jointly published by Asia Watch (the former name of HRW/Asia) and the Minnesota Lawyers Committee for International Human Rights (now known as The Advocates for Human Rights).

¹⁰² E/CN.4/Sub.2/1997/43.

¹⁰³ UN General Assembly, Article 41(2), *International covenant on civil and political rights*, no. 14668 (December 16, 1966).

¹⁰⁴ Human Rights Committee, *General Comment No. 26, General Comment on issues relating to the continuity of obligations to the International Covenant on Civil and Political Rights*, UN Doc. CCPR/C/21/Rev.1/Add.8 (December 8, 1997), ¶ 3. See also UN Human Rights Committee, *Aide-Mémoire: Denunciation of the ICCPR by the Democratic People's Republic of Korea, 23 September 1997*, UN Doc. C.N.467.1997.TREATIES-10 (November 12, 1997).

¹⁰⁵ CCPR/C/21/Rev.1/Add.8.

¹⁰⁶ UN Human Rights Committee, *International Covenant on Civil and Political Rights*, CCPR/C/PRK/2002/2 (May 4, 2000).

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This was followed by another period of relative political thaw in Northeast Asia.¹⁰⁷ During this time, the ROK women's rights advocates challenged DPRK diplomats in Geneva to join the CEDAW. DPRK diplomats, pursuing their general political line that there were no human rights problems in the DPRK, responded that there was no discrimination against women in the DPRK. In response, the ROK countered that there was no reason not to ratify the Convention if that was truly the case.

In February 2001, the DPRK acceded to CEDAW. However, the DPRK authorities filed three "reservations" to provisions that the DPRK would not accept. Two of those reservations were held by the relevant treaty body, the CEDAW Committee, to be incompatible with the Convention and urged that they should be withdrawn.¹⁰⁸

2. The Human Rights Treaty Review Process: Renewed Engagement and Substantial Withdrawal

In 2002, the DPRK submitted its State Report on its implementation of the ICESCR,¹⁰⁹ which was reviewed by the ICESCR Committee in December

2003.¹¹⁰ The Committee's Concluding Observations were published in December 2003.¹¹¹ The DPRK also submitted, in September 2002, its initial state report on CEDAW.¹¹² The CEDAW Committee reviewed the DPRK's report in July 2005,¹¹³ and issued its Concluding Observations in July 2005.¹¹⁴

Following the review of the DPRK's report on its implementation of CEDAW in 2005, the DPRK largely withdrew from further cooperation with Committees overseeing the implementation of the ICCPR, ICESCR, and CEDAW for the next decade. The one exception was its continued engagement with the CRC. The DPRK resumed its participation in 2015, but there have been major shortcomings in its approach to date.

The likely reason for this resumption was the 2014 release of the final report of the COI, a high-level UN investigation that had been established in 2013 at the request of the governments on the HRC. The COI's report determined that several categories of widespread and systematic DPRK human rights violations constituted crimes against humanity. When the governments at the HRC and General

107 This was associated, to an extent, with the "sunshine" policies of President Kim Dae-Jung in the ROK, and U.S. negotiations with the DPRK at the end of President Clinton's second term.

108 On November 23, 2015, the DPRK notified the Secretary-General that it had withdrawn its reservation to CEDAW Article 2 paragraph (f) "To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;" and withdrawn its reservation to Article 9 paragraph (2) "States Parties shall grant women equal rights with men with respect to the nationality of their children." Thus, the DPRK only retains its reservation to Article 29 paragraph (1), which recognizes the jurisdiction of the ICJ to resolve a dispute between States Parties on the interpretation or implementation of CEDAW.

109 UN Economic and Social Council, *Implementation of the International Covenant on Economic, Social and Cultural Rights—Addendum: Democratic People's Republic of Korea*, UN Doc. E/1990/6/Add.35 (May 15, 2002).

110 Summary Records, E/C.12/2003/SR.44, E/C.12/2003/SR.46, E/C.12/2003/SR.56.

111 UN Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties under articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic, Social and Cultural Rights: Democratic People's Republic of Korea*, UN Doc. E/C.12/1/Add.95 (December 12, 2003).

112 UN Committee on the Elimination of Discrimination against Women, *Consideration of Reports Submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Initial report of States Parties: Democratic People's Republic of Korea*, UN Doc. CEDAW/C/PRK/1 (September 11, 2002).

113 UN Committee on the Elimination of Discrimination against Women, *Consideration of Reports Submitted by States Parties under article 18 of the Convention (continued): Initial report of the Democratic People's Republic of Korea*, UN Doc. CEDAW/C/SR.699 and SR.700 (September 8-9, 2005).

114 UN Committee on the Elimination of Discrimination against Women, *Concluding comments: Democratic People's Republic of Korea*, UN Doc. CEDAW/C/PRK/CO/1 (July 22, 2005); UN General Assembly, *Report of the Committee on the Elimination of Discrimination against Women*, UN Doc. A/60/38 (SUPP) (January 10-28, 2005), ¶ 19-76.

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Assembly endorsed the COI's recommendation that the UN Security Council refer the DPRK to the ICC for investigation and prosecution, the DPRK authorities realized that they could not stand idly by.¹¹⁵

The DPRK's responses were driven, at least in part, by a realization that they could no longer continue to completely refuse cooperation with the UN human rights system.¹¹⁶ The DPRK authorities announced that they would now participate in the UN's review of their report on the implementation of the CRC, and that they would submit their decade-long overdue report on the CEDAW. In September 2014, the DPRK signed, and in November ratified, an Optional Protocol to the CRC that prohibits the trafficking and exploitation of children.

In October 2016, the DPRK submitted its state report to the CRC Committee, which had been due in 2012.¹¹⁷ Having failed to submit its second or third periodic report on the implementation of the CEDAW, the DPRK submitted in April 2016 a combined second, third, and fourth report to the CEDAW Committee.¹¹⁸ In June 2016, the DPRK also submitted its Common Core Document.¹¹⁹ The

Common Core Document is a relatively recent development coming out of efforts to harmonize the Treaty Body reporting process that enables States Parties to multiple human rights conventions to submit information on their basic political structure and legal system that will be similarly relevant to all the major UN human rights treaties and their review processes. In December 2016, the DPRK ratified the CRPD.¹²⁰

B. Substantial Shortcomings (as of 2019)

The DPRK garnered notice and praise for renewing its cooperation regarding women's and children's rights, and for joining the CRPD. However, there remains a substantial gap in the DPRK's renewed cooperation with the UN human rights treaty committee. The DPRK has not renewed its cooperation with the ICCPR Committee or the ICESCR Committee. Pyongyang's cooperation with the reporting and review processes on these two most fundamental elements of international human rights norms and standards ceased in 2001 and 2003, respectively. It has not been revived since. The DPRK is again reasserting its renunciation of, and withdrawal from, the ICCPR. To the author's knowledge, there has been no comparable formal disavowal of the DPRK's accession to the ICESCR.

As discussed in Chapter II, the ICCPR and the ICESCR codified the provisions of the UDHR into the more concrete prescriptions of international law. All of the international human rights conventions

115 See Chapter VI.

116 The DPRK's non-cooperation with the HRC's resolutions, "Special Procedures," and the UPR are outlined in Chapter V.

117 UN Committee on the Rights of the Child, *Consideration of reports Submitted by States Parties Under article 44 of the Convention: Fifth periodic reports of States parties due in 2012: Democratic People's Republic of Korea*, UN Doc. CRC/C/PRK/5 (October 25, 2016).

118 UN Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined second to fourth periodic reports of the Democratic People's Republic of Korea*, UN Doc. CEDAW/C/PRK/CO/2-4 (November 22, 2017).

119 UN International Human Rights Instruments, *Common core document forming part of the reports of States parties: Democratic People's Republic of Korea*, UN Doc. HRI/CORE/PRK/2016 (June 2, 2016). The DPRK's common core document was prepared—as was the case for the presently submitted reports on women's and children's rights, by the DPRK National Committee for Implementing International Human Rights, which was formed in April 2015 as part of the DPRK's post-COI approach toward human rights—to better integrate the international standards into State policy and implementation. This National Committee, it is stated, "makes remedial recommendations to the Presidium of the SPA, the Cabinet, law enforcement organs and other

related bodies" UN CEDAW, *Consideration of reports submitted by States parties under article 18 of the Convention*, CEDAW/C/PRK/2-4, (June 1, 2016)¶ 20, 5d.

120 For several years, international organizations specializing in disabilities and disability issues, and other NGOs, had been quietly working in the DPRK, where persons with disabilities had been, to a substantial degree, kept out-of-sight and marginalized in DPRK society. Apparently, these NGOs had persuaded the authorities that dealing with disability issues more forthrightly would not jeopardize social or political control. The DPRK signed the CRPD in September 2013.

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that followed can be understood as elaborations of these twin covenants in their application to vulnerable groups or as more specific definitions of particularly egregious forms of human rights abuse. Consistent with the DPRK's cooperation and non-cooperation with other UN mechanisms to promote and protect human rights, the gap in the DPRK's renewed approach towards international human rights conventions appears consistent with its overall approach to human rights policy and practice.

At the UN, basic principles of human rights are articulated as universal, inalienable, indivisible, interdependent, and inter-related. Even as the DPRK cooperates with UN mechanisms relating to women, children, and persons with disabilities, it persists in refusing to recognize the fundamental norms and standards of civil, political, economic, social, and cultural rights. If human rights considerations are to be included in evaluations of the DPRK's attempts to improve its ties with the international community, then this selectivity in its engagement with the international human rights system should not be disregarded.

C. The Recommendations of the Convention Implementation Review Committees

Over the last two decades, the UN treaty committees have made a range of recommendations to the DPRK to improve its respect for and observance of the rights set forth in the conventions it ratified and acceded to. The recommendations to States Parties to the human rights conventions are issued in the form of "Concluding Observations." The following are a sample of major recommendations from the treaty committees to the DPRK.

1. Civil and Political Rights

In 2001, the Human Rights Committee reviewed the DPRK's state report on the ICCPR and recommended that the DPRK *inter alia*:

- Establish an independent judiciary;
- Establish a national human rights institution (usually called a commission);
- End Criminal Code provisions allowing public executions and work toward elimination of capital punishment;
- Amend Criminal Code provisions that allow prosecutions for actions not explicitly specified as unlawful;
- Allow detained persons access to family members and counsel, bring detained persons promptly before a judge;
- Eliminate the practice of internal travel certificates;
- Curb the requirement of exit visas for foreign travel;
- Ensure the free exercise of religious practice;
- End restrictions on public assembly; and
- Allow foreign periodicals into the DPRK and allow DPRK journalists to travel abroad.¹²¹

2. Economic, Social, and Cultural Rights

In 2003, the UN Committee on Economic, Social and Cultural Rights reviewed the DPRK's report on its

¹²¹ For the full list, see UN Human Rights Committee, *Consideration of Reports Submitted by States Parties under article 40 of the Covenant: Concluding observations of the Human Rights Committee: Democratic People's Republic of Korea*, UN Doc. CCPR/CO/72/PRK (August 27, 2001).

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implementation of the ICESCR and recommended that the DPRK:

- Set up a mechanism for monitoring the progressive implementation of economic and social rights;
 - Seek assistance and cooperation including from the Office of the UN High Commissioner for Human Rights;
 - Provide information on the functioning of the Law on Complaints and Petitions as it relates to economic, social and cultural rights;
 - Eliminate penalties against persons who traveled abroad in search of employment;
 - Alter legislation to allow independent trade unions;
 - Explore increasing budgetary allocations for social expenditure and public assistance for people in need; and
 - Increase attention to adequate nutrition and healthcare for children.¹²²
- Increase the number of women in decision-making positions in all spheres;
 - Introduce specific poverty alleviation measures aimed at improving the situation of women particularly in rural areas;
 - Protect the rights of women who went abroad without valid travel permits;
 - Ensure that violence against women and girls constitutes a criminal offense;
 - Intensify international, regional and bilateral cooperation to combat trafficking;
 - Provide more detailed information on the number and condition of women in detention;
 - Provide more detailed information on the availability and access to general and reproductive health services for women in all parts of the country; and
 - Encourage the establishment of women's human rights NGOs.¹²⁴

3. Women's Rights

In September 2002, the DPRK submitted its state report to the CEDAW Committee.¹²³ In 2005, the CEDAW Committee issued its recommendations for the DPRK to:

- Revise its 1946 law on gender equality in accordance with CEDAW provisions;
 - Ensure adequate representation of women on People's Committees (local governments);
- Increase the minimum age of marriage to 18 years;
 - Ensure that legal provisions concerning 'reconciliation among spouses' are not used to dismiss

In 2017, after the DPRK partially rejoined the treaty implementation review process, the DPRK submitted its latest state report on CEDAW implementation covering the period from 2005 to 2015. The CEDAW Committee issued its Concluding Observations in November 2017.¹²⁵

122 For the full list, see E/C.12/1/Add.95.

123 CEDAW/C/PRK/1.

124 For the full list, see CEDAW/C/PRK/CO/1; A/60/38 (SUPP), ¶ 19-76.

125 For the full list, see CEDAW/C/PRK/CO/2-4.

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- prosecutions for domestic violence and sexual offenses;¹²⁶
- Make laws, directives, and regulations publicly available on the national intranet and the Internet;
- Ensure equal gender participation on the National Committee for Implementing International Human Rights Treaties;
- Develop, adopt, and implement a comprehensive plan of action to promote women's rights and gender equality, and monitor its impact;
- Establish an independent national human rights institution, and invite support and advice from the OHCHR;
- Create an enabling environment in which civil society groups can independently monitor the women's human rights situation and engage in advocacy with public authorities regarding women's rights and CEDAW;
- Set time-bound targets and temporary special proactive measures in areas where women are under-represented, such as higher education, the judiciary, security and police forces, and managerial positions;
- Adopt targeted and defined timeframes to increase women's participation in the SPA, local assemblies, ministries, the diplomatic service, academic institutions, and the judiciary;
- Review bilateral agreements to ensure that children born to DPRK women outside the territory obtain birth registration and citizenship without forcible repatriation by third States;
- Ensure that repatriated women who are victims of trafficking receive appropriate support and are not sent to labor camps or prisons, and that pregnant women are not subjected to forced abortions;
- Provide international organizations and 'Special Procedures mandate holders' access to all women's detention facilities;¹²⁷
- Review labor laws and policies that assign women to low-paying jobs;
- Make statistics on equal pay regularly available; and
- Develop systems for the collection, analysis, and distribution of comprehensive data disaggregated by sex, age, and location.¹²⁸

126 The DPRK reports that some thirty percent of divorce-related matters brought to the courts result in spousal reconciliation.

127 "Special Procedures" refer to the international human rights mechanism of independent experts appointed by the HRC in various thematic and country-specific areas to examine human rights issues related to their mandates. They produce periodic reports, conduct visits to relevant countries, and issue communications to governments, including urgent appeals, allegation letters, and other letters concerning legislative developments. Special Procedures encompass the Special Rapporteurs, Independent Experts, and Working Groups, who receive their mandates through resolutions of the HRC. In the UN context, "International Organizations" usually refers to intergovernmental bodies rather than international NGOs.

128 Some of the provided statistics are interesting. For example, the education attainment percentages of women are nearly 80 percent high school, 3.5 percent vocational, 6.7 percent college, and 9.9 percent university. Women teachers are 86 percent primary, 50 percent high school, 24 percent college and university. Only some 20 percent of deputies to the SPA and 27 percent of deputies to local assemblies are women. The percentages of women in ministries vary from 16 percent, including the Ministry of Foreign Affairs, to 20 percent. Only 4.9 percent of overseas diplomatic postings are held by women. Regarding the latter, the DPRK report notes that this falls far short of the required standards and promises efforts to enhance women's roles in the international arena, particularly in its relations with foreign countries abroad.

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4. Children's Rights

The DPRK ratified the CRC in 1990 and submitted its first state report in 1996,¹²⁹ which was reviewed in 1998.¹³⁰ The DPRK submitted a combined third and fourth report on the CRC in 2008.¹³¹ The Concluding Observations following the review of the 2009 report recommend that the DPRK:

- Strengthen and harmonize legislation with the provisions of the CRC;
- Establish a national human rights commission to receive complaints and monitor compliance;
- Allow the emergence of civil society;
- Increase budgetary allotment for the economic and social rights of children;
- Increase budgetary allotments for the educational sector;
- Improve food availability to children;
- Avoid early militarization of children in school; and
- Ensure that work performed by children does not exceed educational goals or jeopardize the right to education.¹³²

As noted, the DPRK partially rejoined the treaty review process in 2015 and participated in the CRC review in September 2017. The Committee issued its Concluding Observations in October 2017. Its recommendations included:

- Substantially increase the allocations in the health, education and social sectors to adequate levels ensuring equitable distribution among urban and rural areas;
- Establish an independent mechanism for monitoring children's rights;
- Establish an enabling environment for an independent civil society that will facilitate organizations working for children's rights;
- Take prompt measures to end discrimination against children based on the social status or political views of their parents;
- Review bilateral agreements to ensure that children born to mothers who are citizens of the DPRK residing outside the territory of the State party have access to birth registration and nationality;
- Promote children's freedom of expression and guarantee freedom to seek, receive and impart information orally, in writing and print or other media including the Internet;
- Prevent and eliminate persecution on grounds of religion or belief and promote religious tolerance and dialogue;
- Decriminalize children's access to what is considered hostile broadcasting;
- Establish a three digit toll-free 24-hour helpline for all children;
- Ensure that children are not punished or sanctioned for the crimes of their parents, and enable

129 UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under article 44 of the Convention: Initial report of States parties due in 1992*, UN Doc. CRC/C/3/Add.41 (June 17, 1996).

130 UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under article 44 of the Convention: Concluding observations of the Committee on the Rights of the Child: Democratic People's Republic of Korea*, UN Doc. CRC/C/15/Add.88 (June 24, 1998). Interestingly, in 2004, just prior to the scheduled CRC's review of the next DPRK compliance report on the implementation of the CRC, the DPRK invited the Chair and two other members of the CRC Committee to Pyongyang—a cooperative engagement that the DPRK did not extend to other UN human rights officials until 2017.

131 UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties Under article 44 of the Convention: The combined third and fourth periodic reports of States parties due in 2007: Democratic People's Republic of Korea*, UN Doc. CRC/C/PRK/4 (January 15, 2008).

132 Ibid.

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children to have regular contact with their detained parents;

- Strengthen efforts to reduce infant, child and maternal mortality, particularly in rural and remote areas;
- Ensure that free or affordable medicine is available to all children particularly in rural and remote areas;
- Ensure adequate investment in health-related infrastructure;
- Ensure that children are not required to perform labor tasks that interfere with their education;¹³³
- Ensure that children are not requested to perform “economic assignments” as part of their education;
- Ban schools from requesting contributions in the form of fees, food and materials;
- End discrimination against children based on the social status of their parents with respect to access to schools and types of education; and
- Include human rights and children’s rights into the school curriculum.¹³⁴

D. The Democratic People’s Republic of Korea’s Reported Follow-Up to the Treaty Committee Recommendations: Examples and Notations

Given all the recommendations made to the DPRK, it is important to ask what the DPRK has done to implement those recommendations and whether such measures have meaningfully improved the lives of the North Korean people. All available information

133 This is a reference to the *dolgyeokdae* labor brigades that use school children for “speed building” construction crews and agricultural production.

134 For the full list, see UN Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of the Democratic People’s Republic of Korea*, UN Doc. CRC/C/PRK/CO/5 (October 23, 2017).

indicates that most of the recommendations outlined above have been ignored.¹³⁵ The DPRK has responded, albeit highly selectively, to only a small number of the recommendations made by the UN treaty committees.

E. International Covenant on Civil and Political Rights

In its 2001 review of the DPRK’s implementation of the ICCPR, the Human Rights Committee recommended the elimination from its Criminal Code provisions that allow for prosecution on the basis of analogous or related offenses.¹³⁶ Under these provisions, if there was no precise legal prohibition on a particular action, an offender could be prosecuted using laws against a seemingly related or analogous offense. This is contrary to the long-established legal principle of *nullem crimen sine lege*—that there can be no crime without a law explicitly making a particular act a criminal offense. In 2004, responding directly to the recommendation of the Human Rights Committee, the DPRK altered Article 10 of its Criminal Code to incorporate this legal principle.

The Human Rights Committee also recommended that the DPRK reduce the number of crimes that were subject to the death penalty in the event of conviction.¹³⁷ Subsequently, the DPRK reportedly reduced the number of capital offenses from 33 to five. Four of these five, it should be noted, are essentially political offenses.¹³⁸

135 Many of these same recommendations were made to the DPRK from other parts of the UN human rights system (see Chapter V). However, those recommendations were also ignored by the DPRK until 2014 when international criminal law was applied to the DPRK (see Chapter VI).

136 CCPR/CO/72/PRK.

137 Ibid., ¶ 13. The Covenants absolutely prohibit the execution of minors only. Otherwise, Article 6 of ICCPR allows the death penalty to only the most serious crimes in countries where the death penalty remains.

138 In addition to “intentional murder,” capital offenses currently include “conspiracy against the state,” “terrorism,” “anti-national

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F. Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination

In 2004, prior to its review of the DPRK's report on the implementation of the CRC, the CRC Committee sent Pyongyang a "List of Issues to be taken up in connection with the consideration of the second periodic report of the DPRK." The DPRK responded with a statement saying that it had made amendments to more than 50 articles in its citizenship law and family laws to bring those laws closer to the norms and standards of the CRC.¹³⁹

In 2010, the DPRK updated its 1948 Gender Equality Law with a Women's Rights Act. This had been recommended by the 2005 CEDAW Committee.¹⁴⁰ In 2010, the DPRK passed a Children's Rights Act, as had been recommended by the CRC during the DPRK's 2009 review.¹⁴¹ Indeed, the recent 2017 DPRK reports on the CEDAW and the CRC cite

numerous instances where DPRK laws relevant to the situation of women and children have been brought into closer alignment with international human rights standards.¹⁴²

Whether these legislative changes have meaningfully improved the lives of North Koreans is difficult to ascertain. For example, in regard to changes in the DPRK criminal and criminal procedure codes, the author has interviewed scores of former North Koreans previously taken into custody and detained by various DPRK police authorities. Many of those interviewed had no trial or judicial procedures whatsoever, and they were never told what laws they had violated. They were not formally arrested and detained according to the criminal procedure codes. Of the former prisoners who did undergo trial and were informed of the laws they were charged with violating, many stated that they did not have a lawyer present at their trial. Others thought that they did have a lawyer present, but they were not sure which of the men sitting at the table in the courtroom he may have been.

Regarding women's rights, the Citizens' Alliance for Human Rights in North Korea, a Seoul-based NGO, conducted a survey of 60 North Korean female refugees who fled to China and the ROK in 2011 and 2012. Of these, only four women even knew about the 2010 Women's Rights Act, and only one had any knowledge of its provisions.¹⁴³

treachery," and "high treason." There may, however, still be additional capital offenses in the DPRK Criminal Code. UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/HRC/19/65 (February 13, 2012), ¶ 36-37. The UN Committee also recommended the elimination of provisions allowing for public execution. The DPRK does not publish statistics on executions, so it is not known if the number or rate of non-public executions has declined. There are presently fewer refugee reports of public executions than was the case during the famine crisis of the 1990s.

¹³⁹ UN Doc. CRC/C/Q/PRK/2, February 13, 2004, quoted in Young-hwan Lee, *Child is King of the Country: Briefing Report on the Situation of the Rights of the Child in the DPRK*, NKHR Briefing Report No.3 (Seoul: Citizens' Alliance for Human Rights in North Korea, Life & Human Rights Books, 2009), 82.

¹⁴⁰ Other recommendations included: incorporate fully the definition of both direct and indirect discrimination; undertake proactive measures to ensure formal and substantive equality; undertake awareness-raising campaigns, especially for legislators, the judiciary and legal profession (¶ 38); and revise 1946 law in accordance with CEDAW provisions (¶ 40).

