

IPUS Unification Studies 24

North Korean Human Rights

Crafting a More
Effective Framework

Bo-hyuk Suh



IPUS Seoul National University
Institute for Peace and Unification Studies

North Korean Human Rights: Crafting a More Effective Framework

Printed 2016. 5. 26.

Published 2016. 5. 26.

Published by The Institute for Peace and Unification Studies, Seoul National University

Publisher Keun-Sik Jung

Authors Bo-hyuk Suh

Registration number 119-82-67975(July 7, 2006)

Address The Institute for Peace and Unification Studies, Seoul National University,
1 Gwanak-ro, Gwanak-gu, Seoul, 08826, Republic of Korea

Phone 82-2-880-4052

Fax 82-2-874-7305

Homepage tongjil@snu.ac.kr

Designing and Printing NEULPUM PLUS Co., Ltd.(82-70-7090-1177)

ISBN 979-11-9550-934-8 93340

Not for sale

Copyright © Bo-hyuk Suh, 2016

* All rights reserved. No part of this work might be reproduced or utilized in any form or by any means, electronic or mechanical, or any information storage and retrieval system, without prior written permission from the publisher.

This research was supported by the National Research Foundation's Korea Grants, funded by Korea's Ministry of Education (NRF-2010-361-A00017).

Suh, Bo-hyuk

North Korean Human Rights : Crafting a More Effective Framework
/ authors: Bo-hyuk Suh, — Seoul : The Institute for Peace and
Unification Studies, Seoul National University, 2016
p. ; cm. — (IPUS Unification Studies ; 24)

Includes bibliographical references and index
ISBN 979-11-955093-4-8 93340 : Not for sale

342.10911-KDC6
323.095193-DDC23

CIP2016013713

North Korean Human Rights

**Crafting a More
Effective Framework**

Bo-hyuk Suh

Contents

Acknowledgements

Introduction 1

Part I Trends in International Human Rights

1. Human Rights Fundamentals and State Responsibility 13
2. The International Human Rights Regime 21
3. The Interconnectedness of Human Rights,
Humanitarian Intervention and Development 40
4. The International Human Rights Regime and
North Korea 51

Part II Evaluating North Korean Human Rights

5. Trends in North Korean Human Rights Policy 55
6. Issues Surrounding North Korean Human Rights 84
7. Critical Analysis of Current Trends 102



Part III The Needs and Direction for Korea Human Right

8. Comparing Human Rights in North and South Korea	139
9. The Need for Korea Human Rights	171
10. The Future of Korea Human Rights	192
11. Roadmap for Improving North Korean Human Rights	215
Conclusion	237
Reference	242
Index	251

Acknowledgements

The notion of *Korea human rights* did not come from me alone. Upon the attempt by the George W. Bush Administration to enact the “North Korean Freedom Act of 2003,” several peace and human rights scholars and activists within South Korea met regularly. I myself attended those meetings. The North Korean Freedom Act of 2003 claimed that North Korean human rights can be improved through regime change. Due to strong opposition from within the U.S. and South Korea, the act was not approved and the “North Korean Human Rights Act of 2004” was enacted instead. At the time, we were firm that the priority should be improving North Korean human rights in the most peaceful and realistic manner. We also agreed that it would be important to have North Korea’s participation in this process and inter-Korean cooperation. We called this “Korean Peninsula Human Rights.” From that time on, I have maintained that view and explored specific strategies for developing a framework. Although this book is based on the Korean book titled *Korea Inkwon-Bukhan Inkwon-kwa Hanbando Pyeonghwa* (Korea Human Rights-Human Rights in North Korea and Peace on the Korean Peninsula, 2011), but it is extended into new version reflecting new findings and more analysis.

I would like to share the publication of this book with the colleagues that were with me throughout this process.

I would like to give special thanks to Professor Myoung-Kyu Park, former Director of the Institute for Peace and Unification Studies (IPUS) at Seoul National University and Professor Keun-Sik Jung, Director of IPUS, for giving me their unwavering support. The many academic debates and discussions with my colleagues at the Institute were a great asset to my research. I want to thank Korea's first Human Rights Ambassador-at-Large, Dr. Kyung-seo Park, for giving me the inspiration and support to research of human rights and peace. This book would not have developed without the constructive criticism of 'Korea human rights' provided by colleagues in academic and civic circle. I would like to thank Jae-myung Kim, Francis Daehoon Lee, Kyung-joo Lee, Nam-joo Lee, Kab-woo Koo, Young Hoon Song, Tae-Ho Lee, Jeong-eun Park, and Anselmo Lee. I would like to also thank Christine Ahn and Christine Hong, who enriched my work through our long-distance discussion. Peter Beck, Gayoon Baek, and Anna Yeuna Kim proofread all parts of the manuscript. Finally, I can't express enough my gratitude to my wife, Dr. Na-mi Lee, for her full support as we walk down the path of life, discussing democracy, peace, and human rights.

ABBREVIATIONS

AICHR	ASEAN Inter-governmental Commission on Human Rights
APF	Asia Pacific Forum on National Human Rights Institutions
CAT	Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
CAT-OP	Optional Protocol to the International Convention against Torture
CCK	Christian Council of Korea
CED	Convention for the Protection of All Persons from Enforced Disappearance
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CHR	Commission on Human Rights
CHRC	Catholic Human Rights Committee
COI	Commission of Inquiry
CPED	International Convention for the Protection of the Rights of All Persons from Enforced Disappearance
CPR	Civil and Political Rights
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSE	Conference on Security and Cooperation in Europe
CSOs	civil society organizations
DPRK	Democratic People's Republic of Korea
ESCR	Economic, Social and Cultural Rights
EU	European Union
GNP	Grand National Party
HRC	Human Rights Council
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
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Their Families

ICNK	International Coalition to Stop Crimes against Humanity in North Korea
IGOs	Inter-Governmental Organizations
ILO	International Labor Organization
INGOs	International Non-Governmental Organizations
KCNA	Korea Central News Agency
MDG	UN Millennium Development Goals
NAP	National Action Plans for the Promotion and Protection of Human Rights
NCCK	National Council of Churches in Korea
NGOs	Non-Governmental Organizations
NHRCK	National Human Rights Commission of Korea
NSL	National Security Law
OECD	Organization for Economic Cooperation Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
OHCR	Office of the United Nations High Commissioner for Refugees
OSCE	Organization for Security and Cooperation in Europe
POWs	Prisoners of War
PSPD	People's Solidarity for Participatory Democracy
R2P	Responsibility to Protect
RBA	Human Rights-Based Approach to Development
ROK	Republic of Korea
UN	United Nations
UNDP	United Nations Development Program
UNESCO	United Nations Educational, Scientific and Cultural Organization
UDHR	Universal Declaration of Human Rights
UNICEF	United Nations International Children's Emergency Fund
UPP	Unified Progressive Party
UPR	Universal Periodic Review
WFP	World Food Programme
WGAD	Working Group on Arbitrary Detention

Introduction

Each year the international community's attention turns to Geneva in the spring and New York in the fall. This is due to the fact that since the early 1990s the United Nations (UN) Commission on Human Rights (CHR) and the UN General Assembly meet at those times. With the increased interest in human rights issues after the end of Cold War, discussions of human rights at the UN receive greater attention. The Universal Periodic Review (UPR) was introduced as a mechanism to investigate the human rights situations of all member states after the 2006 replacement of the UN CHR by the UN Human Rights Council (HRC). This mechanism is a wise application of the universality of human rights.

A country's human rights situation shapes its image and reputation. Countries with a high level of human rights is eligible to become members of the HRC. In contrast, for countries with a dire human rights situation, a UN Special Procedure Mandate Holders are mandated by country as well as by theme, such as right to food and prevention of torture. As of May 2016, there are 41 thematic and 14 country mandates. With the establishment of the UN HRC, the Republic of Korea (ROK or South Korea) was a council member from 2006-2008, 2009-2011, and 2013-2015. In 2016, South Korea is serving as a chair of the UN HRC on behalf of Asian region. At the 60th session of the UN CHR in 2004, Resolution 2004/13 was passed. This resolution mandates a Special Rapporteur for human rights situation in the Democratic People's Republic of Korea (DPRK or North Korea). In addition,

thematic Special Rapporteurs for the Right to Food, the Elimination of Discrimination against Women, and the Rights of the Child have also been mandated to North Korea. However, Pyongyang has continued to be suspicious of those UN human rights mechanisms as having a political agenda, which has resulted in the lack of cooperation on the part of the North.