¹⁴¹ "Harmonize legislation with provisions of Convention and strengthen the implementation of domestic legislation." UN Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under article 44 of the Convention: Concluding Observations: Democratic People's Republic of Korea*, UN Doc. CRC/C/PRK/CO/4 (March 27, 2009), ¶ 8.

¹⁴² The NGO stakeholder reports submitted to the UN critiquing the DPRK's official reports present a different picture and dispute some of the assertions made by the DPRK. These "shadow reports," usually based on extensive refugee interviews, are easily accessible on the OHCHR Treaty Bodies website.

¹⁴³ Joanna Hosaniak, *Status of Women's Rights in the Context of Socio-Economic Changes in the DPRK*, NKHR Briefing Report No.7 (Seoul: Citizens' Alliance for Human Rights in North Korea, Life & Human Rights Books, 2013), 10. This survey, like most surveys of North Korean refugees in the ROK, is heavily skewed towards former residents of the northeastern provinces closest to the Sino-DPRK border. This report contains a valuable article-by-article legal analysis of the 2010 Act that also draws on a comparison similar to women's rights acts in China and Laos. While the 1948 Gender Equality Act had an enormous impact

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Another South Korean NGO, NKDB, also surveyed 100 North Korean refugees on the implementation of the 2010 Law on the Promotion and Protection of Women's Rights. Its report provides little evidence of implementation. In its survey, 42 percent reported an increase in the number of female representatives in local People's Assemblies and local party political organizations, with considerable regional variation, and 36 percent of respondents reported no observable increases between 2010 and 2014.¹⁴⁴ The 2010 law posits a role for the Women's Union in promoting women's rights. However, of the 46 refugee women who had been members of the Women's Union, 72 percent reported that they did not receive any education or awareness-raising on women's rights issues, and 84 percent of survey respondents did not observe any women's rights activities by the Women's Union between 2010 and 2014. Numerous survey participants reported that the Women's Union only continued its traditional function of mobilizing "volunteer" labor for construction projects and "contributions" to national holiday celebrations, such as the "Day of the Sun" (Kim Il-sung's birthday).¹⁴⁵

Following the 2017 CEDAW Committee review, Citizens' Alliance published, in 2018, an updated survey of 40 North Korean women refugees, all but three of whom had arrived in the ROK between 2013 and 2017.¹⁴⁶ The interviews addressed their knowledge of the Women's Rights Act, women's

rights organizations and complaint mechanisms, gender stereotyping and discrimination in society, education, health, the economy, violence against women, and trafficking. Their conclusion stated that the survey of recently arrived refugee women "begs the question whether the Convention [on women's rights] and the domestic laws protecting women are implemented in their country at all."¹⁴⁷

G. Conclusion

As noted in Chapter II, perhaps the most important aspect of international human rights law is the effect it has on the legislation and domestic policy of states that accede to the conventions. In the DPRK, there have been modest adjustments to domestic legislation as part of a selective response to the recommendations resulting from the review processes that are part of the international human rights system.

It is likely the case that there is a group of officials in Pyongyang, associated with the Central Committee and the Presidium of the SPA, who closely follow developments in international law. These officials are responsible for laws that directly relate to human rights, such as laws that address the composition of the court and also petitions and complaints. What also seems clear, however, is that these officials wield far less power and influence than the internal security organs and the military. Kim Jong-il gave primacy to the military and defense organs in his *Songun* "Military First" policy, and Kim Jong-un has reasserted a stronger role for the KWP. There is little indication, as of yet, that he intends to strengthen the role of government ministries and institutions, including those that deal with legal and judicial matters.

There remain enormous political constraints on the legal framework and institutions in the DPRK,

on the status and rights of women in the DPRK, the Citizens' Alliance researchers conclude that "the new [2010] act essentially ... remains on paper, but that the status of women in North Korea would see an improvement if the DPRK "follows the spirit of this law," 21.

144 Sun-young Choi et al., *The UN Universal Periodic Review and the DPRK: Monitoring the Implementation of Its Recommendations* (Seoul: Database Center for North Korean Human Rights, 2017), 59.

145 Ibid., 62.

146 Daye Gang and Joanna Hosaniak, *They only claim that things have changed ... Discrimination Against Women in the DPRK, NKHR Briefing Report No.8* (Seoul: Citizens' Alliance for Human Rights in North Korea, Life & Human Rights Books, 2018), d8.

147 Ibid., 9.

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which severely minimize the domestic application of international human rights law. The DPRK prohibits the societal components—independent legal and lawyers' groups, a free press, independent civil society organizations, and interaction with international observers—which would enable international human rights law to positively impact their societies as they do in other UN Member States.

The DPRK has ignored most of the Concluding Observations of the treaty committees, and repeatedly shuns the most important recommendations. In the words of one Korean foreign policy specialist, the DPRK “uses international law and institutions if it concludes they might advance its national interests and ignores or repudiates them when they would not.”¹⁴⁸

¹⁴⁸ Leon V. Sigal, “Legal Approaches to Korean Security in the Early Stages of Unification: The Armistice Agreement and the NLL,” in *Law and Policy on Korean Unification: Analysis and Implications*, eds. Jong-Chul Park and Jeong-Ho Roh (Seoul: Korea Institute for National Unification; New York: Columbia Law School Center for Korean Legal Studies, 2014), 119, 9.

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CHAPTER V. APPLYING HUMAN RIGHTS STANDARDS TO THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA AT THE HUMAN RIGHTS COUNCIL AND THE GENERAL ASSEMBLY

Having examined North Korea's sporadic and limited cooperation with international human rights conventions and their treaty committees, this chapter reviews the history of UN resolutions on the human rights situation in the DPRK and the DPRK's non-cooperation with other UN human rights mechanisms. This includes the UPR, an array of Special Rapporteurs, and a series of Working Groups that comprise "Special Procedures," which operate under mandates from the HRC and the General Assembly. This chapter also reviews the DPRK's non-cooperation with a core program of the OHCHR: a broad variety of human rights education and training programs that the UN terms "Technical Cooperation."

Following the 2014 report of the UN COI, whose work is described in Chapter VI, the DPRK altered its approach to each of these mechanisms and procedures. The DPRK's post-COI approach to these mechanisms is detailed in this chapter.

A. Human Rights Resolutions at the United Nations

The application of international human rights standards by the "political" organs of the UN—primarily the HRC, the General Assembly, and, less frequently, the Security Council—are initiated and guided by resolutions approved by the voting majorities of UN Member States.

Such human rights resolutions are a longstanding practice at the UN. Even while the UDHR was being drafted, a newly independent India successfully put forward a resolution adopted at the General Assembly condemning racial discrimination against Asians in *apartheid* South Africa on the basis of the human rights provisions in the UN Charter. Subsequently, as African states gained independence and UN membership in the 1950s and 1960s, they sponsored additional resolutions condemning racist policies in states throughout southern Africa and recommending various measures for ending human rights violations.

Since the 1970s, the standard for human rights resolutions at the HRC and General Assembly has been the recognition of "a consistent pattern of gross violations of internationally recognized human rights." This standard is meant to preclude miscarriages of justice or isolated violations that should be resolved at local or national levels. In particular, the consideration of "country-specific" resolutions is politically charged. These resolutions typically make recommendations to the Member State whose human rights violations are being addressed. Few governments welcome such direct criticism from fellow governments or unfavorable attention from the media or NGOs.

The 47 Member States on the HRC, apportioned on a regional basis, are elected by the Member States of the General Assembly. Almost all other General Assembly Member States attend the Council as observers, who can and do speak at the Council and can also join resolutions as co-sponsors. However, only the elected Member States on the Council are allowed to vote on the resolutions.

It is sometimes thought that only governments with relatively good human rights records would want to, or should be allowed to, serve on the HRC. In reality, it is exactly the opposite. Repressive dictatorships strive to get elected to the HRC so that they can combine forces with other autocratic regimes

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to prevent diplomatic action aimed at human rights abuses. The same dynamic applies at the General Assembly, where an active group of mostly authoritarian regimes work together to prevent the passage of resolutions that single out a government for human rights attention or criticism.

Debates in the UN political organs, where Member States speak and vote according to instructions from their respective capitals, amount to global politics in the world of nation-states. Debates for and against “country-specific” human rights resolutions can be very sharp; behind-the-scenes diplomatic lobbying can be intense. There have been occasional efforts to end country-specific resolutions altogether, but these efforts fail because of the voting majorities of the Latin American and European democracies. Nevertheless, a number of UN Member States abstain from votes on all or nearly all country-specific human rights resolutions, including the resolutions on the DPRK.

Currently, there are roughly a dozen UN Member States whose human rights practices are singled out for critical resolutions on their human rights situations. These resolutions also often authorize one or more “Special Procedures” that are intended to address ongoing human rights abuses in that country.

B. How and Why the Resolutions on Human Rights in the Democratic People’s Republic of Korea Came About

As noted above, a devastating famine in the DPRK during the 1990s gave rise to an outflow of refugees to China, some of whom arrived in the ROK through Mongolia or Thailand. These refugees became accessible to journalists, scholars and human rights investigators. Press accounts and various NGO reports recorded and disseminated the information provided by the refugees. International concern mounted.

While public concern was stimulated mostly by the increase of information about the dire situation in the DPRK, there were additional factors. Several prominent humanitarian aid organizations, including the London-based *Oxfam*, the Paris-based *Médecins Sans Frontières* (Doctors Without Borders), and *Action Contre la Faim* (Action Against Famine) withdrew from the North Korean humanitarian relief program, charging that DPRK officials prevented them from feeding the most vulnerable famine victims and interfered with their ability to assess, monitor, and evaluate their aid programs.¹⁴⁹

The prominence of these NGOs and the public concerns raised by their principled withdrawal from the North Korean famine relief effort raised hackles in London and Paris. Additionally, the publication in France of *The Aquariums of Pyongyang*, a biographic account of a North Korean escapee that was co-authored by prominent French intellectual Pierre Rigoulot, raised awareness of the DPRK’s human rights violations in French political circles.¹⁵⁰

Due to these factors, the French government pressed other EU members to submit the EU’s first draft resolution on the “situation of human rights in the DPRK” at the March 2003 session of the Commission on Human Rights, where it easily passed by a vote of 28 to 10, with 14 abstentions.¹⁵¹

The resolution was quite modest in its content. It expressed “deep concern” about human rights violations and mostly called on the DPRK to

149 For a book-length review of the aid efforts and NGO withdrawals, see *Paved with Good Intentions: the NGO Experience in North Korea*, ed. L. Gordon Flake and Scott Snyder (Westport: Praeger, 2003). Additionally, a German doctor who had been officially honored by the DPRK government for his medical work in the DPRK abruptly left the DPRK and publicly castigated the Kim regime throughout Europe.

150 Kang and Rigoulot, *Aquariums of Pyongyang: Ten Years in the North Korean Gulag*, New York: Basic Books, 2001.

151 UN Office of the High Commission Human Rights, *Situation of human rights in the Democratic People’s Republic of Korea*, UN Doc. E/CN.4/Res/2003/10 (April 16, 2003).

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engage in a comprehensive dialogue with the UN High Commissioner for Human Rights. Between the informal circulation of the draft resolution and its formal introduction, the diplomats at the DPRK Mission to the UN received no instructions from Pyongyang, which meant that they could not comment on the substance of the resolution. By the time of the vote, they had received instructions to denounce and reject the resolution in its entirety.¹⁵²

C. Fallout from the Initial 2003 European Union Resolution: The European Union-Democratic People's Republic of Korea Human Rights Dialogue

By 2003, the EU had held at least two formal meetings with DPRK Foreign Ministry officials to initiate a dialogue on human rights issues. Unsurprisingly, these meetings were largely exploratory in nature. In response to the 2003 introduction of the EU-sponsored resolution at the Commission on Human Rights, the DPRK called off any further dialogue on human rights with the EU.¹⁵³ Pyongyang complained that they had not been extended the diplomatic courtesy of advance notice by the EU regarding the 2003 resolution.

Most EU Member States, with the notable exception of France, had extended diplomatic recognition to the DPRK around the turn of the new millennium. The more recent EU members from Eastern Europe,

of course, had long recognized the DPRK. Some EU Member States, notably the United Kingdom and Germany, established embassies in Pyongyang. Other EU Member States accredited their ambassadors in Seoul to Pyongyang as well.

Eleven years later, in 2014, as part of its efforts to head off a referral of the DPRK to the ICC, DPRK diplomats offered to resume dialogue with the EU. A high-level DPRK diplomat, Kang Sok-ju, journeyed to Brussels and proposed reviving the human rights dialogue on condition that the EU would drop the ICC referral provision from its resolution at the General Assembly. This was unacceptable for the EU Member States. As of early 2020, human rights dialogue between the EU and the DPRK has not resumed.¹⁵⁴

D. Moving Ahead: Subsequent Human Rights Resolutions on the Democratic People's Republic of Korea

Adhering to its position that it has no human rights problems, the DPRK refuses to recognize the concerns of a large majority of Member States. The DPRK refuses requests for cooperation with the recommended UN human rights mechanisms. After it first introduced a resolution on the DPRK human rights to the HRC in 2003, the EU added further elements to the resolution in subsequent years to account for the DPRK's refusal to cooperate and the growing availability of information on the situation in the DPRK.

¹⁵² The DPRK's Mission to the UN had no instructions from Seoul, which meant that DPRK diplomats were not able to comment on the resolution. Fortunately, a number of knowledgeable North Korean human rights experts were on hand to discuss the resolution with other delegations. During the vote, the DPRK was noted as "absent" even though its diplomats were sitting in their designated seats during the Commission vote.

¹⁵³ The EU pursues human rights dialogues with some 40 countries. Rajiv Narayan, "North Korean Human Rights Discourse and Advocacy," in *North Korean Human Rights: Activists and Networks*, eds. Andrew Yeo and Danielle Chubb (New York: Cambridge University Press, 2018), 109.

¹⁵⁴ There is a separate and ongoing political dialogue between the EU and the DPRK that covers non-proliferation, humanitarian, and economic development issues, with some human rights topics. What took place twice and was then cancelled by the DPRK was an entirely separate dialogue on human rights modeled on the EU-China human rights dialogue.

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Since the DPRK refused a substantial dialogue with the High Commissioner for Human Rights, the 2004 resolution requested the appointment of a “Special Rapporteur” on the situation of human rights in the DPRK so that the UN could conduct its own investigations. The mandate of the Special Rapporteur has been renewed annually in subsequent years.

Faced with ongoing non-cooperation by the DPRK, the EU also decided to submit its resolution on the situation of human rights in the DPRK to the full General Assembly in 2005. This placed the issue of DPRK human rights on the agenda of the General Assembly’s Third Committee in New York in the autumn after the HRC in Geneva considered the matter in the spring. The 2005 resolution requested an annual report from the Secretary General, in addition to the reports from the Special Rapporteur, to focus on a comprehensive review of all interactions between UN agencies, programs, and funds, and the DPRK, so that the Member States could review the full range of human rights, humanitarian, and security issues between the UN and the DPRK.¹⁵⁵

There was another critical development in 2005. Japan joined the EU as the primary co-sponsor of the resolutions on DPRK human rights issues. Since the UN operates along regional lines, this has important implications. The government of Japan has its own bilateral human rights issue with the DPRK: the abduction and prolonged *incommunicado* detention by the DPRK of kidnapped Japanese civilians; the unwillingness of the DPRK to allow possibly

remaining kidnapped Japanese nationals to return to Japan; and the failure to provide Japan with a credible accounting of the fate of the kidnapped Japanese citizens who died while in DPRK custody.¹⁵⁶

In every year over the next decade, the EU-Japan cosponsored resolution on the situation of human rights in the DPRK gained additional sponsors and passed by ever larger majorities at the HRC and the General Assembly. The number of votes in favor of the resolution at HRC increased from 28 (2003) to 30 (2006). The number of votes against hovered between eight and ten. At the General Assembly, support for the resolution rose dramatically from 84 (2005) to 112 (2011).

One aim of this biannual project is to increase the number of supporting Member States every year. It is the most concrete indication that concern about the DPRK’s human rights violations has been growing around the world. The diplomats from the sponsoring countries work very hard to persuade nations that abstained in previous years to vote in favor of the resolution.¹⁵⁷

In 2012 and 2013, the resolutions against the DPRK’s human rights violations passed by “consensus.” A consensus vote does not necessarily mean that all UN Member States agree on the resolution. It is a diplomatic arrangement to accelerate decision-making and to spare opponents of a resolution the embarrassment of being revealed on record as a small minority. Member States that want to register

¹⁵⁵ Six UN Agencies have resident programs in the DPRK: the Food and Agriculture Organization (FAO), the UN Development Program (UNDP), the Population Fund (UNFPA), the Children’s Fund (UNICEF), the World Food Program (WFP), and the World Health Organization (WHO). Eight non-resident agencies also have programs in the DPRK. The annual Secretary-General reports track UN humanitarian assistance to the DPRK, the findings of the human rights mechanisms, and the Security Council resolutions on the DPRK’s nuclear weapons and missile tests.

¹⁵⁶ Boynton, *Invitation-Only Zone: The True Story of North Korea’s Abduction Project*, New York: Basic Books, 2001.

¹⁵⁷ Usually, such decisions are not made at the ambassadorial level in Geneva or New York. Diplomatic representatives posted to the UN obtain instructions from their foreign ministries on how to vote on UN resolutions.

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their opposition can “disassociate” themselves from the “consensus.”¹⁵⁸

In 2014, following the dramatic development of the COI report discussed in Chapter V, voting at the General Assembly resumed on a considerably stronger and much more condemnatory resolution. This resolution passed with 116 votes in favor and 20 against, with 53 abstentions.

E. The Democratic People's Republic of Korea's Record of Non-Cooperation with the Procedures and Mechanisms of the United Nations Human Rights Council and the High Commissioner for Human Rights

The DPRK's truculent refusals to cooperate with the HRC and the OHCHR after 2003 contributed to the decision, a decade later, for more drastic action: the appointment of a high-level COI and broad endorsement of the COI's findings and recommendations. The DPRK's non-cooperation with Special Rapporteurs, the OHCHR, and the UPR all contributed to much stronger multilateral diplomatic and political pressure on the DPRK.

Following the release of the report of the COI in 2014, the DPRK reversed course, primarily regarding the UPR, while indicating that it might be willing to extend some cooperation with the “Special Procedures.”

F. Special Rapporteurs

In addition to the “treaty-based” mechanisms to promote and protect human rights examined in Chapters III and IV, Article 13 of the UN Charter states that “the General Assembly shall initiate studies and make recommendations for the purpose of ... assisting the realization of human rights and fundamental freedoms for all.” The General Assembly has, for the most part, delegated its authority to *initiate studies and make recommendations* to its subordinate body, the HRC. Previously, some of these studies were conducted by the experts serving on the “Sub-commission” of the earlier Commission on Human Rights. In recent decades, such studies, termed “reports,” have been undertaken by the OHCHR or independent experts appointed by the President of the HRC.

These reports typically require prior authorization by a majority vote of the Member States and are undertaken and prepared by appointed experts termed “Special Rapporteurs.” These rapporteurs receive administrative and logistical support from staff members at the OHCHR. Their reports and recommendations frequently call for specific actions to address the most difficult country situations or severe phenomena of repression that occur in multiple countries.

Special Rapporteurs can be broadly divided into two categories. “Country-specific” rapporteurs study and report on a particular Member State.¹⁵⁹ “Thematic” rapporteurs examine a range of human rights concerns across a variety of countries, such as violence against women, freedom of religion or belief, the right to food, the right to water and sanitation, torture, child

¹⁵⁸ In 2012, eight countries disassociated: China, Cuba, DPRK, Iran, Nicaragua, Russia, Syria, and Venezuela. In 2013, seven countries disassociated: Belarus, China, DPRK, Iran, Russia, Syria, and Venezuela.

¹⁵⁹ As of March 2020, there are country-specific rapporteurs for Belarus, Cambodia, the DPRK, Eritrea, Iran, Myanmar (Burma), the Palestinian territories, and Syria.

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soldiers, the independence of judges and lawyers, arbitrary detention, the rights of minorities, human rights defenders, and—more recently—issues related to albinism and leprosy.¹⁶⁰

In some instances, the rapporteurs or independent experts are convened as Working Groups with two or three appointed experts working on the same theme. The rapporteurs usually serve for a term of three years, but their mandates are often renewed annually. The rapporteurs are appointed by the President of the HRC from a list of candidates furnished by the Member States.¹⁶¹

Country-specific rapporteurs can visit the country they are mandated to study, but this can only be done at the invitation of that government. In other cases, as with the DPRK, the Special Rapporteur has to rely on visits to neighboring or other states for interviews with and information from the large numbers of refugees outside the country. Rapporteurs also consult with NGOs, whose data also largely comes from refugee testimony, academic scholars, and government officials, many of whom are tasked with caring for the refugee populations.

Rapporteurs and other mandate-holders are tasked to submit reports to the HRC, and some are also tasked to submit reports to the General Assembly. These written reports are circulated in advance of the HRC or General Assembly session at which the mandate-holders present an oral update or a summary of their report. This is followed by an “Inter-Active Dialogue” in which Member and Observer States comment on the findings or recommendations of the Special Rapporteur.

In practice, countries that are cited by the rapporteurs for human rights violations take this opportunity to dispute the rapporteur’s findings and sometimes to denounce the rapporteurs as “puppets” of the country’s geopolitical adversaries. Other Member States usually discuss and debate the substance of the rapporteurs’ findings. The findings of country-specific rapporteurs are frequently incorporated into resolutions at the HRC and voted on by the Council’s Member States.

1. The Special Rapporteur on the “situation of human rights in the Democratic People’s Republic of Korea”

The DPRK’s non-cooperation with the High Commissioner for Human Rights led the EU and a growing list of co-sponsors to add the appointment of a country-specific Special Rapporteur to the 2004 resolution on the situation of human rights in the DPRK.

Mr. Vitit Muntarbhorn, a Thai law professor who had previously handled many other assignments for the UN, was appointed to be the first Special Rapporteur for the DPRK. Mr. Muntarbhorn requested an invitation to visit the DPRK, but the DPRK refused.¹⁶² Instead, the Special Rapporteur was able to visit the ROK, Mongolia, and Japan to interview North Korean refugees with first-hand knowledge of the DPRK’s human rights practices. This began a series of annual reports to the HRC and, after 2005, to the General Assembly as well.

Special Rapporteurs have term limits of two three-year terms. When Mr. Muntarbhorn’s term expired,

¹⁶⁰ For more background on Special Procedures and a list of the current mandates see “Special Procedures of the Human Rights Council,” OHCHR, <https://www.ohchr.org/en/hrbodies/sp/pages/welcomepage.aspx>.

¹⁶¹ The President of the Council is elected by the Member States of the Council.

¹⁶² Unless covered by previously existing bilateral Memoranda of Understanding, UN officials can enter the territory of Member States only with the prior authorization of that government. Member States also control the travel of UN personnel within that government’s territory and jurisdiction.

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the President of the HRC appointed former Indonesian Attorney-General Marzuki Darusman as the next Special Rapporteur.¹⁶³

Both Mr. Muntarbhorn and Mr. Darusman would have made superb interlocutors in a human rights dialogue with the DPRK. However, the DPRK continued to rebuff their requests for dialogue. Mr. Darusman's two-term limit was reached in March 2016. Following the publication of the 2014 COI report, DPRK representatives met with Mr. Darusman at the UN in New York. The DPRK diplomats offered the prospect of the long-sought invitation to Pyongyang for an in-depth discussion of human rights issues, but only if the reference to crimes against humanity and the provision for ICC referral were removed from the EU-Japan sponsored resolution. This was deemed unacceptable by the co-sponsors. Moreover, the Special Rapporteur was not in a position to accept this offer, since decisions about the content of resolutions can only be made by the co-sponsors.