Recently the North Korean human rights issue has gained unprecedented international attention. Until the early 2000s, rights violations were only sporadically discussed by North Korean escapees and civil society organizations (CSOs) in and out of South Korea. Despite the dire North Korean human rights for several decades, little improvement has been seen due to the North's recalcitrant administration. In comparison, efforts by the international community, including the UN, to improve the North Korean human rights situation have intensified. In 2003, a resolution on North Korean human rights was adopted at the 59th session of the UN CHR. Since then, governmental and non-governmental organizations (NGOs) have actively worked toward alleviating human rights infringements in the North. A variety of methods of improving human rights in the North have been tried, such as adopting resolutions, publishing reports, actively spreading awareness, taking escapee testimonials, campaigning, protesting in front of North Korean embassies, sending propaganda via radio and leaflets, and even starting a movement to take the North's leader to the International Criminal Court (ICC). Despite those efforts, there has not been any tangible improvement in the North Korean human rights situation.

Given the deep interest in North Korean human rights

taken by the international community, it is hard to say that there have been actual improvement on North Korean human rights. Is it that the abundance of criticism of the North Korean human rights and cries for improvement have existed without a realistic action plan? Or, was it because the human rights issue was used as a tool for achieving another goal, namely regime change? To find out what is the best way to make a real improvement, it is crucial to highlight the need for an evaluation of the effectiveness of the North Korean human rights policy pushed by the international community, including South Korea. We have bypassed discussing “to what extent” the human rights situation is dire and instead we must focus on “how” we can improve it.

Of course, if a country’s human rights situation is dire, then the reason lies in that country. In addition, first step is to pressure Pyongyang on its human rights situation. I also agree that the primary responsibility for the poor state of human rights lies with the North Korean administration. With this as a foundation, the existing policies will be analyzed and evaluated.

Through this book, I will examine the gaps between the international North Korean human rights policy and the lack of actual improvement in North Korean human rights. This difficult task will be analyzed with the following three issues.

First is the problem of applying international human rights standards at the national level. We usually take for granted the term “human rights.” However, when human rights are actually implemented on the ground, the term comes to be defined in many different ways. Also, many people do not have a sufficient

understanding of the international human rights mechanisms that have been developed and improved inside and outside of the UN. Only when the mechanisms are fully understood can one efficiently apply the regulations and processes to improve human rights. Human rights not only have diverse perspectives and attributes, they also have connections with other universal norms, such as peace. However, human rights is in danger of being understood within the context of the personal interests of an individual. For example, the proposition that *human rights are universal* may seem to be without a doubt self-evident. However, if this principle is not understood within the context it can be wrongfully applied. In case of Korea, more than 60-years of armistice system and unstable political relationship between two countries should be taken into consideration while discussing about human rights. We can find these areas for concern in North Korean human rights activism.

Second is the problem with our general understanding of North Korean human rights. Are North Korean human rights equal to North Korea + human rights? This fairly simple equation contains a complicated significance. As a member of the international community, South Korea is able to perceive the North Korean human rights issue with human rights as its foundation. At the same time, as the people of the South are not the people of the North, there are great differences in handling the North Korean human rights issue as compared to how South Koreans deal with their own. The South and the North have different understandings when it comes to human rights. Even within the DPRK and the international community, we can see fairly

significant differences in point of view. This leads to many possible issues. An outsider's understanding and judgment of North Korea and its methods of improving the situation may greatly differ with the North's. To make matters worse, there is a lack of contact between the international community and the DPRK. In addition, we often cannot confirm the accuracy of information on North Korea.

Within these limitations, can we not say that the international community's bias and urgency are to be blamed when approaching the North Korean human rights issue? If the North Korean human rights issue is approached by the state or the administration for its political interests, it will not be free from harsh criticism, whether by North Korea or other countries in the international community. Furthermore, looking at North Korea simply as a subject on which to apply international regulations will not be tolerated by the North and will not make actual improvement. It also calls attention to the mutual North-South humanitarian issues. As human rights is universal, we do not only examine our efforts for improving human rights situation in our community, but also are concerned with the human rights issues of a community with which one is not affiliated. Therefore, there is a need for introspection regarding activism around North Korean human rights.

Third is the issue of what role the international community, especially South Korea, must take with regards to improving North Korean human rights. The Kim Dae-jung and Roh Moo-hyun administration (Feb. 1998 - Feb. 2008) were passive towards North Korean human rights to the extent that they received

criticism for remaining silent on the issue. However, this is far from the reality. The Kim Dae-jung administration transformed the war torn and divided Korean Peninsula by shifting from viewing the opposite party as the enemy to viewing it as a partner for reconciliation and cooperation. The Roh Moo-hyun administration inherited Kim's *Sunshine Policy* and worked to institutionalize the North-South relations. This was a historic task that no one can deny. Of course, when thinking about improving North-South relations and the future of reunification, the significance of North Korean human rights cannot be denied.

In comparison, the Lee Myung-bak administration (Feb. 2008 - Feb. 2013) came into office with public support for its criticism of the two previous administrations' engagement policy with North Korea. Therefore, the administration pushed forward a policy toward North Korea based on bring changes in North Korea rather than improving relations with the North. The current Park Geun-hye administration, although succeeding Lee Myung-bak administration, is somewhat in between. In this context, the North Korean human rights issue became more significant in terms of policy toward North Korea. The South Korean administration, in cooperation with the international community, began to show a more active stance on the human rights issue in the North. However, the South's North Korean human rights policy has been criticized as severing communications between the two Koreas by pressing the North. This eventually limited South Korea's ability to intervene in North Korean human rights. Because the Park Geun-hye administration is focusing on peace through the denuclearization of the Korean

Peninsula, when it comes to North Korea policy, North Korean human rights seem to be a secondary concern.

Naturally, two questions arise from this. First, which comes first, North Korean human rights or inter-Korean relations? Second, when pursuing these two goals, is there a choice between North-South cooperation and international human rights cooperation on the part of South Korea? In reality, the basis of South Korea's consistent North Korea policy is reestablishing ethnic homogeneity, building peace, and preparing for reunification. Cooperation between South Korea and North Korea and international assistance should not be a matter of choice depending on the priorities of a given administration. Neither improvements in North-South relations nor North Korean human rights improvements should be prioritized. Instead, it is necessary to work toward both simultaneously. For South Korea, the North Korea problem poses both the prospect of preparing for reunification and realizing international universal values. Although it is a member of the international community, ROK is in a unique position.

For North Korean human rights to improve, changes in North Korea's attitude and actions are absolutely necessary. In that case, what role should the international community play? For some time, the international community in and out of the UN has called on Pyongyang to improve their human rights situation accepting international inspections (starting with the special rapporteur), guarantee right to movement, creating an international network for North Korean human rights improvement and open to receive technical cooperation. After building

up international public opinion, it is now time to establish a method for improving human rights that will reap real results. For this, we must first objectively reflect on our North Korean human rights policy. There is a need to consider whether the realization of universal human rights in North Korean human rights policy was in actuality universal and whether the international human rights regime was applied sufficiently to the improvement of North Korean human rights. Of course, there will be achievements and setbacks.

The initial North Korean human rights movement went forward, and now we have an opportunity for introspection and evaluation. North Korean human rights policy should be evaluated taking into consideration both the universality of the human rights proposition and the capacity to make effective improvements. When discussing the human rights issue of a country facing special circumstances, the perspectives of the parties concerned and those nearby must be taken seriously. When the human rights situation of the one community is left out of the discussion and the standards of the outside world are highlighted, can we really say that human rights is universal? Shouldn't we be more cautious and more meticulous when handling the human rights of a country that has a unique ideology and has hostile relations with much of the world?

This book evaluates North Korean human rights policy from the perspective of effectively improving North Korea's human rights situation, but the book focuses on the role of South Korea in crafting a solution. South Korea has a dual role in the North Korean human rights issue. The first one is that South

Korea and North Korea have a special relationship in preparing for reunification through reconciliation and cooperation, and the other is that the South is a member of an international community that pursues universal values. If South Korea fails to present concrete solutions to the North Korean human rights issue, it will not be able to contribute to the improvement of human rights. There is a need for a realistic and implementable alternative. It is unnecessary to fill the absence of an alternative with ideas and principles. It is meaningless to go back and forth between universal and specialized rights, hard line and soft line, and international mutual assistance and North-South cooperation. Standing on one side of a particular assertion brings agitation. For South Korea, North Korean human rights is the main consideration in preparing for reunification as well as a mirror that reflects the reality of the South. This is the reason that the South must take the lead to the right path for finding a solution to the North Korean human rights issue. This book was written with this aim and hopes that it will contribute significantly.