In June 2016, Tomás Ojea Quintana, an Argentinian human rights lawyer, was appointed as the third Special Rapporteur on the situation of human rights in the DPRK.¹⁶⁴ In November 2016, DPRK diplomats in New York publicly stated that Mr. Quintana could visit Pyongyang in his personal capacity as a professor of law. When Quintana sought to follow up on this invitation, he was informed by the DPRK Mission to the UN in Geneva that he would first have to resign from his mandate as Special Rapporteur—a

condition that was clearly unacceptable.¹⁶⁵ As of early 2020, the DPRK continues to refuse to engage in a substantive dialogue with the Special Rapporteur on the situation of human rights in the DPRK.

a. Thematic Rapporteurs

Prior to the COI report, the DPRK repeatedly refused to cooperate with thematic Special Procedures who had also made requests to visit the DPRK, including the Special Rapporteur on the right to food.¹⁶⁶ The Special Rapporteur on the right to food made the request to visit Pyongyang on six instances, each of which were rejected, even during the 1990s famine when UN agencies were providing food to nearly a third of the DPRK population.

However, in the aftermath of the 2014 COI report, as part of the DPRK's changed approach to the UN human rights mechanisms, the DPRK invited the Special Rapporteur on the rights of persons with disabilities to Pyongyang in 2017. This was the first official invitation to a Special Procedures mandate holder from the DPRK, with the exception of an invitation issued to the Special Rapporteur on violence against women in the 1990s as part of an investigation of the "comfort women" issue.

As the current Special Rapporteur, Ms. Catalina Devandas Aguilar visited the DPRK from May 3 to 8, 2017, and her mission report was published

¹⁶³ Mr. Darusman was also formerly a leader in the National Human Rights Commission of Indonesia. Professor Muntarbhorn subsequently served as a member of the UN COI on Syria.

¹⁶⁴ Mr. Quintana had earlier worked for the Inter-American Human Rights Commission. He had directed the OHCHR office in Bolivia and from 2008 to 2014 he was the UN Special Rapporteur on the situation of human rights in Myanmar (Burma).

¹⁶⁵ UN General Assembly, *Situation of human rights in the Democratic People's Republic of Korea—Note by the Secretary General*, UN Doc. A/72/394 (September 18, 2017), ¶ 11.

¹⁶⁶ To the author's knowledge, there is one exception. In 1995, the UN staff member supporting the work of the Special Rapporteur on Violence Against Women visited Pyongyang as part of a mission to North and South Korea and Japan to investigate the issue of "comfort women." The Special Rapporteur herself had been invited, but was unable to reach Pyongyang because of delays in airline flight connections. UN Commission on Human Rights, *Report on the mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the issue of military sexual slavery in wartime*, UN Doc. E/CN.4/1996/53/Add.1 (January 4, 1996).

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in December 2017.¹⁶⁷ While she regretted “that she could only meet with a limited number of persons with disabilities and that there was no possibility to hold discussions with them in private,” most of her requests “for meetings and visits to places of interest to her mandate were accepted.”¹⁶⁸ She was able to cover a fair amount of territory for the first visit of a Special Rapporteur, and her report provides a substantive series of recommendations to improve the situation of persons with disabilities in the DPRK.¹⁶⁹

The DPRK Foreign Ministry commented on the Special Rapporteur’s report, “appreciat[ing] her successful visit,” but challenging a number of her findings.¹⁷⁰ For example, the Special Rapporteur reported that the general denial of freedom of movement within the country disproportionately affects persons with disabilities, who may be in need of access to healthcare and other services. The DPRK responded that “advance travel clearance is necessary to confirm that people moving in the country possess the necessary identification certificate under the peculiar situation of the country’s division where the hostile forces continue to engage in destructive sabotage plots of all kinds.”¹⁷¹

167 UN Human Rights Council, *Report of the Special Rapporteur on the rights of persons with disabilities on her visit to the Democratic People’s Republic of Korea—Note by the Secretariat*, UN Doc. A/HRC/37/56/Add.1 (December 8, 2017), 7.

168 Ibid., ¶ 5, 3. While it is occasionally possible for Korean speakers to talk in passing to people inside the DPRK, North Koreans can only talk to foreigners through government provided translators, and virtually all tourist groups are provided with official “minders,” who report to various surveillance and police agencies.

169 For additional information on disability rights issues in the DPRK, see Katharina Zellweger, *People with Disabilities in a Changing North Korea* (Stanford: Shorenstein Asia-Pacific Research Center, 2014) and Jae-Chun Won et al., “Disability, Repressive Regimes, and Health Disparity: Assessing Country Conditions in North Korea,” in *Hague Yearbook of International Law / Annuaire de La Haye de Droit International*, Vol. 27 (2014), eds. Ruth Bonneville-Kok and Jure Vidmar (Leiden: Brill | Nijhoof, 2017), 6.

170 UN Human Rights Council, *Report of the Special Rapporteur on the rights of persons with disabilities on her visit to the Democratic People’s Republic of Korea: comments by the State*, UN Doc. A/HRC/37/56/Add.3 (January 26, 2018).

171 Ibid., ¶ 3, 2.

The DPRK did not, however, take issue with any of the Special Rapporteur’s recommendations, and the Special Rapporteur’s report itself. It noted that “State officials have indicated that the country is open for dialogue and cooperation with other thematic mandate holders.”¹⁷²

b. Working Groups

South Korean NGOs and North Korean refugee-based groups have submitted cases to the Working Group on Arbitrary Detention (WGAD) and the Working Group on Enforced or Involuntary Disappearances (WGEID). First established in the 1980s to assist families in determining the fate or whereabouts of relatives who have reportedly disappeared, the WGEID has five independent experts who are supported by OHCHR staff.¹⁷³ The WGAD was first established in the 1990s to investigate deprivations of liberty without due process or in violation of the UDHR or relevant international conventions. It has four independent expert members and is also supported by OHCHR staff.¹⁷⁴

Both the WGAD and WGEID have specific databases and slightly different approaches to their work compared to Special Procedures mandates.¹⁷⁵ However, they also submit communications to governments on specific cases. Such inquiries have

172 A/HRC/37/56/Add.1, ¶ 16, 5.

173 As of January 2021, the WGEID members are from the ROK, Lithuania, Guinea-Bissau, Canada, and Argentina. WGEID is separate from the Committee on Enforced Disappearances, which is the treaty committee for the International Convention for the Protection of all Persons from Enforced Disappearances. WGEID does, however, cooperate with the Committee.

174 As of January 2021, the WGAD members are from Australia, Latvia, the ROK, and Zambia.

175 For example, Working Groups undertake general studies, such as “Enforced Disappearances in the Context of Migration” and “Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court.”

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generally been ignored by DPRK authorities.¹⁷⁶ To this author's knowledge, there has only been one substantive reply on a case, in which the DPRK harshly denounced the ROK citizen who sought the UN's inquiry about family members in the DPRK.¹⁷⁷

In March 2015, the HRC requested an expert panel discussion on abducted persons by, and enforced disappearances in, the DPRK, including presentations by civil society experts, for the September 2015 session. That panel discussion took place on September 21, 2015.¹⁷⁸ Following presentations by the panelists, and denials by the DPRK, various Ambassadors made comments, almost invariably critical.¹⁷⁹

176 The Chair of the WGAD, joined by the Special Rapporteur on torture, sent an inquiry to the DPRK in August 2010. The Special Rapporteur on extra-judicial, summary, or arbitrary execution sent an inquiry to the DPRK in June 2010 and another in March 2011. UN General Assembly, *Situation of human rights in the Democratic People's Republic of Korea—Report of the Secretary-General*, UN Doc. A/66/343 (September 7, 2011), ¶ 33-35, 11. See also UN Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearance A/HRC/16/48* (January 26, 2011), ¶ 156-60, 41. In October 2012, five mandate holders, the Special Rapporteur on the situation of human rights in the DPRK, the Special Rapporteur on Torture, the Special Rapporteur on extra-judicial, summary or arbitrary executions, WGEID, and WGAD sent a letter to the DPRK on the alleged use of labor camps for political prisoners. UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Marzuki Darusman*, UN Doc. A/HRC/22/57 (February 1, 2013), ¶ 29, 11.

177 In 2012, the WGAD wrote to the DPRK on behalf of a South Korean, whose family was in the DPRK and, as reported by North Korean refugees in Seoul, may have been seen in a DPRK detention facility. Their case attracted considerable interest in South Korea and had come to the attention of the UN Secretary-General. The DPRK responded to the WGAD, stating that the daughters were alive and well, but wanted no contact with their father in South Korea. For details, see Roberta Cohen, "The High Commissioner for Human Rights and North Korea," in Felice D. Gaer and Christen L. Broecker, *The United Nations High Commissioner for Human Rights: Conscience for the World*, eds. (Leiden: Brill | Nijhoof, 2013).

178 The author was invited by the President of the HRC to participate in the panel presentations.

179 The comments by Russia and China sometimes note that they are not defending the human rights record or situation in the DPRK. In this instance, China simply expressed its strong opinion that no one should take actions that threaten stability on the Korean peninsula, an implicit but obvious appeal against further nuclear and missile tests.

2. Non-Cooperation with the Universal Periodic Review (First Cycle)

The UPR is a post-2006 addition to the UN human rights system that was part of a reform package that accompanied the establishment of the HRC to replace the Commission on Human Rights. The UPR was designed to remedy the selectivity of country-specific Special Procedures in response to charges of "politicization" in the inter-governmental approaches to human rights issues among and between UN Member States.¹⁸⁰ The intent and purpose of the UPR is to examine the policies and practices of every UN Member State on a regular basis.

Over a four-year cycle, each and every UN Member State presents a written report and oral update to the HRC on the situation of human rights in that country. During the review, a delegation of officials, usually sent from the country's capital, outlines its human rights situation and updates since the previous UPR. Following this presentation, other Member and Observer States review the State Report, Stakeholder Reports, and relevant information from the UN mechanisms. On the basis of this review, other Member and Observer States issue public recommendations regarding measures that could be taken to improve human rights practices.¹⁸¹

180 Expecting governments not to be political or politicized is oxymoronic. It is in the nature of sovereign states to pursue their perceived interests and aggrandizements, or to refrain from criticizing their geopolitical adversaries or opponents. Furthermore, selectivity is unavoidable, even as inconsistency shades into hypocrisy. Currently, a coalition of authoritarian Member States argue that the UPR should replace most other Special Procedures, but the Latin American and European democracies have the votes to block such arguments and measures.

181 An essential component of the UPR are the many submissions by NGOs that highlight human rights violations and problems that are often not mentioned in the State report. These Stakeholder Reports, including from NGOs that have consultative status with the UN Economic and Social Council (ECOSOC), are part of the official record and are available on the UPR pages of the website of the Office of the High Commissioner for Human Rights. Only Member and Observer States, however, can make recommendations under the UPR.

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The next step in this process is the crucial part of the UPR. Officials from the state under review take these recommendations from other governments back to the capital for further consideration. At the subsequent session of the HRC, the representatives of the previously reviewed Member State are expected to announce their government's position on the recommendations—which of the recommendations the government accepts and will take action to implement.¹⁸²

While the UPR itself is a political process wherein governments make recommendations to fellow governments, it is largely based on the norms and standards set forth in international human rights law. Many of the participating governments make constant reference to the international human rights treaties described in Chapter II. Recommendations from the UPR frequently include requests for Member States to accede to the human rights conventions they have not yet ratified, which highlights the complementary nature of the UPR.

The DPRK initially participated in the UPR. In 2009, the DPRK submitted its written report, and Pyongyang sent a substantial delegation to Geneva in December to make the oral presentation to the HRC. The delegation listened as the other Member and Observer States made 167 recommendations to the DPRK on measures to improve human rights. The DPRK delegation then provided initial oral responses to some of these recommendations.

The DPRK's cooperation and participation ceased thereafter. At the subsequent session of the HRC

in early 2010, the DPRK's representative refused to accept or support any of the recommendations made to it previously by the other UN Member States. The DPRK was the only UN Member State that refused to accept even one of the recommendations previously articulated by the other governments.

Some of the recommendations to the DPRK came from Member States that are historical allies, such as China and Vietnam, or from Observer States, such as the Palestinian Authority, that are not directly involved in the geopolitics of the Korean peninsula. Their recommendations to the DPRK were hardly of the sort that would have subverted or undermined the DPRK government. When the DPRK's refusal to accept any recommendation was challenged by other diplomats in Geneva, the DPRK Ambassador could not provide an explanation. Pyongyang had ostensibly not accepted any recommendations. The Ambassador had no instructions to make any statement accepting any recommendation.

The decision of the DPRK government not to accept any recommendations from its fellow governments in the UN may well have been taken for domestic political reasons. It could also be understood as a logical conclusion of the routine statement that there could be no human rights issues or problems in the DPRK. Alternatively, the DPRK mission to the UN in Geneva may not have adequately communicated to the Foreign Ministry in Pyongyang the importance of a governmental response or perhaps the Foreign Ministry was unable to persuade higher authorities of the importance of a proper response.

As noted in the introduction, if a repressive government makes a tactical human rights concession to the international community, such as signing a convention or accepting a recommendation, that government creates an opening that might be utilized by human rights advocates abroad or, more importantly, at home. On the other hand, if the repressive government stonewalls, it invites further scrutiny. The latter

182 Two four-year cycles of periodic reviews have been completed, but it is not yet possible to adequately assess how effective this procedure has been overall. It will be interesting to see which, or to what extent, any or all of the recommendations that the Member States have formally accepted and agreed to have, in fact, been implemented. However, it is already clear that the UPR has added legitimacy to the modern principle that a sovereign state's treatment of its own citizenry should be subject to international consideration and comment.

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is exactly what happened to the DPRK. Its failure to cooperate at the most important stage of the UPR contributed to the DPRK's further isolation in the community of nations and increased international momentum for a full-fledged UN investigation.

3. Reversing Course on the Universal Periodic Review (Second Cycle)

Following the publication of the 2014 COI report, the DPRK completely reversed course on the UPR. On the eve of the UPR's "second cycle," the DPRK submitted a 12-page document entitled "Position of the DPRK on the recommendations received during its first cycle UPR."¹⁸³

In the document, the DPRK addressed the recommendations that it received in 2009. It also rejected 50 recommendations on the grounds that they distort reality and slander the country. It simply rejected 15 other recommendations, while taking note of 155 recommendations—meaning that they cannot be accepted at present, but may be considered at a later date. Six recommendations were partially accepted and eighty-one recommendations were accepted.

In his June 2014 report to the HRC, the Special Rapporteur on the situation of human rights in the DPRK reviewed the accepted recommendations from the first cycle of the UPR. While noting that indications of acceptance could not be taken at face value, he stated that the belated responses created an opportunity for engagement with the DPRK that should be "seized by Member States and all

parties concerned, including the UN system and civil society."¹⁸⁴

In its subsequent 2014 response to the second cycle of the UPR, the DPRK utilized the same five categories of acceptance and rejection. These recommendations are examined in depth in Chapter VII.

The third cycle of the UPR for the DPRK took place in 2019. The review process no longer provides the clear-cut gradation of acceptance or rejection, but the DPRK formally accepted a number of recommendations that could lead to real human rights improvements if other conditions are met. These recommendations were noted by the Special Rapporteur in his report to the General Assembly in October 2019.¹⁸⁵

4. Refusing Technical Cooperation

Pursuant to Articles 55 and 56 of the UN Charter for "joint and separate action in cooperation with the [UN] Organization ... to promote respect for human rights," human rights education, training, and information programs, funded by UN Member States are carried out by the United Nations Organization (UNO) in numerous countries around the world. Referred to as "technical cooperation," these programs are guided by memoranda of understanding between the host Member State and the UN. The OHCHR

¹⁸³ UN Human Rights Council | Universal Periodic Review, *Position of the DPRK on the recommendations received during its first cycle UPR* (April 2014), https://www.upr-info.org/sites/default/files/document/korea_dpr/session_19_-_april_2014/a_hrc_wg.6_19_prk_1_annex_e.pdf.

¹⁸⁴ UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, Marzuki Darusman, UN Doc. A/HRC/26/43 (June 13, 2014), 10. The Special Rapporteur also noted, however, that some of the DPRK's delayed responses to the first cycle of the UPR constitute "blatant denial of the systematic human rights violations and the numerous cases of international abduction and enforced disappearances as documented by the commission of inquiry in its report" (12-13).

¹⁸⁵ Tomás Ojea Quintana, *Statement by the UN Special Rapporteur on the situation of human rights in the DPRK to the 74th session of the General Assembly* (October 22, 2019).

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has scores of technical cooperation programs in dozens of countries.¹⁸⁶

Some of the larger specialized agencies of the UN include UNDP, UN Women, the UN Educational, Scientific and Cultural Organization (UNESCO), UNICEF, and UNFPA. These agencies support hundreds of human rights education and training programs and projects that are carried out in cooperation with national or local government units, even sometimes with domestic NGOs. Between the OHCHR and the “specialized agencies,” the UN devotes considerable energy and resources to education, training, and information programs to promote and protect human rights.

Neither the OHCHR nor other UN agencies conduct education, training, or information programs in the DPRK in the field of human rights. This is unfortunate, given the likelihood that many of these kinds of programs that the UN operates in other countries would be of interest to and could benefit many North Koreans at the ministerial, provincial, and local levels.

For over a decade, the HRC and the General Assembly have been recommending such technical cooperation for the DPRK. The rationale that the DPRK has provided for refusing any program of technical cooperation with the OHCHR is that such programs are recommended in the human rights resolutions that it views as a political maneuver by hostile forces, including the United States.¹⁸⁷

Yet, it is also the case that the resolutions at the HRC that have authorized the UN to undertake technical cooperation programs in UN Member States predate the country-specific DPRK resolution by decades. Such programs could be carried out in the DPRK under the mandate and authority of the earlier omnibus resolutions on technical cooperation, or under the non-rejected recommendations of the treaty committees described in Chapter IV.

In October 2014, DPRK diplomats made concerted attempts to alter the text of the 2014 resolution on the situation of human rights in the DPRK at the General Assembly. They raised the offer of an OHCHR technical cooperation program in the DPRK if the provisions condemning the DPRK’s human rights violations as crimes against humanity and the recommendation for an ICC referral were removed. This trade-off was unacceptable to the resolution’s co-sponsors, many of whom had urged the DPRK since 2003 to cooperate with such technical cooperation programs.

However, in September 2015, as part of the DPRK’s new approach following the COI, the DPRK’s Foreign Minister invited the UN High Commissioner for Human Rights to Pyongyang for talks that would likely address technical cooperation as part of the agenda. The invitation, reported in the Secretary-General’s report to the General Assembly, was made orally at the end of a contentious meeting at the UN.¹⁸⁸ Follow-up discussions on a possible visit were held by the DPRK Mission to the UN in Geneva and the OHCHR. The Special Rapporteur on the situation of human rights in the DPRK welcomed this as a positive development and an opportunity to improve cooperation. He noted that “Such cooperation is critical to facilitate the

¹⁸⁶ The author was in charge of such an OHCHR program in Cambodia in the mid- to late-1990s.

¹⁸⁷ UN Human Rights Council, *Note verbale dated 1 February 2012 from the Permanent Mission of the Democratic People’s Republic of Korea to the United Nations Office at Geneva addressed to the President of the Human Rights Council*, UN Doc. A/HRC/19/G/1 (February 14, 2012), quoted in Cohen, “The High Commissioner for Human Rights and North Korea,” 293–310.

¹⁸⁸ “The Secretary-General welcomes the invitation that the Minister of Foreign Affairs extended to the High Commissioner to visit the country,” A/71/439 ¶ 63.

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implementation of the State's international human rights obligations.”¹⁸⁹

These preliminary discussions were overshadowed by the DPRK nuclear weapons and missiles tests of 2016 and 2017, which led to more condemnation, sanctions, and isolation of the DPRK at the UN Security Council. In his March 2018 report to the HRC, the Special Rapporteur noted the increase in meetings with DPRK officials and reiterated the recommendation for “concrete technical assistance programmes to help government officials to address the shortcomings of their policies and the way to improve the situation.”¹⁹⁰ Furthermore, in his September 2018 report to the General Assembly, the Special Rapporteur outlined ten areas in which the OHCHR could provide technical cooperation for the DPRK.¹⁹¹

In a modest breakthrough, the DPRK allowed members of its delegation to the third cycle of the UPR in 2019 to attend a three-day workshop in Geneva organized by the OHCHR. This was the first such interaction between the OHCHR and the DPRK authorities for the purpose of what the UN regards as technical cooperation for capacity building.

5. Recent and Different Approach to Technical Cooperation

In the post-COI context, it appears that the possibility of technical cooperation between the UN and the DPRK in the field of human rights has emerged, at least in principle. The “Strategic Framework for

Cooperation between the UN and the DPRK: 2017–2021,”¹⁹² signed by the DPRK Foreign Ministry and all 12 UN resident and non-resident agencies that work inside the DPRK, state that DPRK officials essentially agreed to a “human rights-based approach to development” (HRBD).¹⁹³

This Strategic Framework mentions “targeting beneficiaries to address inequalities and reach the most vulnerable people, groups and regions of the country.”¹⁹⁴ It explicitly posits that an “Inter-Agency UN Gender Focal Points Task Force” will be established to monitor and ensure implementation of gender equality and women's empowerment.¹⁹⁵ Specifically, it states:

To ensure improved compliance with international norms and standards, notably in the field of human rights, the UN stands ready to provide support to the Government in meeting its global commitments to, and reporting on, international human rights commitments under the ICCPR, ICESCR, CRC, CEDAW, CRPD, and the accepted recommendations made through the Universal Periodic Review (UPR).¹⁹⁶

The UN Country Team with the leadership of the UN Resident Coordinator would offer support in enabling the DPRK Government to fulfil its commitments of implementation of the

189 UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea—Note by the Secretariat*, UN Doc. A/HRC/31/70 (January 19, 2016), ¶ 19.

190 UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea—Note by the Secretariat*, UN Doc. A/HRC/37/69 (March 9, 2018).

191 UN General Assembly, *Situation of human rights in the Democratic People's Republic of Korea—Note by the Secretary General*, UN Doc. A/73/45466 (September 19, 2018), ¶ 51 (a) – (j), 14–15.

192 It is a “strategic framework” rather than a typical UN document known as a “country plan” because the UN budget for the DPRK is substantially underfunded.

193 There is a large body of literature on HRBD in development studies. In short, it proposes that people-centered social development should not be overlooked while pursuing infrastructure investments in ports, roads, and railways as part of economic development programs.

194 *Strategic Framework*, 12. For a critical discussion of “vulnerable groups” in the DPRK, see Roberta Cohen, “UN Humanitarian Actors and North Korea's Prison Camps,” in *International Journal of Korean Studies*, vol. 21, no. 1 (Spring-Summer 2017): 1–23, <http://icks.org/n/data/ijks/2017-1.pdf>.

195 *Ibid.*, 12.

196 *Ibid.*, 20.

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*UPR recommendations and reporting, including a mid-term report.*¹⁹⁷

*UN support may involve technical cooperation, policy dialogue or providing capacity building, including training to DPRK officials and institutions in the implementation of international norms and standards, as embodied in many treaties and conventions as negotiated and ratified by Member States, including the DPRK.*¹⁹⁸

Since only 20 percent of the UN's budget for humanitarian and development aid to the DPRK has been funded, it seems improbable that such technical cooperation projects could be designed and implemented immediately.¹⁹⁹ Nevertheless, this development indicates that the DPRK Foreign Ministry has agreed, in principle, to some technical cooperation in the area of human rights. Even if implemented, such programs could be of small consequence compared to the severity of ongoing human rights violations. Others will see a possibility to encourage and enlarge human rights discourse within the DPRK.

197 If this was actually implemented, it could be a valuable addition to the efforts made by South Korean NGOs to monitor DPRK implementation through surveys of North Korean refugees now residing in the ROK.