The aforementioned three questions comprise the heart of this book and will be discussed in detail. Part I covers the current state of international human rights mechanisms and the necessity to apply them to the North Korean human rights issue. Chapter 1 discusses the principles of human rights and state responsibility. Chapter 2 focuses on the UN, looking for ways in which international human rights mechanisms can be used to improve North Korean human rights. Chapter 3 discusses the characteristics of human rights that are at the core of human

rights development. In addition, recent human rights trends and the relevance of universal values to the progression of human rights will be explored.

In Part II, the current North Korean human rights arguments and policies within South Korea and the international community will be evaluated in order to find lessons for crafting new policies. Chapter 4 will introduce the existing North Korean human rights policies in South Korea and in the international community and will then be evaluated. In South Korea, the political parties, CSOs, and national human rights institution will be explored. The chapter also reviews the issues raised by the relevant countries in the international community as well as the UN and INGOs. Chapter 5 will introduce the main points surrounding the North Korean human rights issues that have been magnified by the South Korean administration, political parties, and civic groups. Chapter 6 will identify five problems arising from North Korean human rights policies and will take these as the foundation for considering an alternative North Korean human rights policy.

This book will offer both criticisms and alternative solutions for improving North Korean human rights. The main argument of this book, the establishment of a *Korea human rights* framework, is the focus of Part III. I will suggest more effective North Korean human rights strategies and determine the appropriate role for South Korea and the division of labor with the international community. Chapter 7 will establish the basic framework for the Korea human rights debate by outlining the fundamental human rights perspectives and policies, as

well as comparing the status of human rights in both the South and the North. In Chapter 8, the necessity of Korea human rights will be suggested through examining of the past and by looking to the future. In Chapter 9, the proper direction for Korea human rights will be suggested. Recommendations will be made, taking into consideration the roles and interactions of the administration, civil society, and national human rights institution within the framework of North-South human rights cooperation.

Finally, the conclusion will explain the significance of the Korea human rights argument and the tasks ahead. *Korea human rights* takes the achievements of the current North Korean human rights policies and points out the shortcomings. In taking international human rights mechanisms as a foundation, I will suggest a path forward for improving human rights through cooperation between the South and the North. I hope through this book that the readers realize that North Korean human rights have been exhausted as a target in the political arena and that it is time for a fresh and constructive North Korean human rights discussion.

Part I

Trends in International Human Rights





Part I

1. Human Rights Fundamentals and State Responsibility

The Fundamentals of Human Rights

The public's awareness about human rights progresses as democracy evolves. Accordingly, the scope of human rights has also expanded. Therefore, it is a meaningless and unrealistic to task to circumscribe the category of human rights. When looking at mankind's progression towards democracy, defining human rights is vital. The Universal Declaration of Human Rights (UDHR) Article 1-2 defines human rights as follows:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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. Furthermore, no distinction shall be made on the basis of the political,

jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Currently, human rights is recognized as a universal value that is shared by all the peoples of the world. Even authoritarian administrations claim to support human rights protections and establish a basic framework of human rights regulations so as to avoid international criticism and isolation. This is necessary because no one can deny the following special characteristics that human rights possess. The Office of the United Nations High Commissioner for Human Rights (OHCHR)¹ explains human rights as follows:

The principle of universality of human rights is the cornerstone of international human rights law. It is the duty of States to promote and protect all human rights and fundamental freedoms,

¹- Since Administrations have the primary responsibility to protect human rights, the OHCHR provides assistance to administrations, such as expertise and technical training in the areas of administration of justice, legislative strengthening, and electoral process enhancements, to help realize international human rights standards on the ground. The Office also assists other entities with the responsibility of protecting human rights to fulfill their obligations and individuals to realize their rights. As the principal UN office mandated to promote and protect human rights for all, OHCHR leads global human rights efforts and speaks out objectively in the face of human rights violations worldwide. The Office provides a forum for identifying, highlighting and developing responses to today's human rights challenges, and act as the principal focal point of human rights research, education, public information, and advocacy activities in the UN system.

regardless of their political, economic and cultural systems. Human rights is inalienable. They should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law. All human rights are indivisible, whether they are CPR, such as the right to survival, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education, or collective rights, such as the rights to development and self-determination, are indivisible, inter-related and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others. Non-discrimination is a cross-cutting principle in international human rights law. The principle is present in all the major human rights treaties and provides the central theme of some of international human rights conventions. The principle applies to everyone in relation to all human rights and freedoms and it prohibits discrimination on the basis of a list of non-exhaustive categories such as sex, race, color, and so on. The principle of non-discrimination is complemented by the principle of equality.

There are two levels of human rights, namely the individual and collective levels. In the West, individual human rights is emphasized, while the East emphasizes the human rights of the group. The two sides often criticize one another. However, the laborers, farmers, people of color, women, children, persons with disabilities, foreigners and all socially vulnerable that are con-

tained in those societies have thus recognized their rights and have fought for them. Some scholars have summarized the special characteristics of human rights as innateness, equality, and universality. However, for human rights to have meaning in reality, political power must be obtained.²

Human rights is guaranteed through human rights law and policies, which protects the individual and group from infringements of fundamental freedoms and human dignity. Human rights are expressed through conventions, common law, fundamental principles, and other legal means. Human rights law has been utilized as a special method to encourage the state to perform its duty to protect human rights. On the other hand, it also establishes limitations on State actions so that human rights is not infringed. However, human rights law does not make human rights. That is because of the expansion of the understanding that human rights is based on the truth that as human beings we are born with innate rights. Conventions and other legal means are in place to officially protect the individual and group in the case of threats to human rights by the state. Although the understanding of human rights as being innate has spread widely and human rights laws have been established and implemented, it is still difficult to say that in reality human rights have improved, either globally or regionally. Rather, it is more accurate to say that human beings' expectations for human rights protections have increased. Torture, the most notorious

²- Lynn Hunt, *Inventing Human Rights: A History* (W. W. Norton & Company, 2007), pp. 20-21.

human rights infringement, had been acknowledged even in the 21th century, but international law agreeing to eradicate it, known as the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), was adopted in 1984, and the Optional Protocol to the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (CAT-OP) was adopted in 2002. Therefore, the gap between perception and reality is significant. Human rights policy and human rights activism are the essentials to shortening and eventually eliminating this gap.

State Responsibility

For human rights, the State is like Janus, a two-faced being. The state has the greatest potential to infringe upon human rights in the name of maintaining power and for the benefit of the ruling elites. As seen in the two World Wars and during the “ethnic cleansing”³ of the Balkan Peninsula and Rwanda, when there is

³- The phrase ‘ethnic cleansing’ became widely accepted in the 1990’s to describe the mass civilian killings of a particular ethnic group during the disintegration of the former Socialist Federal Republic of Yugoslavia and the Rwandan Genocide. Albanians, Croats, and Bosnians, who respectively demanded independence in Kosovo, Croatia, and Bosnia, were massacred by Serbs who were supported by the Yugoslav administration during the disintegration of the Yugoslav federation ruled by Serbs. In that process, retaliation from both sides occurred. During the Rwandan Genocide, a mass slaughter occurred between Tutsi and Hutu to seize power. The phrase ‘ethnic cleansing,’ however, dates back to World War I. France, which regained Alsace-Lorraine from Germany after becoming victorious in World War I, slaughtered local Germans who had settled in the area after 1870.