198 Ibid., 20-21.

199 Many parts of the UN's Specialized Agencies programs do not come from the "regular budget" of the UN, but must be separately funded by UN Member States.

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CHAPTER VI. THE TURNING POINT: APPLYING INTERNATIONAL CRIMINAL LAW TO THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

Throughout the two phases of interaction between the DPRK and the UN's human rights mechanisms—the treaty reviews and the attempts at the HRC and General Assembly to address the DPRK's human rights situation—the DPRK resolutely maintained its stance that there were not and could not be any human rights problems or issues in the DPRK. However, the UN's initiation in 2013 of a more systematic examination of the DPRK by the COI according to a branch of international law known as international criminal law caused the DPRK to alter its approach to the international human rights system.

The application of international criminal law to the DPRK led the General Assembly, by sizable voting margins, to change from expressing its “grave concern” over the situation of human rights in the DPRK to “condemning in the strongest terms” the DPRK's crimes against its own citizens and the citizens of other states. This condemnation was followed by a recommendation from the General Assembly that the UN Security Council refer the DPRK to the ICC for the investigation and prosecution of North Korean individuals for crimes against humanity. This process required considerable diplomatic and political effort at the General Assembly.

The DPRK's egregious human rights violations were placed, through a procedural vote, on the permanent agenda of the Security Council in December 2014 (and subsequently in 2015, 2016, and 2017). This was one of the first instances where a human rights situation was considered by the Security Council as a matter that affects regional security. The Security

Council also held an “Arria-Formula” meeting to discuss the COI's report in April 2014.

As a result of these developments, the DPRK's human rights violations were placed firmly at the forefront of the international community's agenda, along with the DPRK's nuclear weapons and missile programs. In response, the DPRK decided it needed to engage with at least some of the UN's human rights mechanisms.

A. Severe Human Rights Violations as Atrocity Crimes in International Law

As human rights issues and concerns swept through international affairs in the 1970s and 1980s, the body of international human rights law grew, primarily through the elaboration of the conventions and declarations described in Chapter III. However, in the 1990s, owing in part to the human rights disasters of the late Cold War and the post-Cold War period, international human rights law underwent another major transformation. Human rights law incorporated elements of international criminal law from the laws of war as well as elements from the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Much of this was due to the growing recognition of the importance of the principle of accountability for atrocities in the post-Cold War era that “shocked the conscience of mankind.”

There are now two levels of more precisely defined categories of human rights violations: 1) gross violations and 2) atrocity crimes.²⁰⁰ As noted in Chapter V,

200 “Atrocity crimes” shortens “genocide, war crimes, and crimes against humanity” to two words. “Atrocity crimes” is not official UN terminology. The term was coined by the former U.S. Ambassador-at-large for war crimes, David Scheffer. He then became the Special Representative of the Secretary-General for the Khmer Rouge tribunal in Phnom Penh. He was able to encapsulate the legal thinking that went into and came out of the *ad hoc* tribunals and the Rome Statute for the

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since at least the mid-1970s, governments at the UN have used the standard of “a consistent pattern of gross violations of internationally recognized human rights,” often shortened to “gross violations.” In the 1990s, the *ad hoc* international tribunals for the former Yugoslavia and for Rwanda, and the negotiations leading to the creation of the ICC formalized the categories of atrocity crimes: genocide, war crimes, and most importantly for the DPRK, the concept and definition of crimes against humanity.²⁰¹

ICC. David Scheffer, *All the Missing Souls: A Personal History of the War Crimes Tribunals* (Princeton: Princeton University Press, 2012).

201 The 1948 Convention on the Prevention and Punishment of the Crime of Genocide had envisioned (Article VI) the creation of an “international penal tribunal,” but, owing largely to the emergence of Cold War divisions, nothing was ever created. Following the creation of the two *ad hoc* tribunals in the 1990s, the need for a permanent international tribunal was widely recognized. The creation of such a permanent tribunal required clear definitions of the crimes that would be within its mandate and jurisdiction.

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Crimes Against Humanity Re-defined

There had long been a considerable gap in the normative human rights framework between violations of the rights set forth in the UDHR and the two International Covenants, and “genocide” as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which had been drafted under UN auspices at the same time as the UDHR. The normative framework failed to adequately provide for phenomena of repression that were more severe and atrocious than “gross violations,” but did not constitute “genocide” as defined in the Genocide Convention: the intentional destruction, in whole or in part, of a national, ethnic, racial or religious group, as such.²⁰²

It was recognized in the 1980s and 1990s that extreme violations and atrocities were insufficiently delineated and proscribed in the two Covenants when they were drafted in the 1950s and 1960s. Examples of insufficiently delineated phenomena of severe repression in the then existing legal instruments included “enforced disappearances” (extra-judicial abductions by State authorities followed by *incommunicado* detention and often, secret political killings);²⁰³ “extra-judicial executions” (killings by State authorities without trial or judicial proceedings); deportations and prolonged detention without trial;²⁰⁴ “ethnic cleansing” (deportations of ethnic or religious minorities from areas where they were previously lawfully resident);²⁰⁵ and rape as a weapon of war.²⁰⁶

The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), established by the UN Security Council in the 1990s, addressed these omissions. They were further addressed in the 1997 negotiations to draft the Rome Statue for the ICC. These juridical proceedings and diplomatic negotiations adjusted the normative framework for analyzing contemporary phenomena of repression: a more inclusive definition of “crimes against humanity.”

202 Recognition of this normative gap was occasioned in part by the massacres in Guatemala and Indonesia in the mid-1960s, Uganda in the 1970s, and the wholesale slaughter in Cambodia under Khmer Rouge rule. These atrocities were clearly much greater in scope than “gross violations.” However, there was doubt and debate about whether or not such terrible and large-scale massacres constituted “genocide” as defined in the 1948 Convention with its restrictive “as such” intent provision, its omission of protection for “political,” “economic,” or “social” groups, and its failure to include the concept of “cultural genocide.”

203 This was a practice prominently used by military dictatorships during the “dirty wars” in the southern cone of Latin America in the 1970s.

204 This includes the “B category” prisoners in Indonesia, whereby tens of thousands were detained in the 1960s and 1970s because the Indonesian government determined there was no evidence of criminal acts that could be used to bring them to trial. As a result, it deported them from Jakarta and other cities, and imprisoned them without trial on the remote island of Buru.

205 This was seen in the Balkan conflicts of the early 1990s.

206 Rape, pillage, and violence against women have been part of war and political conflict since time immemorial. Growing international realization of women’s rights, including greater participation by female lawyers and judges, led to the recognition of the crime of wartime rape, particularly in the Balkan and Central African conflicts of the 1990s.

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The Nuremberg Tribunal had placed “crimes against humanity” within the context of armed conflict between nation-states—atrocities committed against civilians in time of war in parallel with “war crimes,” which are atrocities committed against enemy combatants in time of war. The ICTY retained the connection to armed conflict, but determined that the armed conflict did not have to be multinational in character. In other words, the conflict could be *within* a nation as opposed to between nations. The ICTR further loosened the connection with conflict between two armed political groupings. Initially, these changes held sway largely within the jurisdictions of those *ad hoc* tribunals. However, the negotiations for the statutes of a permanent international criminal court maintained the disassociation between crimes against humanity and armed conflict.

Drawing heavily on the rulings and determinations of the ICTY and ICTR and what jurists and legal scholars refer to as “customary international law,” “crimes against humanity” were defined in “positive” international law as:

- murder;
- extermination;
- enslavement;
- deportation or forcible population transfers;
- imprisonment or severe deprivations of physical liberty in violation of the fundamental rules of international law;
- torture;
- rape or sexual slavery;
- persecution on political, racial, national, ethnic, religious or gender grounds;
- enforced disappearances;
- apartheid; and
- other inhumane acts of comparable gravity

when those acts are knowingly committed as part of a widespread or systematic course of conduct against a civilian population in furtherance of state policy [emphasis added].²⁰⁷

²⁰⁷ This formulation constituted an entirely different “intent” provision. This is what lawyers call *mens rea*: what was in the mind of the perpetrator of an action defined as criminal. Under the terms of the Genocide Convention, a perpetrator has to “intend” great harm. Under the definition of crimes against humanity in the Rome Statute of the ICC, the perpetrator has only to “know” that great harm is being done against a civilian population. In the Genocide Convention, the harm must be done against a specified group “as such,” meaning the intrinsic character of the group is central. Under the Rome Statute, the great harm only has to be to “further state policy”—a state policy that may very well be intended to eliminate real or imagined political opposition or ideological dissidence. Furthermore, the great harm can be either “widespread” or “systematic.” It does not have to be both.

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In 2013 and 2014, the UN applied the concept of “crimes against humanity” to human rights violations in the DPRK through the investigation of the COI. This, in turn, raised international concern about human rights in the DPRK to a much higher level and elicited a multi-faceted response by Pyongyang.

B. Applying Criminal Law to the Democratic People's Republic of Korea: The Creation, Operations, Findings, and Recommendations of the Commission of Inquiry

The process of assessing and seeking accountability for widespread and egregious human rights violations is often initiated by a high-level international investigation of possible criminal behavior. This is commonly described as a “commission of inquiry,” although it is sometimes also referred to as an “international fact-finding missions” or “expert panels”.

Such international investigations date back to the post-Napoleonic “Concert of Europe” in the 19th century. Commissions of eminent persons, almost always legal experts or diplomats from a cross-section of Concert Powers, investigated egregious atrocities—usually massacres—with the particular aim of assessing accountability. In recent years, high-level investigative bodies have been created by the HRC, the General Assembly, the Security Council, the UN Secretary-General, or the High Commissioner for Human Rights to make a preliminary determination of grave breaches of international criminal law. These may be undertaken prior to the creation of *ad hoc* tribunals, such as those for Yugoslavia and Rwanda, or the creation of a “hybrid” tribunal, such as the tribunal established in Cambodia.

The primary difference between a COI and an investigation by a Special Rapporteur is the level of support that is provided, its scale, and the scope of its mandate. COIs are provided much more staff

support and given a clear mandate to determine if violations constitute criminal acts. The COI on the DPRK was explicitly mandated by the HRC to apply both human rights law and international criminal law to the DPRK in order to determine if the long-documented DPRK violations crossed the high legal threshold necessary to be considered as crimes against humanity and to make recommendations for future action by UN Member States. If crimes against humanity were found, the question of political responsibility and personal accountability would arise.²⁰⁸

C. How and Why the Commission of Inquiry on the Democratic People's Republic of Korea Came About

1. Initial Advocacy

The first Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Vitit Muntarbhorn, set the stage for the establishment of an international investigation in his final report to the General Assembly in 2009. He noted that more action was necessary beyond Special Procedures to address the scope of the problem in the DPRK. He recommended that the international community:

Address the issue of impunity through a variety of actions, whether in terms of State responsibility or individual criminal responsibility, and enable the totality of the United Nations system, especially the Security Council, to adopt measures to prevent egregious

208 Under the DPRK's *Suryong* (leadership) system, political power flows from the Kim dynasty and criminal responsibility ends there as well. For example, the decision and order to execute Kim Jong-un's uncle, his half-brother, and other high-ranking officials, can only come from Kim Jong-un.

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*violations, protect people from victimization and provide effective redress.*²⁰⁹

After the turn of the new millennium, the steady accumulation of credible testimony from a growing number of North Korean refugees, who found safe haven in the ROK and other countries, led to increased international attention that then gave rise to the COI. These refugees and their testimony became accessible to journalists, scholars, human rights advocates, and social media. The refugees' testimonies allowed the phenomena of repression in the DPRK to be documented with compelling clarity and force.

At the same time, practicing attorneys, legal scholars, and NGO advocates had begun to analyze the DPRK's phenomena of repression according to the norms and standards of contemporary international law. They found that various violations in the DPRK fit the definition of crimes against humanity as detailed in contemporary international law.²¹⁰

In early December 2009, 150 North Korean refugees, including many former political prisoners, wrote to the ICC's Prosecutor asking for an investigation of the DPRK's serious violations and offering to provide testimony.²¹¹ Representatives of the North Korean refugees traveled to the Hague to press

their case.²¹² The Prosecutor's Office acknowledged receipt of their appeal and responded that absent the DPRK's accession to the Rome Statute of the ICC or a referral from the Security Council, the situation in the DPRK was not within the ICC's jurisdiction.²¹³ The Prosecutor's letter referred the North Korean refugees to the appropriate organs of the UN.

By the second decade of the 21st century, North Korean refugees residing in the ROK, including former political prisoners, had formed their own NGOs. These organizations amplified their unique and well-informed voices. Like victims of severe violations from elsewhere around the world, the North Korean refugees possessed an acute sense of the injustices inflicted on them, their families, and their friends. They wanted those responsible to be held accountable.

Mainstream international human rights NGOs, such as the New York-based HRW, AI, and Paris-based International Federation for Human Rights (FIDH), also became more involved with the DPRK's human rights issues. This brought the mainstream human rights community's focus on the necessity of holding DPRK officials accountable for their actions.²¹⁴ These NGOs also brought considerable experience working within the UN human rights system. In 2011, a broad-based NGO coalition, the International Coalition to End Crimes Against Humanity in North Korea (ICNK), was formed in Tokyo to advocate for the

209 UN General Assembly, *Situation of human rights in the Democratic People's Republic of Korea—Note by the Secretary General*, UN Doc. A/64/244 (August 4, 2009).

210 A report commissioned by former Czech Republic President Václav Havel, a former Norwegian Prime Minister Kjell Bondevik, and Nobel Peace Prize recipient Elie Wiesel, *Failure to Protect: A Call for the UN Security Council to Act in North Korea* (Washington, D.C.: Committee for Human Rights in North Korea; DLA Piper US LLP, 2016); in addition, see David Hawk, *Concentrations of Inhumanity* (New York: Freedom House, 2007) and Christian Solidarity Worldwide, *North Korea: A Case to Answer, a Call to Act* (London: 2007).

211 John M. Glionna and Ju-min Park, "North Korean rights groups want Kim put on trial," *Los Angeles Times*, December 4, 2009, <https://www.latimes.com/archives/la-xpm-2009-dec-04-la-fg-north-korea-rights-2009dec04-story.html>.

212 Harry Meijer, "North Korean refugees plead case against Kim Jong-il," *NRC Handelsblad*, December 10, 2009, <http://northkoreawatch.blogspot.com/2009/12/north-korean-refugees-plead-case.html?m=1>.

213 Letter from Head of Information and Evidence Unit, Office of the Prosecutor, International Criminal Court, December 10, 2009, Ref. OPT-CR-946/09. Letter in possession of the author.

214 Previously, human rights advocacy on the DPRK, particularly in the United States and the ROK, had been divided between "regime change" and "engagement." The weight of the mainstream international human rights NGOs, with their consistent focus on accountability, largely replaced the former divide within the North Korea human rights advocacy community.

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creation of a UN COI.²¹⁵ With the assistance of the ICNK, in December 2011, North Korean refugees wrote to the Foreign Ministers of most UN Member States via their embassies in Seoul, asking for the establishment of a COI.²¹⁶

2. The Endorsement of United Nations Human Rights Officials

Beyond refugee and NGO advocacy, the proposal to establish a COI required the strong support of relevant UN officials. The first milestone was garnering the support of the Special Rapporteur, Marzuki Darusman, who was fully cognizant that his investigations and reports were being ignored by the DPRK and not leading to any meaningful progress. He was, thus, willing to support the establishment of a COI.

As a preliminary step, Darusman first conducted a comprehensive review of the available data and information. This preliminary review was undertaken from 2012 to 2013 and appeared as a meticulously footnoted 20-page annex, "Analysis of patterns of human rights violations in the DPRK, documented by the UN through its reports and resolutions since 2004" to his 2013 report to the HRC.²¹⁷ This report, thus, made a strong case for a more thorough investigation with a larger mandate.

The second requirement was the endorsement by the High Commissioner for Human Rights, the UN's highest-ranking human rights official. In December 2012, the High Commissioner, Navi Pillay, a former South African jurist and a former President of the ICTR, met with two prominent North Korean

escapees:²¹⁸ 1) Ms. Kim Hye-sook, who was imprisoned for twenty-eight years in political prison camp No. 18; and 2) Mr. Shin Dong-hyuk, born and raised for twenty years in political prison camps.²¹⁹ Ms. Kim was forced to labor in the prison camp's coal mines and still suffers from what in United States is called "black lung disease." She also gave birth to and raised children inside the prison camp.

Ms. Pillay, who had made significant contributions to bringing gender violence and discrimination into the purview of contemporary international law, was deeply moved by Ms. Kim's first-hand account of the suffering of female prisoners in the DPRK's political prison camps. The meeting lasted far longer than originally scheduled. Shortly thereafter, convinced that the DPRK violations crossed the threshold of atrocity crimes, the High Commissioner called for the formation of a COI.

On January 14, 2013, the High Commissioner for Human Rights stated:

For years now, the Government of DPRK has persistently refused to cooperate with successive Special Rapporteurs on the situation of human rights in the DPRK appointed by the Human Rights Council, or with my Office. For this reason, and because of the enduring gravity of the situation, I believe an in-depth inquiry into one of the worst – but least understood and

215 This meeting was organized by the Tokyo office of HRW, with the support of other Japanese and South Korean human rights NGOs.

216 Cho Jong-ik, "179 Defectors in Call for Commission of Inquiry," *The Daily NK*, November 1, 2012, <https://www.dailynk.com/english/179-defectors-in-call-for-commissi/>.

217 A/HRC/22/57.

218 The meeting with the High Commissioner was organized by the Geneva office of HRW and a Seoul-based NGO, the Citizens' Alliance for Human Rights in North Korea. Citizens' Alliance was headed by the former, founding, and long-term director of the South Korean section of AI.

219 Shin's account was published in a best-selling biography by Blaine Harden, *Escape from Camp 14: One Man's Remarkable Odyssey from North Korea to Freedom in the West* (New York: Penguin Random House, 2012), but it was later disclosed that Shin also was imprisoned at Camp 18 as well as Camp 14.

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*reported – human rights situations in the world is not only fully justified, but long overdue.*²²⁰

On February 28, 2013, a group of thematic Special Procedures mandate-holders—covering arbitrary detention, torture, extra-judicial killings, and enforced disappearances—also stated their support for the Special Rapporteur’s call to “set up an inquiry into grave, systematic and widespread violations of human rights in the DPRK, and to recommend ways to ensure accountability for possible crimes against humanity.”²²¹

3. The Politics of Member State Support

Having earned the support of key officials in the UN, the establishment of a COI required the passage of a resolution at the UN HRC. The specific language of a resolution is typically drafted by the “primary co-sponsors,” who then gather the support of as many co-sponsors as possible. The primary co-sponsors of the resolution to establish a COI for the DPRK were, as in previous resolutions on the DPRK, the EU and Japan.

a. Japan Takes the Initiative

Japan had held a number of closed bilateral meetings with the DPRK in Beijing and Singapore to attempt to resolve the issue of the DPRK’s abduction of Japanese citizens. However, Pyongyang was not willing to produce a credible account of the abducted Japanese, who the DPRK claimed died in the

DPRK. Since any UN investigation would address this issue, it appears that the Japanese government decided to internationalize the abduction issue in the hopes that this would encourage the DPRK to be more forthcoming, at least by providing a credible accounting.

Tokyo, as a primary co-sponsor of the UN human rights resolutions on the DPRK, informed the EU that it wanted to include the request for a COI in the draft text of the 2013 resolution.²²² ICNK, a coalition of like-minded NGOs, had previously sent delegations to Europe and Japan to meet with key foreign ministry officials.²²³ The Europeans initially showed a cautious approach; none were willing to lead the effort to include a request for a COI within the provisions of the annual resolution on human rights in the DPRK.²²⁴ Once Japan took the initiative, a great deal of support arose from EU Member States, as was thereafter apparent in the strong European support for the findings and recommendations of the COI.

b. Support from the Republic of Korea and the United States

The support—or, at minimum, the tacit approval—of the ROK and the United States were also necessary to initiate a high-level UN investigation into the human rights situation in the DPRK. Had either country strongly opposed the creation of the COI on

220 UN News, “Top UN official calls for international inquiry into human rights abuses in DPR Korea,” January 14, 2013, <https://news.un.org/en/story/2013/01/429762-top-un-official-calls-international-inquiry-human-rights-abuses-dpr-korea>. For additional information and details see Felice D. Gaer and Christen L. Broecker, *The United Nations High Commissioner for Human Rights: Conscience for the World* (Leiden: Brill | Nijhoof, 2013), 293–309.

221 UN News, “Independent UN experts urge human rights inquiry into ‘gulags’ in DPR Korea,” February 28, 2013, <https://news.un.org/en/story/2013/02/433082-independent-un-experts-urge-human-rights-inquiry-gulags-dpr-korea>.

222 There was interest at the highest levels of the Japanese government. The Prime Minister personally telephoned the head of the Tokyo HRW office to inform her of this action.

223 The author participated in several of these meetings.

224 No one disputed that such an action at the UN was worthy of consideration, but initiating such a process is a decision that must be made by high-level political authorities. Such an initiative then entails a great deal of work by that country’s diplomats, who will not want a decision taken by high-level political authorities to fail for lack of support in the political organs of the UN. The substantial diplomatic work at the UN General Assembly to secure support for the COI’s findings and recommendations is described below.

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the DPRK, the EU and Japan would likely not have proceeded with the COI.

The Bureau of East Asia and Pacific Affairs (EAP), the lead agency within the U.S. Department of State for matters pertaining to the DPRK, had previously been concerned that human rights issues could complicate the negotiations surrounding the DPRK's nuclear program.²²⁵ The complete and sudden breakdown of the February 2012 "Leap Day" Agreement between the United States and the DPRK, however, essentially closed the prospect for further security-related negotiations for the remainder of the Obama presidency.²²⁶ Indeed, EAP began to view augmented human rights diplomacy on the DPRK in a more positive light.

In the ROK, when progressive political parties held the presidency from 1998 to 2008, the government did not raise human rights issues out of concern that it would create difficulties for inter-Korean reconciliation. The ROK even abstained during votes on the DPRK human rights resolutions at the UN on several occasions, drawing heavy criticism from the opposition and conservative media outlets. When the conservatives returned to power in 2008, the administration demonstrated public support for efforts at the UN to address and seek remedy for the

suffering of the Korean people above the 38th parallel. This support enabled the COI's advocates to proceed.

4. Approval by Consensus

In March 2013, the resolution containing the request for the establishment of the COI passed the HRC by consensus. The passage of the EU-Japan resolution was facilitated by a fortuitous turn of events. There are limits to the number of consecutive years a Member State may serve on the HRC. When this limit is reached, the government whose term has expired must step off the Council for at least a year and then seek re-election at the following year's General Assembly. By coincidence, the term limits for three of the DPRK's strongest allies—Russia, China, and Cuba—had expired, and all three had rotated off the Council in 2013. These states attended the Council sessions only as Observing States, and were not eligible to render their objection to the consensus or to actively participate in the proceedings.

D. The Operations, Findings, and Recommendations of the Commission of Inquiry

The COI on the DPRK consisted of three Commissioners, who were appointed by the President of the HRC.²²⁷ It was assisted by nine staff members, appointed by the High Commissioner for Human Rights, and translators. Once established, COIs are expected to work independently and report directly to the HRC. The COI is given its own suite of offices and the UN's staff members are not under the direction of the High Commissioner.

The three COI commissioners were: as chair, former Australian High Court Justice Michael Kirby, who

225 Even the office of the U.S. Special Envoy for North Korean Human Rights Issues, a Congressionally mandated post, is housed within EAP, not the Bureau of Democracy, Human Rights, and Labor (DRL) at the State Department.

226 The February 29 "Leap Day Agreements" were the third attempt at negotiations with the DPRK to end its nuclear weapons program, following the "Agreed Framework" under President Clinton and the "Six-Party Talks" during the second term of President George W. Bush. All three agreements broke down. If the Leap Day Agreements had opened the door to improved relations with the DPRK, the Obama administration would likely have sought to raise human rights concerns. The lead U.S. negotiator was Glyn Davies, who had previously been acting head of the State Department's human rights bureau and had previously expressed concern about the DPRK's prison camps. Furthermore, humanitarian aid to the DPRK was a major component of this Agreement in which Robert King, the U.S. Special Envoy for North Korean Human Rights Issues, had been centrally involved.

227 The revolving President of the Human Rights Council is elected prior to each session of the Council.

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was previously the Special Representative of the Secretary-General for human rights in Cambodia and the president of a Geneva-based NGO, the International Commission of Jurists; Ms. Sonja Biserko, a former Serbian diplomat who played an exemplary and courageous role during the Balkan wars of the 1990s; and, for the sake of continuity, the sitting Special Rapporteur, Mr. Marzuki Darusman, the former Attorney-General of Indonesia.

1. Operations

The COI sought cooperation from the DPRK authorities for on-site visits and requested meetings to discuss its findings before its report was published. There was no response from Pyongyang. At the beginning of its inquiry, the COI met with NGOs to gather relevant information about the human rights situation in the DPRK. It also held public hearings in four cities: 1) Seoul (August 20–24); 2) Tokyo (August 29–30); 3) London (October 23); and Washington, D.C. (October 30–31). During these hearings, 80 witnesses testified in public. The video recordings of these proceedings were made available online.²²⁸ The COI also conducted around 240 confidential interviews, including with North Koreans now living outside the DPRK who feared that public identification would jeopardize family members still inside the country. There were also consultations with academics and humanitarian aid workers with concerns about future access to the DPRK.

2. Findings & Recommendations

On February 17, 2014, the COI released its findings: a 36-page *Report of the commission of inquiry on human rights in the Democratic People's Republic of Korea*,²²⁹

and a 372-page annex, *Report of the detailed findings of the commission of inquiry on human rights in the People's Democratic Republic of Korea*.²³⁰

The COI's detailed findings enumerate six categories of severe, widespread, and systematic human rights violations:

- (1) violations of freedoms of thought, expression and religion;
- (2) discrimination based on class, gender and disability;
- (3) violations of freedoms of movement, residence, and the freedom to leave;
- (4) violations of the right to food and the right to life;
- (5) arbitrary detention, torture, executions, enforced disappearances, and prison camps; and
- (6) enforced disappearances and abductions of foreigners.

The COI found that:

*Systematic, widespread and gross violations have been and are being committed by the DPRK, its institutions and officials ... The gravity, scale and nature of these violations reveal a State that does not have any parallel in the contemporary world.*²³¹

A number of long-standing and ongoing systematic and widespread violations ... meet

228 "CoIDPRK Public Hearings," OHCHR, accessed May 20, 2020, <https://www.ohchr.org/en/hrbodies/hrc/coidprk/pages/publichearings.aspx>.

229 A/HRC/25/63.

230 A/HRC/25/CRP.1. The 36-page version is the summary of the "detailed findings," and it was translated into the five other official languages of the UN.

231 Ibid., ¶ 80, 15.

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*the high threshold required for proof of crimes against humanity in international law ... The perpetrators enjoy impunity ... because those perpetrators act in accordance with State policy.*²³²

The “detailed findings” further specify the six categories of victims found by the COI to have been subjected to crimes against humanity:

- (1) inmates in political prison camps;
- (2) political prisoners in the ordinary prison system;
- (3) religious believers;
- (4) persons who sought to flee the country;
- (5) populations subjected to starvation; and
- (6) persons from foreign countries subjected to abductions and forced disappearances.²³³

It should be noted that, in technical terms, this is a *prima facie* finding of facts, a preliminary step in contemporary law that precedes a prosecutorial accountability procedure in a *bona fide* international legal tribunal. The next step would be a referral to exactly such a tribunal.²³⁴ Thus, the COI concluded that:

232 Ibid., ¶ 85, 16.

233 Ibid., ¶ 319-45.

234 Upon the referral necessary to bring the DPRK case within the legal jurisdiction of the ICC, the Prosecutor's office of the ICC would conduct its own investigation, and upon completion, seek from the judges a warrant to bring the perpetrators into custody. Unlike the ICJ, which under relevant international law and practice can conduct an *in absentia* procedure on “state responsibility” for acts of genocide, the ICC can only conduct criminal proceedings against a defendant in custody and mentally and physically capable of participating in his or her own defense. The ICC would then conduct a trial, which could take years, at the end of which the judges would render a verdict.

*The United Nations must ensure that those responsible for crimes against humanity committed in the DPRK are held accountable ... [through] a Security Council referral of the situation to the ICC or the establishment of an ad hoc tribunal.*²³⁵

It also outlined a two-track approach, combining dialogue with efforts to pursue accountability:

*Urgent accountability measures should be combined with a reinforced human rights dialogue, the promotion of incremental change through more people-to-people contact and an inter-Korean agenda for reconciliation.*²³⁶

Based on its detailed findings and exhaustive analysis of the phenomena of repression in the DPRK, the 36-page report made 19 recommendations to the DPRK; each of the recommendations had multiple components. These recommendations enumerated the “*profound political and institutional reform*” necessary to address the severity of the violations the COI had identified.²³⁷

Furthermore, the Report made:

(1) six recommendations to China, mostly concerned with forced repatriation of North Koreans and alleviating the plight and risks facing North Koreans in China;

(2) three recommendations to “other states” urging dialogue and people-to-people engagement with the DPRK;²³⁸ and

235 COI Report, ¶ 87, 16.

236 Ibid.

237 Ibid., ¶a. 89, 16-18. These recommendations are listed in the Appendix to this report.

238 The COI's recommendations regarding engagement with the DPRK (A/HRC/25/63, ¶ 91-93 and 94(c)), which necessarily require DPRK cooperation, were initially overshadowed by the DPRK's

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(3) ten recommendations to the UN and the international community, starting with a Security Council referral of the situation in the DPRK to the ICC and the creation of a “field-based structure” to augment the UN’s human rights efforts on the DPRK.

E. The Inter-Governmental Response to the Commission of Inquiry Report: From “Serious Concern” to “Condemnation in the Strongest Terms”

1. At the Human Rights Council

The COI report was released to the Member States in mid-February 2014. At the March session of the HRC, the Commissioners formally presented their report with an oral update. The governments, including the DPRK, considered the report with the utmost seriousness. The resolution, co-authored by the EU and Japan, and joined by about 40 other co-sponsors,²³⁹ changed the language of the resolution on the situation of human rights in the DPRK from the previously articulated “serious concern” about the DPRK’s gross violations to “condemnation in the strongest terms” of the atrocity crimes the DPRK was committing against its own citizens and the abducted citizens of other countries. After a contentious debate, the resolution passed overwhelmingly by a vote of 30 to 6, with 11 abstentions. The HRC strongly endorsed the findings of the COI.

vituperative response to the COI report, and the considerable effort at the General Assembly to advance the “accountability track.” Whether the COI’s engagement and dialogue recommendations will remain in abeyance, given the ROK’s and the United States’ return to negotiations and engagement with the DPRK, will depend on: 1) whether other states will put human rights on the negotiation and engagement agenda, and 2) whether the DPRK will accept this as part of its efforts to improve its relationships and standing in the international community (See Chapter VIII).

239 As noted, governments that were not elected to the HRC can join in sponsoring resolutions and participate in debates at the Council, but only the States elected to the Council can vote.

The resolution recommended to the General Assembly that it submit the report of the COI to the Security Council for its consideration and appropriate action, including the recommendation to refer the DPRK to “the appropriate international criminal justice mechanism,”²⁴⁰ a diplomatic formula understood to primarily mean the ICC.²⁴¹ Only the General Assembly itself, not a subsidiary organ, such as the HRC, can make recommendations to the Security Council.

At meetings of the co-sponsors prior to voting, the smaller EU member governments and Eastern European states argued in favor of making the referral provision to the ICC explicit. It is worth noting that it was the smaller nations of Western Europe that decades earlier had argued most strongly for the inclusion of human rights provisions in the 1975 Helsinki Final Act.²⁴² Many of the Eastern European diplomats were old enough to remember when some of the totalitarian limitations of rights discussed in the COI’s “detailed report” prevailed in

240 UN General Assembly, *Report of the Human Rights Council*, UN Doc. A/69/53 (January 20, 2014).

241 Technically, an international criminal justice mechanism could include a UN-created *ad hoc* tribunal similar to those created for the former Yugoslavia and Rwanda. This option was discussed in the COI’s “detailed report,” primarily on the grounds that the temporal jurisdiction of the ICC only starts in July 2002, when the Rome Statute entered into force, whereas the crimes detailed in the COI report had been ongoing for decades prior to 2002. The temporal mandate of a UN-created *ad hoc* tribunal could be extended to include criminal acts committed before 2002.

242 The Helsinki Final Act, also known as the Helsinki Accords, was an agreement between the states of Western Europe, Eastern Europe, the Soviet Union, the United States, and Canada that settled the western borders of Poland and Russia. During World War II, as the Soviet Red Army reached Berlin, the Hanseatic League port cities of Danzig and Königsberg, previously considered to be German, were incorporated into Poland and Russia as Gdansk and Kaliningrad. The Soviet Union had long sought Western, particularly West German, acceptance of this World War II outcome. To achieve this, the Eastern Bloc accepted a number of historically important human rights provisions within the diplomatic accords to settle the post-World War II European nation-state boundaries. Neither the Soviet Union nor the United States wanted these geopolitical settlements, themselves a part of the broader rapprochement of détente, to be complicated by human rights considerations. However, the smaller nations of Western Europe insisted on human rights, and these became part of what was then known as “Basket III.”

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their own countries. Delegations from Poland, the Czech Republic, Romania, and Bulgaria were strong and vocal supporters of the COI recommendations at the HRC and the General Assembly. By the time of the General Assembly resolution later that year, the more explicit language on ICC referral was adopted by the EU and Japan.

2. The Seoul Office of the High Commissioner for Human Rights

As noted above, the COI also recommended the establishment of a “field-based structure” with a broad mandate to follow up the work of the COI. After some deliberation and discussions with the ROK, it was determined that a UN “field office” to promote human rights in the DPRK would be established in Seoul. Its mandate includes: (1) to provide support to the Special Rapporteur; (2) to strengthen monitoring and documentation of the situation in the DPRK; (3) to ensure accountability, enhance engagement and capacity-building with the Governments of all States concerned, civil society and other stake holders; and (4) to maintain the visibility of the human rights situation in the DPRK, including through sustained communications, advocacy, and outreach initiatives.

On June 23, 2015, the Seoul Office of the UN High Commissioner for Human Rights formally opened with a visit to Seoul by the High Commissioner. Like all OHCHR field offices, the Seoul Office reports annually to the HRC, and its first report was presented in 2016.²⁴³

²⁴³ UN General Assembly, *Role and achievements of the UN OHCHR with regards to the situation of human rights in the DPRK*, UN Doc. A/HRC/31/38 (February 1, 2016).

F. The Commission of Inquiry's Recommendations at the 2014 United Nations General Assembly and Security Council

Sending a case against another UN Member State to the ICC is not a matter taken lightly by the international community. Following the passage of the resolution at the HRC, a number of steps unfolded at the UN in New York to familiarize the diplomats there with the matter that would formally come to the General Assembly and, perhaps, the Security Council in October, November, or December. In April 2014, France, with the United States and Australia, sponsored an “Arria Formula” meeting to which Security Council members were invited to hear a presentation and discussion led by the COI of their findings and recommendations.²⁴⁴ A separate informal briefing was held for Member States that were not on the Security Council.

1. At the General Assembly

The pace of activity increased as the General Assembly session approached. On September 23, the United States sponsored a “high-level side-event,”²⁴⁵ with Secretary of State John Kerry and the foreign ministers of Japan, the ROK, and Botswana in attendance.²⁴⁶ Joining them was the newly-appointed

²⁴⁴ In these meetings, named after the Venezuelan diplomat who initiated the practice, one or more members of the Security Council invited other members to an informal discussion outside of the formal chambers of the Security Council.

²⁴⁵ A “side event” at the UN is usually held in a meeting on UN premises that is outside of the formal sessions and chambers. Only Member States or NGOs with “consultative status” at the UN can organize a side event on UN premises. A “high-level side event” means that governmental officials, who are above the level of Permanent Representative or Ambassadors of the Member States, are in attendance. These government officials are usually diplomats. “High level” signifies that a matter is of particular interest and concern to the political leadership of the countries involved.

²⁴⁶ Following the release of the COI report, Botswana severed diplomatic relations with the DPRK, which is a momentous decision

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High Commissioner for Human Rights, Zeid bin Ra'ad al-Hussein, the former Jordanian Ambassador to the UN who had chaired the Rome Statute meetings, where the ICC Statutes had been negotiated. The event included the participation of several North Korean refugees, one of whom had provided public testimony at the COI hearing in Seoul.²⁴⁷

The General Assembly's Committee on Humanitarian, Social and Cultural Affairs—one of five “committees of the whole”—holds initial discussions on resolutions and other matters before the General Assembly plenary meeting pertaining to humanitarian and human rights issues. Commonly referred to as the “Third Committee,” it devotes several weeks to human rights issues. These are often initiated by written and oral reports by various Special Rapporteurs, on which the Member States respond to or comment. Several weeks later, resolutions on the previously discussed matters are presented and voted on in Committee.

On October 21, 2014, prior to the Third Committee discussion on the DPRK, Australia, Panama, and Botswana organized, with NGO support, a side event at which COI Chair Michael Kirby recounted the Commission's findings and recommendations.²⁴⁸ Two former North Korean political prisoners, who

had testified to the COI, also briefly told their stories.²⁴⁹ A bevy of DPRK diplomats attended this side event, and Justice Kirby offered them the opportunity to articulate their objections in public.²⁵⁰ A week later, on October 28, Special Rapporteur Marzuki Darusman presented his own report that laid out the two tracks—an “accountability track” and an “engagement-dialogue track” that the UN would subsequently follow, or attempt to follow, for the next several years.²⁵¹

In November 2014, the Third Committee voted on the DPRK human rights resolution, co-authored and introduced by the EU and Japan. This resolution recognized and condemned the DPRK's human rights violations as crimes against humanity and recommended to the Security Council that it refer the DPRK to the ICC. On the floor of the General Assembly, Cuba proposed, on the DPRK's behalf, an amendment that sought to delete the references to crimes against humanity and ICC referral. The proposed amendment was rejected by a vote of 77 to 40, with 50 abstentions.²⁵² After considerable discussion and debate, the Third Committee then adopted the EU-Japan resolution by the overwhelming vote of 111 to 19, with 55 abstentions.²⁵³ On December 18,

in inter-state diplomacy. The COI had actually recommended more engagement with the DPRK. Botswana's surprise move caught diplomatic attention. It was a blunt and pointed indication that the COI report had caused a serious shift in international opinion about the DPRK.

²⁴⁷ The North Korean refugees were Mr. Shin Dong-hyuk, 24 years a prisoner at Camps 14 and 18, and Ms. Lee Hyeon-seo, then a college student in the ROK. DPRK Foreign Minister Ri Su-yong was also at the General Assembly. For the first time in fifteen years, the DPRK Foreign Minister attended the UN General Assembly. Foreign Minister Ri sought to participate in the high-level meeting, but his attendance would have precluded the participation of the North Korean refugees, whom the DPRK regularly calls out as “traitorous human scum.” Nonetheless, Ri complained bitterly that the sponsors had preferred to allow North Korean victims to recount violations against the North Korean populace.

²⁴⁸ HRW, the Jacob Blaustein Institute, the U.S.-based HRNK, and the Seoul-based Citizens' Alliance for Human Rights in North Korea were involved in this effort. These NGOs, joined by the UN office of AI, accompanied a number of former DPRK political prison camp victims during meetings with numerous government delegations, so that

the diplomats could meet eyewitnesses to the violations detailed in the COI reports.

²⁴⁹ Ms. Kim Hye-sook, who was imprisoned for 28 years in *Kwan-li-so* Camp No. 18, and Mr. Jung Gwang-il, who was imprisoned for three years at *Kwan-li-so* Camp No. 15.

²⁵⁰ The DPRK denies the existence of prison camps of the kind that Ms. Kim and Mr. Jung were imprisoned in. It was obvious that other diplomats, the press, and the larger public believed the testimony of these former refugees, not the denials of the diplomats. Justice Kirby pointedly urged the DPRK diplomats to stop referring to the refugees who testified to the COI as “human scum” and invited everyone to examine the videotapes of their testimony and decide for themselves the persuasive quality of the testimony on which the COI findings are based.

²⁵¹ UN General Assembly, *Situation of human rights in the Democratic People's Republic of Korea—Note by the Secretary General*, UN Doc. A/69/548 (October 24, 2014).

²⁵² UN General Assembly, *Cuba: amendment to draft resolution*, UN Doc. A/C.3/69/L.28 (November 13, 2014).

²⁵³ UN General Assembly, *Resolution on the situation of human rights in the DPRK*, UN Doc. A/C.3/69/L.28/Rev.1 (November 14, 2014).

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2014, the plenary session of the General Assembly formally voted on the resolution. This time, the resolution passed by an overwhelming margin of 116 to 20, with 53 abstentions.²⁵⁴

2. At the Security Council

On December 5, 2014, while awaiting the plenary vote of the General Assembly, ten Security Council Member States wrote to the President of the Security Council stating that the DPRK violations enumerated in the COI report “threaten to have a destabilizing impact on the region and the maintenance of peace and security” and formally requested that they be considered on the agenda in December.²⁵⁵

On December 22, 2014, the UN Security Council took up the situation of human rights in the DPRK. The Assistant Secretary-General for Human Rights (on behalf of the High Commissioner for Human Rights) and the Assistant Secretary-General for Political Affairs, representing the branch of the UN Secretariat that closely monitors global conflict and security issues, briefed the members of the Security Council. Permanent Representatives of Security Council Member States delivered prepared, sometimes extensive, remarks.²⁵⁶ The DPRK, while entitled to participate in the Security Council proceedings, pointedly refused to send

its Ambassador. The Council members took a procedural vote to place the human rights situation in the DPRK on the standing agenda of the Security Council: there were 11 votes in favor, two (2) against, and two (2) abstentions.²⁵⁷

In its statement opposing this action, China announced that it would oppose any “outcome document” by the Security Council. This was China’s formal announcement that it would veto any resolution including one that would refer the DPRK to the ICC. The other possibilities of an “outcome document” at the Security Council are a Presidential Statement by the rotating President of the Council, which requires the approval of all Council Members, or a “non-binding” resolution, that could include recommendations for specified actions.

Thus, the conclusion of the Security Council’s deliberation meant that the Security Council would, for the foreseeable future, continue to receive reports on the human rights situation in the DPRK and discuss relevant developments. The possibility of an ICC referral, as long as it is annually recommended by the General Assembly and has the voting margin to overcome China’s demand for a procedural vote on the Security Council agenda, will remain on the table in the event that China or Russia indicate they would not necessarily veto a referral.

²⁵⁴ Again, the reason for the number of abstentions is the Non-Aligned Movement’s position to oppose all country-specific resolutions, other than those regarding Israel.

²⁵⁵ The letter was signed by the Permanent Representatives to the UN from Australia, Chile, France, Jordan, Lithuania, the Republic of Korea, Rwanda, the United Kingdom, the United States, and the Charge d’affaires of Luxembourg. (China, Russia, Argentina, Chad, and Nigeria did not sign the letter.)

²⁵⁶ Many of these prepared statements are available online. See “Statement to the Security Council on the Situation of Human Rights in the D.P.R.K.,” by Ivan Simonovic, Assistant Secretary-General for Human Rights, New York, 22 December 2014” and “Assistant Secretary-General Taye-Brook Zerihoun’s Remarks to the Security Council on the D.P.R.K., New York, 22 December 2014.” Available at UN Security Council, *The situation in the Democratic People’s Republic of Korea*, UN Doc. S/PV.7353 (December 22, 2014).

²⁵⁷ Unlike the Security Council’s votes on resolutions, where any one of the five permanent members can veto a resolution, procedural votes do not allow for such a veto.

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G. The Democratic People's Republic of Korea's Responses to the Findings and Recommendations of the Commission of Inquiry

1. A Change in Approach and an Addition to the Political Line

With an overwhelming number of governments now recognizing and condemning the DPRK's human rights violations as crimes against humanity, Pyongyang's mantra that there were, and could be, no human rights issues or problems in the DPRK was no longer tenable.

The international community's condemnation, coupled with the prospect that the UN Security Council could consider sending Kim Jong-un to the ICC, came just as the young leader was attempting to consolidate his power. These efforts included an extensive purge of the top echelons of the DPRK's power structure that Kim Jong-un deemed to be loyal to his father, Kim Jong-il. The threat of being sent before the ICC for crimes against his own people was deemed an intolerable insult to the dignity and respect the DPRK leadership insists upon.

The DPRK leaders realized that the human rights issue was no longer something they could simply ignore. Their responses included: official rebuttals; angry accusations against the United States, the EU, and Japan; mass mobilizations in Pyongyang coupled with bitter denunciations on DPRK TV against some of the North Korean escapees who had provided testimony to the COI; a series of immediate and intense diplomatic maneuvers; and changes in the DPRK's approach to some of the UN human rights mechanisms that could, in time, have

some constructive effect.²⁵⁸ The additional, newly emphasized political line was that these accusations were “a racket” based on the lies of traitorous “human scum,” “kicked-up” by the hostile policy of the United States and its “lackeys” to destroy the social system chosen by the people of the DPRK.

2. The Official Rebuttals to the Commission of Inquiry

By way of official rebuttal to the COI report, the DPRK Association for Human Rights Studies, a hitherto obscure organization in Pyongyang, issued two substantial papers that were publicized at news conferences and distributed to all diplomatic missions to the UN in New York. The first, almost 80 pages in length, titled simply “Report of the DPRK Association for Human Rights Studies,” was followed shortly thereafter by a shorter paper, “Detailed Report on [the] Secret behind Anti-DPRK ‘Human Rights Resolution.’”

These documents sought to expose the COI report as the fabrications of a “U.S. marionette” based on the lies of “traitors,” “human scum,” and “terrorist riff-raff” aimed at “hurting the dignity” of the DPRK. The EU-Japan resolution was described as the “vivid expression of the U.S. hostile policy ... to bring down the socialist system centered on the popular masses under the pretext of human rights.”

258 David Hawk, “North Korea's Response to the UN Commission of Inquiry Report on the Situation of Human Rights in the DPRK,” in *Law and Policy on Korean Unification: Analysis and Implications*, eds. Jong-chul Park and Jeong-ho Roh, (Seoul: Korea Institute for National Unification; New York: Columbia Law School Center for Korean Legal Studies, 2014) and Sandra Fahy, “North Korea Responds to Transnational Human Rights Advocacy: State Discourse and Ersatz Civil Society,” in *North Korean Human Rights: Activists and Networks*, eds. Andrew Yeo and Danielle Chubb (New York: Cambridge University Press, 2018). This last source includes an analysis of the Korean-language comments on the COI by the DPRK's main newspaper (*Rodong Sinmun*) and news agency (*KCNA*).

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The DPRK's "Detailed Report" avers:

*Growing stronger are the voices [in the DPRK] calling for sledge-hammer blows at those who hurt even the dignity of the supreme leadership of the DPRK ... and vows to make every possible effort to shatter all 'human rights' rackets kicked up by the U.S. and other hostile forces, and defend the socialist system where the people are the masters and their genuine human rights are guaranteed at the highest level.*²⁵⁹

It is possible that some officials in Pyongyang who had drafted the reports previously submitted to the UN treaty committees, discussed in Chapter IV, contributed material to the DPRK Association for Human Rights Studies, as they are referenced in the 80-page "Report of the DPRK Human Rights Association" that reiterates some of the same assertions.