war or armed conflict, gross human rights violations are committed. The State is directly concerned when those tragic incidents occur. Ironically, the state also has a duty to protect various human rights. To protect human rights, the state establishes laws and relevant institutions, allocating funds to implement these policies. The state has a central role in the progression of all areas of human rights, in particular the economic, social and cultural rights (ESCR) of a nation. However in the meantime, the civil and political rights (CPR) of a nation's citizens must not be neglected. As CPR move farther away from state power, they increase. On the other hand, ESCR are unique in the sense that it requires more of a state role. In other words, it is also said that the state should be hands off in regards to CPR and be more active with ESCR. However, this differentiation verifies that the state has a large role in the protection of human rights, and it should not be thought that the state's role is limited. This is because human rights include all the "positive and negative" duties of a state. It is important to determine the scope of the state's actions with regards to the increase in human rights. For the increase of human rights, it must be made clear to the state which actions are prohibited. This will be the start for the state in taking responsibility and understanding its duties in increasing human rights. The media and civil society must strictly monitor the state and offer criticism. Human rights provide the border that the state shall not cross through, transcending a special political system.⁴ If human rights is the common norm that all

⁴- For a discussion about this as well as classification and integration of a

political systems should abide by, then the state has the duty to spread and increase human rights to all of society.

International human rights law specifically proscribes that the state has the duty to respect, protect, and fulfill human rights. For example, the UN Committee on ESCR insists that all economic and social rights, like other human rights, must be enhanced and suggests the state must abide by the following three duties: First, the “duty to respect” focuses on the prevention of states from wrongfully intervening in the freedom and rights of any special case. It requests the state to not interfere with its people. In fact, there are instances in which the state must take active measures to prevent interference. For example, in the case where a state institution prohibits a certain action or infringes on a duty, it must take measures to provide compensation. Second is the “duty to protect,” which means that the state has the duty to protect human rights in instances where an individual’s or a group’s rights is violated by a third party. Here the state’s duty to prevent, stop, relieve and punish in protecting rights is emphasized. Third, is the “right to fulfill,” which gives the State the responsibility to provide the necessary resources to promote and enhance a given human rights situation. This is emphasized when the methods of promoting rights is limited or do not exist. Under these circumstances we can look forward to the state’s active approach to improving ESCR. These duties are also congruently

theory of human rights, see Bhikhu Parekh, “Non-ethnocentric universalism,” in Tim Dunne and Nicholas J. Wheeler (eds.), *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), pp. 128-159.

applied to CPR. This is because human rights supplement and strengthen each other. That is known as the principle of human rights indivisibility and interdependence.

Human rights in general are guaranteed by the state for all those within its territory. Moreover, some human rights are guaranteed for a particular group. Suffrage, for example, only applies to citizens of the state. Certainly the state has the duty to enforce measures opposing any treatment that may hinder the rights of the people within its territory and also has the duty to actively look for methods to provide effective relief for people that may have their rights violated. Of course, under international law the enjoyment of human rights may be limited under special circumstances. For example, after a fair trial through which an individual is determined to be guilty, the state can imprison the individual, legally limiting his or her freedom of movement. The limitations of the CPR are possible only when are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights in the international laws.. The ESCR also may be limited through the law, but those limitations are only possible when basic human rights is not infringed upon and when it is for the overall public welfare.

2. The International Human Rights Regime

The Development of International Human Rights Standards

In 1946, with the establishment of the OHCHR by the UN General Assembly, the OHCHR was tasked with drafting a declaration on human rights and fundamental freedom. The UN CHR established a drafting committee for the declaration and covenants, meeting for the first time in January 1947 to report the drafts to the UN General Assembly. After a two-year review process, the UDHR was adopted on December 10, 1948. The UN CHR continued to work on the incomplete human rights covenants. Through that process, the General Assembly adopted a resolution in 1950 affirming that the CPR and ESCR are interrelated and interdependent. After much deliberation, the CHR requested the drafts of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) be written. Thereafter, upon submission of the drafts, opportunity to review the documents was given to human rights experts and diplomats across the world. After a long and meticulous review, the covenants were finally adopted in 1966. Along with the UDHR, the covenants came to be called the International Bill of Human Rights.

With the adoption of the International Bill of Human Rights, international human rights law was expanded with the addition of various conventions and covenants, such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) adopted in 1965; the Convention on the Elimination of All Forms of Discrimination against Women

(CEDAW) adopted in 1979; the CAT adopted in 1984; the Convention on the Rights of the Child (CRC) adopted in 1989; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) adopted in 1990; the International Convention for the Protection of the Rights of All Persons from Enforced Disappearance (CPED) adopted in 2006; and the Convention on the Rights of Persons with Disabilities (CRPD) adopted in 2006. However, international human rights covenants are only legally binding at the time they are ratified by each state, and are an expansion of the respective countries' constitution and regulations.