The primary value of these documents is in their presentation of how KWP and the regime's security officials see DPRK human rights policy and practice inside the DPRK. For example, the "Report" declares, as they have before:

- that there is freedom of religion, but that religion cannot be used to harm the state or social order or to instill reactionary or degenerate ideas and culture;
- that freedom of assembly and association is fully allowed, but associations for the purpose of hostile acts are absolutely prohibited;
- that the new criminal law strengthens the class struggle against anti-socialist crimes while frustrating ideological

and cultural infiltration and smear campaigns; and

- that 100 percent of voters support for the nominated candidates indicates the absolute support and trust of the voters in the Government.²⁶⁰

3. Responses on the Korean Peninsula

The official news agency of the DPRK ran photos and news stories of 100,000 fist-pumping DPRK citizens taking to the streets of Pyongyang to denounce the COI and the UN. Defectors, however, noted that North Koreans certainly would not have been allowed to read the COI report or discuss its contents. DPRK TV ran features of neighbors and friends of the North Korean refugees who had testified to the COI, denouncing their testimonies as vicious and traitorous lies. Kim Jong-un visited the newly renovated Sinchon Museum of American Crimes Against the Korean People, where he declared the U.S. imperialist aggressors to be "cannibals and brutal murderers seeking pleasure in slaughter."²⁶¹ The DPRK also threatened the UN field office in Seoul established by the HRC in its follow-up to the COI's report.²⁶²

4. Diplomatic Moves at the United Nations

To ward off the provision recommending ICC referral, the DPRK Mission to the UN in New York announced that it would sponsor its own human rights resolution on human rights in North Korea to

²⁵⁹ The full text of the "Detailed Report" is available at Korean Central News Agency, *Detailed Report on Secret behind Anti-DPRK 'Human Rights Resolution'* (Pyongyang: 2014), November 29, 2014.

²⁶⁰ Ibid.

²⁶¹ Quoted in Sang-hun Choe, "North Korean Leader Assails American 'Aggressor,'" *The New York Times*, November 26, 2014, <https://www.nytimes.com/2014/11/26/world/asia/north-korean-leader-assails-american-aggressors.html>. See also "N. Korean Launches Outspoken Attack on U.S.," *Yonhap News*, November 25, 2014, <https://en.yna.co.kr/view/AEN20141125007100315>.

²⁶² ROK police guarded the entrance to the office tower in Seoul where the UN Seoul Office is located, and additional police guards were posted in elevators at the entrance to the office.

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counter the EU-Japan resolution. This had no chance of gaining traction. General Assembly rules prohibit overlapping resolutions on the same agenda item, and the EU had already submitted its resolution. Additionally, non-aligned Member States informed the DPRK that since they opposed all country-specific resolutions, they would have to oppose the proposed DPRK resolution as well.

For the first time in 15 years, the DPRK Foreign Minister attended the General Assembly. Subsequently, Ri Su-yong attended the 2015, 2016, and 2017 sessions of the HRC. Some diplomats regard the attendance of the Foreign Minister as a positive step in coaxing the DPRK out of its self-isolation.

DPRK diplomats threatened to expand their “nuclear deterrent,” if the ICC-referral provision was not dropped. This was interpreted as either another nuclear weapons test, already proscribed by unanimous Security Council resolutions, the continued or augmented production of fissile material, or both. This threat was first made at an informal briefing at the New York City-based Council on Foreign Relations.²⁶³ Then, it was officially declared in a letter from the DPRK Ministry of Foreign Affairs circulated to all other Missions to the UN in New York.²⁶⁴ The threat of a new nuclear test was reiterated on the floor of the General Assembly

following the rejection of the Cuban amendment to delete the section on an ICC referral.²⁶⁵

It is inconceivable that co-sponsors of the resolution would have changed the language of a draft resolution in response to the threat of an action that was previously prohibited and condemned by multiple, unanimous Security Council resolutions. That such a threat was made repeatedly is an indication of how seriously the DPRK took the findings and recommendations of the COI, and also of its diplomatic desperation.

One of the likely reasons that the DPRK reacted as strongly as it did to the 2014 COI report was that an accountability process initiated by the UN would necessarily implicate the third, current ruler of the Kim dynasty.²⁶⁶ Kim Jong-un had succeeded his father in December 2011 and was still in the process of eliminating potential rivals to consolidate his rule. In 2013, he had just very publicly purged and executed his uncle, Jang Song-thaek, whom Kim Jong-il had designated as a “regent” to his designated heir. Kim Jong-un had also recently purged most of his father’s high-level appointees in the Party, the military, and the government bureaucracy. The COI report, which charged the DPRK leadership with past and ongoing crimes against the North Korean people and abducted foreigners, clearly jolted political elites in Pyongyang.

²⁶³ The transcript and video of the remarks by DPRK Ambassador Jang Il-hun on October 20, 2014 are available on the website of the Council of Foreign Relations, New York and include a response to the United Nation’s February 2014 report on human rights in North Korea. Ambassador Jang Il Hun on Human Rights in North Korea (New York: Council on Foreign Relations, 2014), <https://www.cfr.org/event/ambassador-jang-il-hun-human-rights-north-korea-0>.

²⁶⁴ UN General Assembly, *Letter dated 24 November 2014 from the Permanent Representative of the Democratic People’s Republic of Korea to the United Nations addressed to the Secretary-General*, UN Doc. A/69/616-S/2014/849 (November 25, 2014), 4. It concludes: “Now that the United States hostile policy toward the DPRK compels the latter not to exercise restraint any longer in conducting a new nuclear test, its war deterrence will grow stronger unlimitedly to cope with the armed intervention of the United States.” The reference to “armed intervention” is rather obscure. It is not clear if this envisions a future armed intervention

or if it is a reference to U.S. troops long stationed south of the military demarcation line at the ROK’s invitation.

²⁶⁵ The author witnessed, first-hand, the threat made by DPRK diplomat Choe Myong-nam at the General Assembly. For press accounts, see Rick Gladstone, “United Nations Urges North Korean Prosecutions,” *The New York Times*, November 18, 2014, <https://www.nytimes.com/2014/11/19/world/asia/north-korea-united-nations-icc-human-rights-abuses.html> and Cara Anna, “UN Push on North Korea Moves Ahead,” *Associated Press*, November 18, 2014, <https://www.ksl.com/article/32399703>.

²⁶⁶ A/HRC/25/63, 4.

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H. Democratic People's Republic of Korea Diplomatic Maneuvers and Tactics on Human Rights

As discussed in Chapter V, DPRK officials raised the possibility of inviting the High Commissioner for Human Rights or the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea in return for removing the language on crimes against humanity and ICC referral from the General Assembly resolution. Another DPRK official traveled to Brussels to offer the prospect of a renewed EU-DPRK dialogue in return for the same. In the months prior to the 2014 General Assembly vote, there were also discussions in New York about a possible visit to Pyongyang by the UN Secretary-General, some of which found their way into the press. Nothing came of these discussions either.

Other tactical responses by the DPRK to the COI report may create some future prospect for openings on human rights engagement that could improve the lives of the North Korean populace in some way.

As noted above, the DPRK failed to complete its participation in the first cycle of the UPR in 2010. Following the COI Report, the DPRK retroactively completed the first cycle and then fully participated in the second cycle in 2014. The potential of this revised DPRK approach to participating more fully in the UPR merits closer examination.

The post-COI actions taken by the DPRK in regard to international human rights conventions and their Treaty Bodies may also hold some promise. As described in Chapter III, in November 2014, the DPRK ratified the Optional Protocol to the CRC on the sale of children, child prostitution, and child pornography. The *Korea Central News Agency (KCNA)*, the official state media outlet, proclaimed this action to be “a manifestation of its will to fulfill its

commitment and promote international cooperation in the field of human rights.”²⁶⁷

In April 2015, the DPRK established the National Committee for Implementing International Human Rights Treaties. In addition to preparing reports to the UN treaty committees, this body is supposed to also make remedial recommendations to the Presidium of the SPA, the Cabinet, law enforcement organs, and other related bodies. The two state reports submitted to the UN treaty committees by this new body seem much more thorough than the reports submitted a decade earlier.²⁶⁸

In December 2016, the DPRK ratified the CRPD. The DPRK followed up on this by inviting the Special Rapporteur on the rights of persons with disabilities to visit Pyongyang.

Following the visit to the DPRK by the Special Rapporteur on the rights of persons with disabilities in May 2017, DPRK officials indicated that they might be open to inviting other thematic mandate-holders to visit.²⁶⁹ Nevertheless, by the end of 2019, no such invitation has been forthcoming despite the outstanding requests for invitations by the Special Rapporteurs on the right to food, on freedom of religion or belief, and on the right to water and sanitation, and the WGEID.

Whether the post-COI policy of renewed—if piecemeal—cooperation with the UN human rights mechanisms will have an impact on the lives of North

267 “N. Korea approves U.N. protocol on child protection,” *Yonhap News*, November 10, 2014, <https://en.yna.co.kr/view/AEN20141112005600325>.

268 To the best of the author's knowledge, no outside human rights experts have had any contact with this newly created committee, so very little is known about it.

269 Catalina Devandas-Aguilar, “End of Mission Statement by the United Nations Special Rapporteur on the rights of persons with disabilities,” (speech, Taedonggang Diplomatic Club, Pyongyang, May 8, 2014). Her findings and recommendations were presented at the HRC in March 2018 and are described in Chapter V.

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Korean citizens remains to be seen. Needless to say, these steps will seem, to many, to be far too minimal relative to the gravity of the atrocities described by the COI.

The COI's report had an immediate and considerable impact on the international community's understanding and evaluation of the situation of human rights in the DPRK. Whether or not this will endure long enough to contribute to progress on the ground remains to be seen.

I. The United Nations Cycle Repeats in 2015, 2016, and 2017

Overwhelming Member State support of the COI's key findings and recommendations, including the finding of crimes against humanity and referring the situation in the DPRK to the ICC, were reiterated in UN resolutions during the 2015, 2016, 2017, and 2018 "cycles" at the UN.

Each cycle began with a resolution at the HRC in the spring, which overwhelmingly passed the EU-Japan resolution. In the autumn, the General Assembly, initially at the Third Committee and then at the plenary session, overwhelmingly passed the EU-Japan resolution that is similar to the resolution adopted at the HRC. Lastly, in December, the Security Council held a session devoted to a discussion on the human rights situation in the DPRK, where, as previously, China threatened to veto any resolution referring the DPRK to the ICC.

For example, in November 2015, the Third Committee of the General Assembly passed the EU-Japan resolution by a vote of 112 to 19, with 50 abstentions.²⁷⁰ On December 17, 2015, the

Plenary Session of the General Assembly passed the resolution 119 to 19, with 48 abstentions.²⁷¹

A week earlier, on December 10, 2015, the Security Council held its second discussion of the human rights situation in the DPRK. While the Security Council voted in 2014 to put the situation of human rights in the DPRK on its "standing agenda," this discussion can be challenged procedurally. Nine votes are needed for procedural decisions, and vetoes do not apply. When China called for a vote, it lost by nine to four, with two abstentions.

The Security Council was thus able to proceed and was briefed by the Under-Secretary General for Political Affairs and the High Commissioner for Human Rights. While Japan had replaced the ROK in the Security Council in 2015, the Council Chair invited the ROK ambassador to also address the Member States. As the Member State being discussed, the DPRK had the option to attend the Security Council to defend its actions, but once again boycotted the Security Council discussion. During its procedural objection, China had indicated that it remained determined to veto ICC referral if it were put forward in a resolution. Instead of proposing a resolution that will certainly be met with a veto, the Member States prefer to keep the issue alive and on the agenda of the Security Council.

The same process that took place in 2014 and 2015 was repeated in 2016, 2017, and 2018 with a few noteworthy changes and minor alterations. The first time the COI findings and recommendations were considered at the General Assembly, the DPRK responded vigorously. Outspoken objections by the DPRK continued into 2015 with DPRK diplomats even protesting NGO conferences on DPRK human

²⁷⁰ UN General Assembly, *Situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/C.3/70/L.35 (October 13, 2015).

²⁷¹ UN General Assembly, *Resolution adopted by the General Assembly on 17 December 2015*, UN Doc. A/RES/70/172 (February 25, 2016).

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rights violations.²⁷² Seeing that these brought little effect, DPRK diplomats resorted to boycotting UN proceedings where the DPRK's human rights situation were discussed.

Marzuki Darusman's last report to the HRC as the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea focused substantially on what he had earlier called international efforts on "the accountability track."²⁷³ The HRC adopted by consensus the Special Rapporteur's recommendation to create an independent experts' group that would—taking into account existing international law and prevailing State practices with regard to accountability—examine further steps that could be taken to achieve accountability for the severe violations now recognized by the overwhelming majority of Member States at the General Assembly.²⁷⁴

Ms. Sonja Biserko, a former member of the COI, and Ms. Sara Hossain, a barrister who practices before the Supreme Court of Bangladesh and was a member of the Geneva-based International Commission of Jurists, were appointed to be the members of the Group of Independent Experts on Accountability. Like other UN approaches to human rights in the DPRK, the Independent Experts sought meetings with DPRK representatives without success. The Report of the Independent Experts was appended to the 2017 Report to the HRC by the Special

Rapporteur on the situation of human rights in the Democratic People's Republic of Korea.²⁷⁵

The Independent Experts note that the DPRK acceded in 1984 to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. Their report outlined possible options for accountability in or for the DPRK, including—in addition to an ICC referral—the creation of an *ad hoc* international tribunal. Highlighting the difficulties caused by the DPRK's non-cooperation, the report recommends a series of more immediate measures, including: on-going consultation with such victims as are accessible; supporting relevant documentation by civil society groups, ensuring that such evidence gathering meet international norms and standards with regard to criminal procedure; and strengthening the ability of the Seoul OHCHR to gather and preserve information for use in any future accountability mechanism.

The HRC endorsed the later recommendation in 2017, and additional staff positions have been created in Geneva and Seoul. At the March 2018 session, the establishment of "the Accountability Project for the DPRK," a comprehensive information system on human rights violations in the DPRK, was announced.²⁷⁶

The "track of engagement" that was recommended by both the COI and the Special Rapporteur to run in parallel with accountability measures remains dependent on the DPRK's willingness to cooperate. The parameters of the DPRK's limited cooperation thus far have been described above. At the HRC

272 Cara Anna, "North Korea threatens strong response to DC rights meeting," *San Diego Union-Tribune*, February 16, 2015, <https://www.sandiegouniontribune.com/sdut-north-korea-threatens-strong-response-to-dc-2015feb16-story.html> and Hamish Macdonald, "North Korean FM denounces U.S. human rights conference," *NK News*, February 19, 2015, <https://www.nknews.org/2015/02/north-korean-fm-denounces-u-s-human-rights-conference/>.

273 A/HRC/31/70.

274 UN General Assembly, *Situation of human rights in the Democratic People's Republic of Korea—The Human Rights Council*, UN Doc. A/HRC/31/L.25 (March 21, 2016), ¶ 11 (a) - (b).

275 UN Human Rights Council, *Report of the group of independent experts on accountability—Note by the Secretariat*, UN Doc. A/HRC/34/66/Add.1 (February 24, 2014).

276 UN Deputy High Commissioner for Human Rights, *Oral Updates on DPRK and Eritrea* (speech, 37th session of the Human Rights Council, New York, March 14, 2018).

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in March 2018, the Deputy High Commissioner welcomed the recent thaw on the Korean peninsula and hoped that this easing of tensions “presages deeper dialogue on a wide range of serious human rights concerns,” calling for a “long term, principled protection approach that improves the situation for the people of the DPRK.”²⁷⁷

J. The International Human Rights Coalition Frays: 2018 and 2019

The vicissitudes of diplomacy over the DPRK’s nuclear weapons and missile programs appear to have frayed the international coalition at the UN to promote human rights in the DPRK.

1. The United States

During the preliminary consideration of the 2018 General Assembly resolution on North Korean human rights, the United States temporarily withdrew its sponsorship. This was most likely because of the resolution’s favorable reference to the ICC, which John Bolton, the U.S. National Security Advisor at the time, strongly opposed. The temporary withdrawal was eventually reversed, and the United States remained a co-sponsor. However, during the internal debates about sponsorship, the United States did not lobby for the support of other members of the Security Council to obtain the nine procedural votes necessary to hold a discussion on North Korean human rights at the Security Council.

In 2019, the United States and the DPRK failed to reach any agreement on denuclearization at the Hanoi summit and the subsequent working-level negotiations in Stockholm. In November and December, 2019, the EU was pressing for a North Korean human rights discussion at the Security

Council, as had been the case from 2014 through 2017, and the United States was set to chair the Security Council in December. The DPRK Ambassador to the UN publicly stated that any Security Council discussion of its human rights would be a “serious provocation.” Shortly thereafter, he added that the United States would “pay dearly” for “malicious words” about the DPRK human rights situation.²⁷⁸

Challenged by the DPRK to use its position as Chair of the Security Council to keep North Korean human rights off the agenda, the United States complied. As in 2018, despite the recommendation from the General Assembly, there was no Security Council discussion of the situation of human rights in the DPRK.

2. Japan

As detailed in Chapters V and VI, Japan has worked with the EU since 2005 as a primary co-sponsor of the resolutions on the DPRK at the HRC and the General Assembly. Recently, Japan announced that it would withdraw its sponsorship at the HRC, most likely because Japanese Prime Minister Abe wanted to join the summitries of 2018 and 2019.²⁷⁹ Moreover, Tokyo has not been able to achieve progress towards its goal of resolving the long-standing issue of the Japanese citizens abducted by the DPRK.

277 Ibid.

278 Foreign Ministry Spokesperson cited in *KCNA*, December 21, 2019.

279 Several of the DPRK’s missile tests traversed Japanese airspace or landed close to Japanese waters. However, the DPRK’s provocations were followed by multiple rounds of summit diplomacy in 2018 and 2019: three meetings with U.S. President Trump; three with Chinese President Xi; four with ROK President Moon Jae-in; and one with Russian President Putin. Not surprisingly, Japanese Prime Minister Abe thought it was not in Tokyo’s interest to be left out of this Northeast Asian summitry. Hence, a putative olive branch was offered to Pyongyang, although to no avail as of yet.

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3. Republic of Korea

From 2009, the ROK was an important co-sponsor of the North Korean human rights resolutions at the HRC and General Assembly, and the human rights discussions at the Security Council from 2014 through 2017. After the Democratic Party of Korea won the ROK presidential elections in 2017, it was widely expected that President Moon Jae-in would not include human rights concerns in inter-Korean discussions. The ROK's Foreign Minister at the time, Kang Kyung-wha, announced that the ROK would continue to support human rights efforts at the UN, but in late 2019, Pyongyang spurned Seoul's efforts to pursue engagement with the DPRK. Then, the Blue House overruled the Foreign Ministry and withdrew ROK support for the human rights resolution.

In the end, the withdrawal of ROK support did not affect the end result at the General Assembly. The resolution on North Korean human rights was adopted, again by consensus, on December 18, 2019.²⁸⁰ Nevertheless, the vacillations by the United States, Japan, and the ROK were deeply troubling to human rights advocates. Such actions run counter to the strong recommendation by the Special Rapporteur, human rights NGOs, and the former U.S. nuclear negotiators with North Korea, who argue that the opening of negotiations and engagement with the DPRK creates opportunities to advance human rights issues, not reasons to retreat from them.²⁸¹

280 UN General Assembly, *Situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/C.3/74/L.26 (October 31, 2019).

281 For example, see Victor Cha and Robert Gallucci, *Toward a New Policy and Strategy for North Korea* (Dallas: George W Bush Institute, 2016).

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CHAPTER VII. THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA'S SELF-PORTRAIT OF ITS HUMAN RIGHTS LANDSCAPE: DETAILED RESPONSES TO THE UNIVERSAL PERIODIC REVIEW

This chapter takes a closer look at the DPRK's post-COI response to and participation in the UPR, with an emphasis on the second and third cycles. The DPRK's response to the recommendations not only provides insight into how it approaches human rights. It also shows areas in which the international community could pursue further dialogue or engagement. Overall, the opportunities for human rights improvement appear small when compared to the recommendations regarding fundamental freedoms that the DPRK strongly rejects.

A. Democratic People's Republic of Korea Self-Portrait in Five Categories

The full list of all second-cycle UPR recommendations in all categories of acceptance, including references to the country that made each recommendation, was published by *38 North*.²⁸² The following is a brief summary of that list.²⁸³

1. Recommendations "Rejected for Slandering the Country"

A brief sample of the 83 recommendations rejected as "slander" shows that the DPRK strongly objected to the recommendations that address the most serious human rights issues and violations. These include recommendations that were also made by the COI and references to cooperation with the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea:

- allow abducted persons to return home, and provide information on the fate of abductees;
- eliminate "anti-state," "anti-people," and "guilt by association" crimes from the criminal codes;
- address prisoners of war and separated families;
- establish an independent judiciary and the separation of powers;
- allow human rights monitors to visit the country;
- cooperate with special procedures and the Special Rapporteur on human rights in the DPRK;
- end forced labor and political prison camps;
- eliminate the three-tiered *songbun* classification system; and
- ratify the Rome Statute, cooperate with the International Criminal Court, implement the recommendations of the COI, and end human rights violations that amount to crimes against humanity.

²⁸² "The DPRK's Responses to the Universal Periodic Review (A/HRC/27/10/Add.1)," *38 North*, October 2014, <https://www.38north.org/wp-content/uploads/2014/10/38N-UPR-Working-Group-DPRK-Response.pdf>.

²⁸³ It should be noted that a large number of the UPR recommendations are repetitive; similar recommendations are made by several different Member States. There are also anomalies and potential contradictions in the DPRK's response. Almost identical recommendations made by different states are included in more than one category of acceptance, and some recommendations are partially accepted from one Member State, but only "noted" or "not-supported" from other Member States.

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2. Recommendations Simply “Non-supported”

The ten non-supported recommendations include measures that, if undertaken, would constitute major improvements:

- allow the International Commission of the Red Cross (ICRC) to visit detention and “reform” facilities;
- end or declare a moratorium on public and non-public executions;
- publish statistics on number and modalities of executions;
- remove restrictions on ability of citizens to travel to the capital city of Pyongyang;
- remove restrictions on the right of citizens to leave and return to the DPRK;
- allow independent newspapers and media;
- allow citizens access to internet, international phone calls and foreign publications;
- reform legislation pertaining to freedom of conscience and belief;
- release persons detained for private economic activity;
- ratify the Convention Against Torture and the Convention on the Prevention of Forced Disappearances;
- join the ILO;
- establish an independent National Human Rights Institution;
- ensure that detained persons have access to adequate food;
- protect female prisoners from sexual violence; and
- end forced abortions.

3. Recommendations “Noted” for Future Consideration

The 58 “noted” recommendations of 2014 include a number of interesting possibilities that would likely be explored further in a human rights dialogue, in the event of a diplomatic resolution on the Korean peninsula:

- a number of recommendations to “consider the possibility of acceding to” or ratifying additional human rights treaties and protocols;
- a number of recommendations to establish a National Human Rights Institution (including several that explicitly mention the “Paris Principles”);²⁸⁴
- a number of recommendations to further cooperate with a variety of OHCHR Special Procedures;
- a number of recommendations for a moratorium on the death penalty;
- a number of recommendations regarding torture and the treatment of detainees;
- a number of recommendations on violence against women, domestic rape and forced abortions;
- recommendations for greater citizen access to information and social media; and
- ensuring non-discriminatory access to food, paying special attention to marginal groups.

284 The Paris Principles are a set of standards that provide these government appointed bodies with a necessary measure of independence.

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4. Recommendations

“Partially Accepted”

The four “partially accepted” recommendations are:

- ratify additional international human rights conventions (meaning the ratification of some, not all, conventions);
- submit treaty committee reports more promptly;²⁸⁵
- align legislation and/or criminal justice system to treaty obligations;²⁸⁶ and
- cooperate with UN human rights mechanisms and the OHCHR.²⁸⁷

5. Recommendations “Supported”

There were 113 recommendations that “enjoy[ed] the support” of the DPRK. Many are of little or no consequence. Some are oxymoronic, such as “Further strengthen the independence of the judiciary.” Some seem rather strange, such as “Share with other countries North Korea’s experience in disaster risk management.”

A number of the supported recommendations had been put forward by other authoritarian Member States that typically seek to thwart UN human rights efforts. During the UPR, these Member States offer complimentary recommendations to each other to counter recommendations that are explicitly or implicitly critical. For example, such laudatory recommendations to the DPRK urged that it “continue to”:

- intensify efforts to improve the well-being of the population;
- continue the fight against poverty;
- continue dialogue and cooperation with the UN and international organizations to address the socio-economic needs of the population;
- continue efforts to empower women to improve gender equality; and
- continue to implement legislation in compliance with the conventions on the rights of women, children, and persons with disabilities.

Many supported recommendations, however, are more deliberate and specific:

- take more effective measures to increase food production;
- increase access to food, health care and education throughout the country, and particularly in rural areas;
- devote greater attention to sanitation facilities and housing construction in rural areas;
- continue efforts to minimize gap between urban and rural areas;
- provide adequate cultural facilities to rural populations;
- take practical measures to provide safer working conditions; and
- strengthen efforts to ensure women’s representation in influential posts in national and regional government.

285 See Chapter III.

286 As noted in Chapter III, the DPRK claims that it is doing some of this, even if on a very partial and restricted basis.

287 Of course, with this revised post-COI approach to the UPR, the DPRK can claim to be doing some of this, but again only on a partial and restricted basis.

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A number of supported recommendations might offer an opening for human rights cooperation:

- strengthen efforts to disseminate human rights culture;
- introduce new methodologies and step up efforts to raise human rights awareness;
- promote human rights education and training for public officials;
- provide law enforcement officials with information on international human rights treaties;
- familiarize the general public with the international human rights standards and instruments which the DPRK has ratified;
- engage with the OHCHR;
- engage in dialogue and cooperation with UN human rights mechanisms; and
- reach the neediest with humanitarian aid.

Lastly, there are a number of “supported” recommendations about which one would like to ask the DPRK authorities what they could possibly mean by their “support.” These include:

- allow religious believers to exercise their religion independently;
- guarantee freedom of thought, conscience and religion to all individuals by ensuring basic rights to freedom of assembly and association;
- enshrine fully the right to fair trial and due process guarantees;
- take practical measures to ensure citizen's rights to free access of information; and
- take steps to facilitate easy travel of citizens abroad.

B. An Evaluation of the Universal Periodic Review's Second Cycle

Sorting through this summary of categorizations, it seems that there may be an opening—however limited—for human rights education and training. Certainly, in this mélange of recommendations, there is a lot to discuss, should a human rights dialogue with the DPRK ever take place. There may also be a possibility for the establishment of a national human rights institution of some sort, recommended by several states and which the DPRK noted for a future decision.

However, it is equally clear that the most serious concerns of the international community regarding human rights in the DPRK are off the table. The core phenomena of repression, which, to date, the regime apparently considers necessary to maintain Kim family rule, remains entirely safeguarded.

Some will dismiss the “supported” UPR recommendations as tactical concessions that are essentially meaningless. Others will contend that a period of time during which more open human rights discourse, discussion, and dialogue are possible is useful or even necessary before more fundamental problems can be directly addressed.

C. Implementing the “Supported” and “Partially Accepted” Recommendations: A Detailed Survey

Accepting recommendations is only the penultimate goal of the UPR. The ultimate goal is that Member States will implement the recommendations that they accepted and explicitly supported. How would

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the DPRK implement the recommendations that it has agreed to support.²⁸⁸

In the area of accepted recommendations regarding “cooperation with UN human rights mechanisms,” some forms of implementation can be easily observed and have been described in these pages. For example, the DPRK has partially or minimally implemented a number of recommendations to ratify additional named human rights conventions: notably the CRPD, as described above in Chapter IV.²⁸⁹ Similarly, the DPRK has partially implemented accepted recommendations to submit its reports to the relevant treaty bodies: notably the treaty committees for the CEDAW and CRC, as described in Chapter IV. Additionally, in the area of international cooperation, the DPRK minimally implemented the “partially accepted” recommendation to cooperate with the mechanisms of the OHCHR, inviting, as described in Chapter V, the Special Rapporteur on Persons with Disabilities to Pyongyang.

The DPRK also updated laws to better align them with international standards, as was described in Chapters II and IV. Aligning national legislation and the criminal justice system with international standards was one of the “partially accepted” UPR recommendations, which the DPRK partially implemented. For example, in 2010 a Law on the Promotion and Protection of the Rights of Women was passed, as was a Law on Protecting the Rights of Children. In January 2011, the Law on General Secondary Education and, in September 2011, an

Ordinance on the Enforcement of the Universal 12 Year Compulsory Education was passed. Similarly, the Law on the Protection of the Rights of Persons With Disabilities was amended in November 2013 to extend compulsory education to children with disabilities.

Furthermore, there was some institutional reform. In 2010, the Korean Sports Association for Persons with Disabilities was formed; the Korean Arts Association for Persons With Disabilities began two years later in 2012. Two rehabilitation centers for children with disabilities were established in 2012 and 2013, both in Pyongyang. An Association for Supporting Children was formed in 2013 to help realize government policy on enhancing children’s access to health facilities.

There is limited information on whether such changes have meaningfully improved the lives of ordinary North Koreans. The only available data on implementation is found in a 2017 report by NKDB, *The UN Universal Periodic Review and the DPRK: Monitoring North Korea’s Implementation of Its Recommendations*, which is also cited in Chapter IV. This report addresses the eighty-one “accepted” and six “partially accepted” recommendations from the 2009 first cycle of the UPR that were presented to the UN in 2014.²⁹⁰

Taking into account the claims made by the DPRK about its implementation of these 87 recommendations, NKDB interviewed 100 North Korean refugees.²⁹¹ The interviewees had left the DPRK between 2010 and 2014, and arrived in the ROK after 2014. The report cross-checked the

288 Some of the DPRK’s claims regarding implementation border on the perverse. It states that the positive statements that it made during the UPR for Sudan, Syria, Myanmar, Iran, Angola, Kyrgyzstan, Laos, and other states can be regarded as engaging in dialogue and cooperation with human rights mechanisms. These are the same states that, in turn, compliment the DPRK’s human rights record. The DPRK also counts as human rights dialogue and cooperation the screeds published against the COI, as described in Chapter VI.

289 Although, as noted, the DPRK rejected recommendations to ratify the ILO conventions or the conventions prohibiting the most severe violations such as torture, arbitrary detention, and enforced disappearances.

290 The circumstances of this four-year delay are described in Chapter IV. The 87 recommendations were clustered into thematic categories including: international cooperation, the rights of specific groups, human rights education and public awareness, civil and political rights, and economic, social and cultural rights.

291 For DPRK claims, see UN Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21—Democratic People’s Republic of Korea*, UN Doc. A/HRC/WG.6/19/PRK/1 (January 30, 2014), 4.

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DPRK's claims with the experience and knowledge of these former North Korean residents.²⁹² The NKDB report can be summarized as follows.

As noted in Chapter IV, there is no evidence of meaningful improvement in women's rights. Notwithstanding a new law passed in 2010, some 30 percent of respondents had knowledge of women compelled to marry men not of their choosing or against their free will; 36 percent claimed knowledge of forced divorce, with female Party members facing expulsion if she did not divorce a husband who was expelled from the Party; and no interviewees reported any implementation of the six UPR recommendations to adopt specific measures to combat domestic or sexual violence. The 2010 law does not define "domestic violence," "sexual violence," or "harassment." It does not include any measures for a wife to seek legal remedy, as violence within the family is not seen as a crime punishable by law.

With regard to children's rights, NKDB found mixed results on the implementation of recommendations for specific measures to improve children's health. Article 5 of the new 2010 Law on the Protection of the Rights of Children stipulates free medical care for children. Reportedly, 76 percent of interviewees received free vaccinations for children, but they had to pay for other services. A new children's hospital in Pyongyang that opened in 2013 was highly regarded by those who knew of it. However, only 15 percent knew of pediatric hospitals and thought that local clinics did not provide free care to children.

In terms of children's education, many interviewees cited improvement in the quality and quantity of school textbooks after Kim Jong-un came to power, although many noted that education was free in name

only, as parents had to make many contributions and fees.²⁹³ Testimonies cited songbun-based discrimination regarding access to university education as well as complaints that richer parents could pay to exempt their children from the child labor mobilization campaigns that were organized through the schools for farming and construction work.

The DPRK had accepted six UPR recommendations on improving the right to health. In addition to the testimony on adequate levels of free vaccination, the refugees indicated that maternity leave was granted without discrimination, and that access to health facilities in Pyongyang had improved. They also said, however, that health care was not free, with nearly 90 percent reporting that they had to bribe doctors and medical workers.

The DPRK had accepted seven recommendations on economic and social rights, mostly of the "continue to improve" variety noted above. The testimonies recorded by NKDB noted that farmers were excited by the 6.28 (2012) measures, which allowed farmers to keep more of their crop to sell in the markets. Unfortunately, 34 percent of survey participants experienced food shortages between 2010 and 2014 and 60 percent responded that they witnessed others who experienced food shortages. Numerous testimonies mentioned that available public food distribution went to Party cadre and police, not to "vulnerable groups."

Of the four accepted recommendations on civil and political rights—including two on freedom of movement and religious belief—not a single interviewee thought that there had been any improvement. Many said that these rights were denied in their entirety.

292 The interviewed survey participants were broken down by categories of residence: rural (29), urban (67), and Pyongyang (4), and by province of residence.

293 Interestingly, the refugee interviewee testimonies expressed sympathy for the teachers, who have to stay in class with their students and, thus, cannot engage in market or commercial activity to support their own families.

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There were three accepted recommendations regarding detention policy. The DPRK's 2014 report stated that all persons deprived of their liberty were treated humanely. However, none of the refugee interviewees thought that the DPRK courts were independent. Many thought that the court system was corrupt, with the police and judges accepting bribes in exchange for leniency. Of the interviewees, 75 percent reported that the police did not use arrest warrants, as required by the Criminal Procedures Code, and over 80 percent thought that torture and beating were commonplace. Only 15 percent knew of the "right to an attorney" and others thought that legal counsel was part of the prosecution. Many thought that secret executions had replaced public executions; 74 percent experienced, witnessed, or knew about injury and illness from forced labor in prisons; and almost 60 percent had heard about deaths in detention from forced labor. Strip searches, vaginal searches, and naked bending-over exercises were thought to be commonly practiced on women prisoners. Almost 40 percent had experienced, witnessed, or heard about sexual assault against women prisoners.

On the other hand, there was testimony that the Capitol People's Security Department in Pyongyang teaches officers against beating people, so as not to make enemies. There was also testimony that officers from the Ministry of People's Security—the regular police—had been demoted for beating detainees and that the level of beatings had decreased. However, these testimonies indicated that police practices had instead switched to sleep deprivation and forcing prisoners to hold their posture for extended periods.

Lastly, the DPRK had accepted four recommendations on human rights education, training, and public awareness. The 2014 report to the UPR claimed that human rights education was provided at judicial officers' training centers, and that there were TV broadcasts on human rights. Over 90 percent of the refugees said they were unaware of any human rights

education or awareness. Several interviewees had seen the words "human rights" in newspapers, but thought that human rights was something associated with the Great Leader. Several others had heard that human rights were granted by the Party. One person had heard of the DPRK Association for the Study of Human Rights.

D. The Third Cycle of the Universal Periodic Review (2019)

Just before the third cycle of the UPR of the DPRK, NKDB published a comparable "second cycle" implementation report. The report was based on interviews with recently arrived North Korean refugees in the ROK who had left the DPRK between 2014 and 2018.²⁹⁴ It concluded that "while major human rights violations continued to take place, including the existence of prison camps, the DPRK government is making minor changes in response to the international community's demands ... as seen [in] the rights of groups such as persons with disabilities, children and women."²⁹⁵

This report notes that the regime complied with some recommendations by altering national legislation. Regarding labor and women's rights, for example, the period of maternity leave was extended.²⁹⁶ However, it also details very sparse implementation of improvements throughout the countryside. 80 percent of interviewees saw no improvement in women's rights between 2014 and 2018. Interviewees were still unaware of the 2010 law on women's rights, and most were highly critical of the Women's Union for compelling labor mobilization and organizing self-criticism sessions, which women reported having

294 Hannah Song, *A Second Chance: North Korea's Implementation of Its Recommendations During the Second Universal Periodic Review* (Seoul: Database Center for North Korean Human Rights, 2019).

295 Ibid., 158.

296 Ibid., 51.

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to pay bribes to avoid. On children's rights, interviewees attributed additional parks and playgrounds to Kim Jong-un, but stated that other improvements in the schools were attributed to cash payments made to the schools by parents. There were complaints about the labor mobilization of school children, which took away from time in class.

Interviewees posited that there was no reality to "supported" recommendations regarding freedom of religion, expression, or association, even for the formation of something like a "dog breeding club."²⁹⁷ Supported recommendations for the ease of travel were only implemented to the extent that residents could pay bribes to receive travel permissions. The same applied to accepted recommendations to improve the judicial system. Violations could be ignored or punishments mitigated through the payment of bribes.

This NKDB report also posits that "[t]he inflow of information into North Korea has opened the North Korean people's eyes to their lack of freedoms ... [and that] North Korea is no longer a country with obedient followers of the Juche ideology." While measurable improvements are very modest, "it is important that these areas continue to improve so that a ripple effect can be seen to other areas of society."²⁹⁸

The third cycle of the UPR Review for the DPRK took place in May 2019. However, the process was opaquely reconfigured. Rather than the five categories of acceptance and rejection used in the first and second cycles—and discussed in the "self-portrait" outlined above—there are now three categories of formal response to recommendations. Accepted and partially accepted recommendations are now collapsed into a much longer list of 132 "supported" recommendations which, it is claimed, are being

implemented "in conformity with the prevailing reality of the DPRK with concrete follow-up measures to be entailed in the future."²⁹⁹

56 non-supported recommendations were put in the category of "noted," which is now defined as "resolutions that cannot be implemented easily in the near future, [but] that correspond to the international trend for promotion and protection of human rights ... [A]nd full implementation ... will be considered as the conditions and environment are provided in the future."³⁰⁰

The DPRK did not accept 11 recommendations "with no room for further consideration" as "politically motivated" and not compatible with its national sovereignty.³⁰¹ An additional 63 recommendations were dismissed orally when first presented, and hence were not even considered in Pyongyang because "these recommendations severely distort the human rights situation ... based on false information fabricated by the hostile forces [with] ulterior political purpose."³⁰²

The formal presentation of third cycle recommendations does not provide the clear self-portrait of the DPRK's human rights posture that was conveyed by the first two cycles. The DPRK continued to reject recommendations that address the most serious violations. Nonetheless, there are "supported" recommendations that could lead to considerable changes if they are meaningfully implemented.

For example, the DPRK "supported" a recommendation from Ireland that reads as follows:

297 Ibid., 95.

298 Ibid., 158-159.

299 UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Democratic People's Republic of Korea—Addendum*, UN Doc. A/HRC/42/10/Add.1 (August 28, 2019), a, ¶ 5.

300 Ibid., 6.

301 Ibid., 7.

302 Ibid., 3.

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*Grant immediate, free and unimpeded access to international humanitarian organizations to provide assistance to the most vulnerable groups, including prisoners.*³⁰³

This almost certainly does not pertain to prisoners in the *kwan-li-so* prison camps administered by the Ministry of State Security, whose existence the regime continues to deny. The mostly life-time prisoners in these extra-judicial forced labor facilities are political prisoners by definition. Under the language of the supported recommendation, however, the provision would apply to the *kyo-hwa-so* prisons and camps administered by the Ministry of People's Security: forced labor facilities that imprison persons convicted of criminal offenses, but also individuals imprisoned for violating articles of the DPRK Criminal Code that are clearly political offenses by international standards.³⁰⁴

The UN has long regarded persons in detention facilities, along with women, children and persons with disabilities, as “vulnerable groups.” During the previous rounds of the UPR, the DPRK has accepted recommendations about “vulnerable groups” without explicitly including “prisoners.” This new DPRK UPR acceptance could have real-life consequences for North Koreans in the future. Satellite photographs demonstrate that Typhoon Lionrock in 2016 flooded Jongno-ri *kyo-hwa-so* prison No. 12, south of Hoeryong City, where there are estimated to be 4,000 to 5,000 prisoners, including hundreds or more women forcibly repatriated from China.

303 Recommendation 126.58, UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Democratic People's Republic of Korea*, UN Doc. A/HRC/42/10 (June 25, 2019).

304 The *kyo-hwa-so* prisons are also commonly called “political prison camps.” While noting that there are individuals imprisoned in these facilities for political offenses, the UN COI refers to these facilities as the “regular prison system.” For detailed information on political prisoners in *kyo-hwa-so* prisons, see David Hawk and Amanda Mortwedt Oh, *The Parallel Gulag: North Korea's “An-jeon-bu” Prison Camps* (Washington, D.C.: Committee for Human Rights in North Korea, 2017).

Humanitarian agencies provided aid to Hoeryong but did not request access to Prison No. 12.³⁰⁵

This issue, as with the DPRK acceptance in principle to UN-assisted human rights training as part of the overall international assistance program in the DPRK, depends on engagement with the DPRK overall. As previously noted, the UN humanitarian effort is severely under-funded, owing in part to substantial humanitarian needs across the globe and donor fatigue with the DPRK in particular. With respect to the United States in particular, humanitarian aid to the DPRK has surged during periods of prolonged negotiations and engagement with the DPRK, and ended when those negotiations broke down.

E. Conclusion

The UPR provides a valuable framework for assessing and monitoring the DPRK's human rights policy and practice. As noted in Chapter V, the DPRK Foreign Ministry has agreed in principle for a UN technical cooperation effort to train DPRK officials on the internal monitoring of implementing accepted recommendations from the UPR. Should this ever be instituted and operationalized, a cross-referencing of internal assessments with external reports, such as the reports compiled by NKDB, would mark a positive step in human rights promotion and protection in the DPRK.

This report concludes with a brief assessment of the national and international contexts affecting the well-being and human rights of the North Korean citizenry, examining the question of whether and

305 David Hawk, *Hidden Gulag IV: Gender Repression and Prisoner Disappearances* (Washington, D.C.: Committee for Human Rights in North Korea, 2015), 5; Greg Scarlatoiu and Joseph S. Bermudez Jr., *North Korea: Flooding at Kyo-hwa-so No. 12, Jŏngŏ-ri* (Washington, D.C.: Committee for Human Rights in North Korea, 2016); and Cohen, “UN Humanitarian Actors and North Korea's Prison Camps,” 1-25.

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how the geopolitical decisions and UN human rights mechanisms evaluated in this report might meaningfully intersect with the real lives of ordinary North Koreans.

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CHAPTER VIII. LOOKING TO THE FUTURE: “REFORM” WITH OR WITHOUT “OPENING,” AND THE UN ROADMAPS FOR A “NORMAL” DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA

The developments described in this report have taken place mostly in Geneva and New York. However, during the timeframe considered in these pages, there were considerable changes in the DPRK economy and society, and, in the last three years, considerable developments in the DPRK’s defense and foreign policies. This concluding chapter briefly outlines some of those changes and examines how those changes relate to the human rights considerations reviewed in this report.

A. Changes in the Democratic People’s Republic of Korea’s Economy and Society

1. Marketization from Below³⁰⁶

When the DPRK economy experienced a catastrophic collapse in the 1990s, so did the PDS, which, until then, had provided most North Koreans with nearly all of their food and clothing. With the PDS no longer operating outside of Pyongyang, unauthorized markets began to appear, initially for food products and subsequently for a variety of goods and services. Through the 1990s and early 2000s, Kim Jong-il

periodically attempted, without success, to suppress these markets.³⁰⁷ Kim Jong-un ended these attempts to throttle the emerging markets, which now thrive across the DPRK. Today, many North Koreans get much of their food, clothing, and consumer goods from markets, not the PDS. The “centrally planned,” “command,” or “state socialist” economy has not been totally replaced, but important sections of the economy have now been marketized.

2. Marketizing Reforms from Above

While Kim Jong-il had an aversion to even using the Korean word for “reform,” Kim Jong-un peeled away a layer of the centrally-planned economy, *de facto* de-collectivizing agricultural production to a large degree by reducing the agricultural work force to almost the unit of a family farm and allowing farmers to sell a much larger percentage of their crops to markets. Predictably, food production increased. Kim Jong-il also gave economic enterprises, including state-owned enterprises and those embedded in government ministries and agencies, the latitude to engage in profit-making activity, including contracting with Chinese business firms.³⁰⁸

3. Monetization

The DPRK used to be a substantially de-monetized society. Jobs and housing were provided by government assignment, education and healthcare were provided free of charge, and food and clothing were distributed through the PDS. Elites in Pyongyang had currency and access to special department stores. The local citizenry also had

306 This term was coined by Haggard and Noland, *Famine in North Korea: Markets, Aid, and Reform*. For other descriptions of this phenomena, see Hazel Smith, *North Korea: Markets and Military Rule* (Cambridge: Cambridge University Press, 2015) and Daniel Tudor and James Pearson, *North Korea Confidential: Private Markets, Fashion Trends, Prison Camps, Dissenters, and Defectors* (North Clarendon: Tuttle Publishing, 2015).

307 There is the possible exception of several “special investment zones” and limited mining operations by Chinese firms, both of which partially operated by market principles.

308 Even DPRK prisons were involved in this activity, with women’s prison work units assembling wigs and false eyelashes. The former women prisoners interviewed by the author did not know where the raw hair came from or where the semi-finished hairpieces and false eyelashes went, but they assumed that they were sent to China.

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some currency, but often not much beyond amounts to purchase everyday goods. Initially, the markets that appeared in the 1990s featured bartering for food. This was soon superseded by the use of currency as a medium of exchange. Kim Jong-il tried several schemes, including currency revaluations, to confiscate the currency then in circulation. Kim Jong-un, however, allowed the monetization to continue. As more goods were imported from and exported to China, markets started dealing in Chinese *renminbi* and even U.S. dollars along with North Korean *won*. The emergence of a cash-based economy created enormous opportunities for corruption, which distorts the social fabric, but also allows citizens to “buy” exemption from punishment for enterprise and activities that remain illegal under DPRK law.

3. Beginnings of a New Middle Class

Increasing economic activity associated with marketization and monetization have started to raise income levels and standards of living for parts of the citizenry, although a large part of the population remains desperately poor or malnourished. The rise in living standards can be attributed to economic productivity as well as KWP membership. Numerous visitors have remarked on the appearance of a new middle class in the cities. North Koreans have coined a term, *Donju*, for this group of *nouveau riche*.

4. Mobile Phones and Information Technology

Orascom, a large Egyptian telecommunications company, was involved in establishing a mobile phone service for the now several million North Koreans who possess “semi-smart” phones. Many of these phones can connect to a nationwide intranet, but not to the worldwide web or global internet. These phones cannot make international phone calls. Nonetheless, more North Koreans can talk to each other, with minimal police and Party surveillance—as is also the

case in many marketplaces, where the police remain on the periphery of the markets.

Computers are also becoming increasingly common in the DPRK. Most laptops and other personal devices come with built-in USB ports. The small size of storage devices, including USB drives and SD cards, allows for more and more information to circulate. The ROK is one of the world's most “wired” countries, and the amount of digitalized information in the Korean language is phenomenal. Young North Koreans will surely get their hands on more and more digitalized information about the outside world, notwithstanding the possible risk.

5. A New Mentality?

For decades, North Koreans were taught that “south Koreans” were poor, oppressed victims of exploitation by the U.S. imperialist occupiers, who succeeded the Japanese colonialists. North Koreans are now very much aware that South Korea is a rich country with a vibrant culture. The DPRK sought to export *juche* ideology for decades, but South Korea's *hallyu* (Korean wave) movies, TV-dramas and shows, and ‘K-pop’ music and videos inundated northeast and southeast Asia.

South Korean media products now saturate the DPRK as well.³⁰⁹ Many North Koreans may also know that the South Korean citizenry, through massive candle-light marches followed by an impeachment process at the National Assembly, removed an elected president from office. North Korean participants and visitors marveled at the South Korea they saw at the 2018 PyeongChang Winter Olympics.

309 Jieun Baek, *North Korea's Hidden Revolution: How the Information Underground is Transforming a Closed Society* (New Haven: Yale University Press, 2016).

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Perhaps these changes can mesh with the DPRK's modest tactical openings in the area of human rights, as detailed in this report. Such openings are quite constricted to begin with, and implementation is partial at best. Nevertheless, it is important to note that the changes outlined above were accompanied by changes in Kim's defense and foreign policy as well as alterations in the DPRK's global situation.

B. Kim Jong-un's Leadership Strategy

Having consolidated his domestic power base, Kim Jong-un raced in 2016 and 2017 to achieve the DPRK's long-sought goal of acquiring nuclear weapons and the means to deliver them across the globe. Kim oversaw a dramatic series of nuclear detonations and missile launches, which were resolutely opposed by the DPRK's neighboring states. Each missile launch and nuclear test was met with additional sanctions by the UN Security Council and stricter sanctions enforcement. These were bolstered by unilateral sanctions from Japan, the ROK, and the United States. The DPRK obtained nuclear weapons and intercontinental ballistic missiles, but it was faced with a substantial embargo on critical foreign exchange-earning exports (minerals, textiles, and seafood) and imports (most importantly, oil and refined oil products). If sustained, these sanctions will bring considerable pain to the DPRK economy.

In January 2018, Kim Jong-un announced that the DPRK had achieved a deliverable nuclear deterrent.³¹⁰ As a result, he declared his intent to focus on economic development and the normalization of the DPRK's diplomatic and economic relationships

³¹⁰ Largely because of the uncertainty that the DPRK had a reliable targeting and "re-entry vehicle" for its nuclear-tipped intercontinental ballistic missiles, some observers posit that Kim Jong-un deliberately stopped one or more tests short of having a nuclear weapon capable of reliably targeting cities on the east coast of the United States. Nevertheless, Kim declared that the DPRK now possessed a treasured and cherished nuclear deterrent and would, therefore, concentrate on economic development.

through energetic diplomacy, unilateral moratoriums in testing, declarations of support for vaguely defined denuclearization, and, perhaps in the near future, reductions in nuclear and missile production. The provocations and bellicose rhetoric of 2016 and 2017 were replaced by a series of headline-grabbing and prestige-enhancing summit meetings with the ROK, China, and, most spectacularly, the United States.

The expectation is that tangible steps toward denuclearization will lead to looser sanctions enforcement, increased exemptions on sanctions, and even perhaps the lifting of sanctions to a degree that would allow spigots of bilateral and multilateral aid, trade, and investment to open up. If this happens, the DPRK, with its mineral wealth and educated but low wage labor force, could become another fast-growing East Asian economy, or at least achieve some of Kim's promised "belt-loosening."

C. What Happens If Kim Jong-un's "Normalization Diplomacy" Succeeds?

It is certainly possible that negotiations over the DPRK's nuclear weapons and missile programs will break down or reach a complete stalemate. Nevertheless, Kim Jong-un has sought to de-escalate tensions with the United States since 2018. He has substantially improved ties with China, seeking to restore trade with and investment from China and to deepen the rather shallow economic relationship with Russia. Economic, political, and social ties with the ROK have also expanded, even if on a highly conditional basis.³¹¹ The DPRK wants an end to "hostile relations" with the United States and, perhaps, Japan in the future. If a denuclearization or arms control agreement can be negotiated, the DPRK may have some interest in opening discussions with

³¹¹ For the most part, the DPRK only engages the ROK if and when the U.S. is cooperating sufficiently with the DPRK. Otherwise, the DPRK challenges the ROK to "break" with the U.S.

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the International Monetary Fund, World Bank, and the Asian Development Banks, although their much more immediate interest is in easing or ending the Security Council-imposed sanctions.

Kim's normalization diplomacy can be readily understood in the context of recent changes in North Korean society, as outlined above. How can Kim's normalization diplomacy be interpreted in the context of the norms and standards of international human rights?

The DPRK's normalization diplomacy begs the question: can the DPRK be a "normal" country? Even with a generous definition of what can be considered "normal" practice as a UN Member State, perhaps not. While the DPRK opens itself to summitry, calls for investment from the ROK, and hopes for expanded economic interaction with the outside world, the DPRK still remains a tightly controlled, closed society.

Some close observers of the DPRK have suggested that what Kim Jong-un aspires to is a model of economic modernization that can be termed "reform without opening"—"*perestroika* without *glasnost*." This would seek controlled and managed foreign input into marketization from "above" and "below." It would welcome foreign trade, aid, and investment. It would seek economic integration with the vibrant economies of northeast Asia, and, perhaps, also with regional and global economic structures and institutions.

However, the Kim family regime would retain absolute political control, and there would be no opening of society. The citizens of the DPRK would not be allowed the freedom of movement, including the ability to obtain a passport and travel abroad. Citizens would not be allowed to form or join independent groups or associations. Likewise, there is little reason to believe that the DPRK will allow access to independent newspapers, magazines, radio, TV, and social media, or allow free communication

with foreigners. Foreign tourism would be sought, but North Korean contact with tourists would be channeled through the KWP. There would be no latitude for freedom of belief or religious practice.

This scenario of "reform without opening" is consistent with observed patterns in the DPRK's policies and practices toward human rights, including its interaction with UN human rights mechanisms. An assessment of the DPRK's post-COI approach to the UPR leads to the conclusion that, as of late 2019, the DPRK has calculated that it can accommodate some women's, children's, and disability rights issues, but it will not cooperate, tolerate, or respect civil, political, economic, and social rights as accepted by an overwhelming majority of Member States at the UN.

D. Will Engagement with the Democratic People's Republic of Korea Require or Result in Human Rights Improvement?

This report has tracked the ability and effectiveness of the UN mechanisms to achieve international standards, providing potential avenues of remedy and redress for persons denied their human rights and fundamental freedoms. It remains to be seen if Kim's normalization diplomacy will succeed, and if the DPRK can open its economy without at least some opening of its society. It is also unclear whether the DPRK's neighbors and negotiating partners will address human rights concerns in their long-term engagement with the DPRK.

Since 2018, the international context for the DPRK has changed dramatically. In the 1990s and the first fifteen years of the 21st century, negotiations with the DPRK were aimed at preventing the DPRK from acquiring nuclear weapons, and multilateral sanctions targeted only such materials as contributed to the DPRK's nuclear and intercontinental ballistic missile programs. During those negotiations, humanitarian

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aid was a key element, but human rights concerns were not raised.³¹²

The current situation is different. The DPRK now proudly boasts of its status as a “dignified” nuclear weapons state. The multilateral sanctions, imposed and enforced against the DPRK during its 2016–2017 race to complete its nuclear and missile programs, are almost economy-wide bans on imports, exports, and investments.

Denuclearization, if it occurs at all, will require a new relationship with all of the DPRK’s neighbors and adversaries. If Kim’s security concerns are addressed, it is not entirely inconceivable that the DPRK would address the concerns of the international community, particularly as reflected and posited at the UN. Denuclearization of the Korean peninsula will be a long-term prospect.³¹³ Diplomatic, political, and economic normalization between the DPRK and other key governments whose interests intersect in Northeast Asia will also be a multi-year process, as will be the economic revitalization of the DPRK. Similarly, the improvement of the human rights situation in the DPRK, should it occur, will require sustained effort and attention.³¹⁴

If there is no discernible progress in the denuclearization process, can engagement with the DPRK be sustainable?³¹⁵ The same question applies to the situation of human rights in the DPRK. The United States, the ROK, and Japan are electoral democracies, and many of their citizens are sensitive to human rights concerns.³¹⁶ How long can engagement with the DPRK be sustained if there are no discernible improvements in human rights? Can the human rights resolutions at the General Assembly be simply ignored altogether?

E. The United Nations’ Roadmap for the Democratic People’s Republic of Korea’s “Normalization”

If the DPRK’s normalization of relations is to proceed, it is reasonable to expect that the DPRK will need to move in the direction of a more “normal” country. The long interactions between the DPRK and the UN reviewed in these pages has produced a roadmap for what a “normal” DPRK would look like. Virtually all of the UN mechanisms to promote and protect human rights give rise to recommendations which, if implemented, would improve the situation in line with contemporary international norms and standards of human rights.

The overlapping recommendations to the DPRK from the various UN committees and organs over a period of more than 20 years are remarkably consistent. It

312 Human rights concerns may have been raised if the multilateral Six Party Talks had reached Phase III or if the bilateral Leap Day Agreement had not collapsed within weeks.

313 If denuclearization happens at all, the DPRK will likely prolong the process—particularly the negotiated transfer of its nuclear weapons arsenal—across several U.S., ROK, and Japanese administrations to ensure that the policies it judges as “non-hostile” will continue over the course of successive administrations. For example, the DPRK will not have confidence in its security until it is minimally demonstrable that a U.S. Congress will not again do what the newly-elected Republican-dominated 1994 Congress did to the Clinton administration’s Agreed Framework, or that President Joseph Biden will not do to the Singapore Agreement what President Trump did to the Joint Comprehensive Plan of Action (JCPOA) with Iran, or that a ROK president will not repeat what the 2008 election of Lee Myung-Bak in the ROK did to the huge aid and investments pledges made to the DPRK in 2007 by Lee’s predecessor, President Roh Moo-Hyun.

314 Such improvements, should they occur, might well be the “in our style” practice of the DPRK, as noted in Chapter III.

315 Since 1991, neither the policies of negotiation and engagement nor the policies of “strategic patience” or “maximum pressure” have been sustained long enough to accomplish their objectives, leaving their respective proponents to argue over the reasons for their failure.

316 In particular, the U.S. Congress seems to have written itself into political settlements with the DPRK. There are also Congressionally-imposed human rights sanctions on the DPRK and its officials. These are not the sanctions that most affect the DPRK economy. However, if the negotiations initiated by the Trump administration do not collapse, the DPRK will likely insist at some point that such Congressional measures be rescinded to demonstrate a new, non-hostile, U.S. relationship with the DPRK.

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matters little whether the recommendations are those of the appointed experts who serve in an individual capacity on the treaty committees; the special rapporteurs, independent experts, and working group members who are appointed by the presidents of the HRC; the governments that participate in the UPR; or the governments that vote for the resolutions on the DPRK at the HRC and the General Assembly.

The DPRK claims that human rights is a “racket” that has been “kicked-up” by its geopolitical adversaries, but this claim is not supported by facts. Virtually all of these recommendations come from expert committees or political organs that reflect the wide variety of political systems of the various UN Member States across all geographic regions of the world. The majority of experts who serve in the UN human rights mechanisms and the majority of UN Member States that vote on DPRK human rights resolutions are not involved in the political conflict on the Korean Peninsula.

What the recommendations to the DPRK represent is the global understanding of the standards for governments in the modern world. Samples of these recommendations have been cited throughout these pages, and additional recommendations are provided in the appendix. Taken together, these recommendations constitute the UN’s *roadmap* for a “normal” DPRK—one that seeks the improved realization of the human rights of its people.

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APPENDIX. THE ROADMAP: RECENT UNITED NATIONS RECOMMENDATIONS FOR HUMAN RIGHTS IN THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

I. The 2014 Commission of Inquiry recommendations to the DPRK:³¹⁷

(a) Undertake profound political and institutional reforms without delay to introduce genuine checks and balances upon the powers of the Supreme Leader and the Workers' Party of Korea; such changes should include an independent and impartial judiciary, a multiparty political system and elected people's assemblies at the local and central levels that emerge from genuinely free and fair elections; reform the security sector by vetting the entire officers' corps for involvement in human rights violations and by limiting the functions of the Korean People's Army to defending the nation against external threats; and dismantle the State Security Department and place the Ministry of Public Security under transparent democratic oversight. An independent constitutional and institutional reform commission, consisting of respected members of society in the Democratic People's Republic of Korea (DPRK), should be constituted to guide this process and should be assisted by appropriate international experts;

(b) Acknowledge the existence of human rights violations, including the political prison camps described by the commission in the present report; provide international humanitarian organizations and human rights monitors with immediate access to the camps and their surviving victims; dismantle all political prison camps and release all political

prisoners; and clarify with full detail the fate of any disappeared persons who cannot be readily traced;

(c) Reform the Criminal Code and Code of Criminal Procedure to abolish vaguely worded "anti-State" and "anti-People" crimes and to fully enshrine the right to a fair trial and due process guarantees articulated in the International Covenant on Civil and Political Rights (ICCPR); enforce existing provisions in the Criminal Code and the Code of Criminal Procedure that prohibit and criminalize the use of torture and other inhuman means of interrogation that are illegal under international law; reform the ordinary prison system so as to ensure humane conditions of detention for all inmates deprived of liberty; end reprisals against persons on the basis of guilt by association; and abolish immediately the practice of forcibly resettling the families of convicted criminals;

(d) Declare and implement an immediate moratorium on the imposition and execution of the death penalty, followed without undue delay by the abolition of the death penalty both in law and in practice;

(e) Allow the establishment of independent newspapers and other media; allow citizens to freely access the Internet, social media, international communications, foreign broadcasts and publications, including the popular culture of other countries; and abolish compulsory participation in mass organizations and indoctrination sessions;

(f) Introduce education to ensure respect for human rights and fundamental freedoms; and abolish any propaganda or educational activities that espouse national, racial or political hatred or war propaganda;

(g) Allow Christians and other religious believers to exercise their religion independently and publicly, without fear of punishment, reprisal or surveillance;

317 A/HRC/25/63, ¶ 89, 16-18.

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(h) End discrimination against citizens on the basis of their perceived political loyalty or the sociopolitical background of their families, including in matters of access to education and employment; dismantle the neighbourhood watch (*inminban*), the secret resident registration file system, and all surveillance of persons and their communications that serve purposes of political oppression and/or are not subject to effective judicial and democratic control; and publicly acknowledge the extent of surveillance practices carried out in the past and provide citizens with access to their resident registration file;

(i) Take immediate measures to ensure gender equality in practice, such as by providing equal access for women in public life and employment; eradicate discriminatory laws, regulations and practices affecting women; take measures to address all forms of violence against women, including domestic violence, sexual and gender-based violence by State agents and/or within State institutions; and respond immediately and effectively to trafficking in women, and address the structural causes that make women vulnerable to such violations;

(j) Ensure that citizens can enjoy the right to food and other economic and social rights without discrimination; pay particular attention to the needs of women and vulnerable groups, such as street children, the elderly and persons with disabilities; promote agricultural, economic and financial policies based on democratic participation, good governance and non-discrimination; and legalize and support free market activities, internal and external trade and other independent economic conduct that provide citizens with a livelihood;

(k) In the light of the past expenditures by the leadership, the military and security apparatus, realign priorities and dedicate the resources made available to ensure, as necessary, freedom from hunger and other essential minimum standards for citizens, including those citizens serving in the armed forces;

(l) Where necessary to ensure the right to food, seek international humanitarian assistance without delay; provide international humanitarian organizations with free and unimpeded access to all populations in need, including for the purposes of effective monitoring; and hold accountable State officials who illegally divert humanitarian aid for improper purposes;

(m) Abolish the *de facto* prohibition on foreign travel imposed on ordinary citizens; decriminalize illegal border crossings and introduce border controls that conform to international standards; renounce orders to shoot and kill at the border; cease to regard citizens repatriated from China as political criminals or to subject them to imprisonment, execution, torture, arbitrary detention, deliberate starvation, illegal cavity searches, forced abortions and other sexual violence; and abolish the State's compulsory designation of places of residence and employment, as well as the requirement to obtain a permit for domestic travel outside a person's designated province;

(n) Provide the families and nations of origin of all persons who have been abducted, or otherwise forcibly disappeared, with full information on their fate and whereabouts, if they have survived; allow those who remain alive, and their descendants, to return immediately to their countries of origin; and, in close cooperation with their families and nations of origin, identify and repatriate the physical remains of those who have died;

(o) Allow separated families to unite, including by allowing citizens to travel or emigrate where they choose; and immediately provide such persons with facilities for unmonitored communications by way of mail, telephone, email and any other means of communication;

(p) Prosecute and bring to justice those persons most responsible for alleged crimes against humanity; appoint a special prosecutor to supervise this process; ensure that victims and their families are provided

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with adequate, prompt and effective reparation and remedies, including by knowing the truth about the violations that have been suffered; launch a people-driven process to establish the truth about the violations; provide adults and children with comprehensive education on national and international law and practice on human rights and democratic governance; and seek international advice and support for transitional justice measures;

(q) Take immediate steps to end all other human rights violations and to address the human rights concerns raised by the commission in the present report, as well as in successive resolutions of the General Assembly and the Human Rights Council (HRC), in the procedures of universal periodic review (UPR) and in the reports of special procedures mandate holders and the treaty bodies;

(r) Ratify without delay the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), the Convention on the Rights of Persons with Disabilities (CRPD), the Rome Statute of the International Criminal Court (ICC) and the fundamental conventions of the International Labour Organization (ILO);

(s) Accept immediately a field-based presence and technical assistance from the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other relevant United Nations (UN) entities to help to implement the above-mentioned recommendations.

II. General Assembly Recommendations to the Democratic People's Republic of Korea in 2018

[The General Assembly] Strongly urges the Government of the DPRK to respect fully all human rights and fundamental freedoms and, in this regard.³¹⁸²

(a) To immediately put an end to the systematic, widespread and grave violations of human rights emphasized above, inter alia, by implementing fully the measures set out in the above-mentioned resolutions of the General Assembly, the Commission on Human Rights and the HRC, and the recommendations addressed to the DPRK by the Council in the context of the UPR and by the commission of inquiry, the UN special procedures and treaty bodies;

(b) To immediately close the political prison camps and to release all political prisoners unconditionally and without any delay;

(c) To protect its inhabitants, address the issue of impunity and ensure that those responsible for crimes involving violations of human rights are brought to justice before an independent judiciary;

(d) To tackle the root causes leading to refugee outflows and prosecute those who exploit refugees through migrant smuggling, trafficking in human beings and extortion, while not criminalizing refugees and the victims of trafficking;

(e) To ensure that everyone within the territory of the DPRK enjoys the right to liberty of movement and is

318 UN General Assembly, *Resolution adopted by the General Assembly on 17 December 2018: Situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/RES/73/180 (January 23, 2019), ¶ 16, 8-10.

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free to leave the country, including for the purpose of seeking asylum outside the DPRK, without interference by the authorities of the DPRK;

(f) To ensure that citizens of the DPRK who are expelled or returned to the DPRK are able to return in safety and dignity, are treated humanely and are not subjected to any kind of punishment, and to provide information on their status and treatment;

(g) To provide citizens of other countries detained in the DPRK with protections, including freedom of communication with, and access to, consular officers in accordance with the Vienna Convention on Consular Relations, 24 to which the DPRK is a party, and any other necessary arrangements to confirm their status and to communicate with their families;

(h) To extend its full cooperation to the Special Rapporteur, including by granting him full, free and unimpeded access to the DPRK, and to other special procedures of the HRC as well as to other UN human rights mechanisms so that a full needs assessment of the human rights situation may be made;

(i) To engage in technical cooperation activities in the field of human rights with the OHCHR, as pursued by the High Commissioner in recent years, with a view to improving the situation of human rights in the country;

(j) To implement the accepted recommendations stemming from the UPR and to consider positively those recommendations which are still under consideration, and to submit a report to the HRC for consideration during the third review cycle;

(k) To become a member of the ILO, to enact legislation and adopt practices to comply with international labour standards and to consider ratifying all the relevant conventions, in particular the core labour conventions of the ILO;

(l) To continue and reinforce its cooperation with UN humanitarian agencies;

(m) To ensure full, safe and unhindered access to humanitarian aid, as well as to critical data, and take measures to allow humanitarian agencies to secure the impartial delivery of such aid to all parts of the country, including detention facilities, on the basis of need in accordance with humanitarian principles, as it pledged to do, to ensure access to adequate food and implement more effective food security and nutrition policies, including through sustainable agriculture, sound food production and distribution measures and the allocation of more funds to the food sector, and to ensure adequate monitoring of humanitarian assistance;

(n) To further improve cooperation with the UN country team members and development agencies so that they can directly contribute to improving the living conditions of the civilian population, including progress towards the achievement of the Sustainable Development Goals;

(o) To consider ratifying and acceding to the remaining international human rights treaties, which would enable a dialogue with the human rights treaty bodies, to resume reporting to monitoring bodies on treaties to which it is a party, to participate meaningfully in treaty body reviews, and to give consideration to the concluding observations of such bodies in order to improve the human rights situation in the country.

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III. 2018 Recommendations of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea

The Special Rapporteur recommends that the DPRK:³¹⁹

(a) Seek the assistance of the international community in addressing chronic food insecurity and malnutrition, as well as access to essential health services and access to clean water and adequate sanitation, with particular attention to vulnerable groups;

(b) Consider taking steps to reduce military expenditure with a view to ensuring equitable reallocation of resources to respond to the ongoing humanitarian situation;

(c) Recognize the fundamental right to leave and enter the DPRK in law and practice, and ensure that those who are repatriated, including victims of human smuggling and trafficking, are not subjected to punishment upon repatriation;

(d) Ensure that family reunion events are conducted with the interests of the families first and foremost in mind, including by ensuring the possibility for them to maintain longer-term communication with their relatives in the Republic of Korea (ROK) in a sustainable manner;

(e) Address allegations of enforced disappearance and provide information to the families of the victims on the fates and whereabouts of their missing relatives;

(f) Consider reforming the Public Distribution System (PDS) with a view to ensuring the right to social security for all, in particular those who cannot meet their basic needs owing to illnesses, accidents, old age, disability or maternity;

(g) Review any formal or informal practice that requires children to perform labour tasks that interfere with their rights to education, health, rest and leisure, and prohibit in law the employment of children under 18 years of age in harmful or hazardous work;

(h) Release statistical and other data that will allow for an assessment of the impact of international sanctions on the population;

(i) Consider becoming a member of the ILO with a view to adhering to the core labour standards;

(j) Ensure that the nationals of the ROK currently detained in Pyongyang are provided with consular assistance, in accordance with the Vienna Convention on Consular Relations, with a view to their early release, and that their treatment fully complies with the standard minimum rules for the treatment of prisoners;

(k) Consider the further granting of amnesty to political prisoners, particularly those imprisoned for guilt by association, as part of a longer-term ongoing process, while ensuring transparency in the process;

(l) Consider seeking the expertise of the UN human rights system as well as that of the International Committee of the Red Cross (ICRC) to reform the penitentiary system in line with international standards;

(m) Continue to cooperate with the HRC, in particular in relation to the upcoming UPR, paying due attention to the implementation of the recommendations accepted during the previous review;

³¹⁹ UN General Assembly, *Situation of human rights in the Democratic People's Republic of Korea—Note by the Secretary-General*, UN Doc. A/73/386 (September 19, 2018), ¶ 61, 19–20.

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- (n) Submit the periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- (o) Consider seeking the technical assistance of the OHCHR, including by granting access to the country;
- (p) Initiate a process of dialogue with the Special Rapporteur on the situation of human rights in the DPRK;
- (q) Engage with the High Commissioner for Human Rights on the issues recommended in paragraphs 51 and 52 above;
- (r) Engage with the Special Rapporteur on the human rights to safe drinking water and sanitation.

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David Hawk reminds us that we must work together to ensure a global future that upholds human dignity and advocates the importance of fundamental human rights for all, despite certain state practices that threaten an international rules-based order. His work is a treasure for human rights practitioners, investigators, and researchers as well as the United Nations.

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