Human rights is officially expressed through international law. International human rights law consists of declarations, guidelines, principles, covenants, and common law. The introduction of the series of international human rights conventions and institutions after 1945 established the legal human rights framework. The establishment of the UN developed international human rights institutions and provided a space for adoption. In addition, regional cooperation institutions were created, increasing the area's interest in human rights issues. Overall, states have adopted general rules and regulations in their constitutions that protect human rights.

According to Article 4 of the ICCPR, at the time of a public emergency that threatens the life of the nation and the existence of which is officially proclaimed, the States may take measures limiting or exempting them of their obligations as long as this does not involve discrimination based on race, color, sex, language, religion or social origin. Upon relief of those obligations, the

State must report to the UN Secretary General the reasons for their derogation (Article 4.3 of the ICCPR). However, there are rights that may never be ignored, even during war or armed conflict. Those rights is the right to survival, freedom from torture, freedom from slavery, and the freedoms of conscience, thought, and religion. The infringement of those fundamental rights cannot be justified, even at times of war or in states of emergency.

The increase in interest in human rights on the international level stems from the mass killings of people during the two World Wars. The preamble of the Charter of the UN indicates that the peoples of the UN determined “to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person.” Article 1 Clause 3 states it aims “to achieve international co-operation in solving international issues of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” This clearly displays the UN’s main goals in their establishment. This is also a clear indication that respect for human rights and achievement of peace are indivisible. In addition, even at times of armed conflict, basic human rights must be respected.

International humanitarian law also has a deep connection to the protection of human rights. International humanitarian law⁵ is a series of principles and regulations agreed to by the international community in order to reduce the pain and suffering

of human beings at times of armed conflict. Considered a part of international law, international humanitarian law is structured through international covenants and common law. It has the aim of protecting wartime rights of prisoners (civil and military) of conflict and neutral countries, as well as limiting the measures of conflict. The 1864 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, signed by 12 states, became the foundation of today's international humanitarian law. The 1874 International Conference and the Hague Conventions of 1899 and 1907 also became an important foundation for international humanitarian law.⁶ The minimum standards that must be abided by at the time of armed conflict by actors are listed in four Geneva conventions. The rules indicate that all those not involved in hostile actions shall not be discriminated against in any environment and shall be treated with human dignity, and all wounded people and patients are to receive protection. In addition, another humanitarian law indicates that at the time of armed conflict cultural assets are to be protected and prohibits the use of weapons of mass destruction

⁵- International Humanitarian Law is often called as 'Law of Armed Conflict' or 'Law of War.'

⁶- The current International Humanitarian Law refers to the Geneva Conventions of 1949-the Convention for the Protection for the Wounded and Sick Soldiers on Land during War, the Protection for the Wounded, Sick and Shipwrecked Military Personnel at Sea during War, the Treatment of POWs, and the Protection to Civilians in Wartime. The Additional Protocols to the Geneva Conventions, adopted in 1977, are the Protocol for the Protection of Victims of Armed Conflicts and Non-Armed Conflicts.

including chemical weapons. In 1995, the Protocol on Blinding Laser Weapons (Protocol IV to the 1980 Convention) was adopted, prohibiting or limiting the use of laser weapons during armed conflict. In 1997, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction was adopted.⁷

For a long time, international human rights law and international humanitarian law were considered two separate fields of international law. International human rights law was considered to be focused on establishing standards for the state for the protection of individual rights and fundamental freedoms. In contrast, international humanitarian law was understood as establishing standards to protect victims of war and framing the conditions of hostile actions. In other words, human rights law is seen to be difficult to apply during times of emergency and armed conflict. Those with this position mention that at times when ICCPR threatens the survival of the state at the time of an emergency, aspects of fundamental rights may be partially ignored. However, for the most part, international human rights law is applicable during times of armed conflict.

Human rights is an essential ingredient to peace and security, and at times of armed conflict, human rights protection should be of top priority. In 1966, U Thant, then Secretary General of the UN, investigated the level of protection of human rights by international human rights institutions. It was discovered that

⁷- The Mine Ban Treaty, which took effect on March 1, 1999, is also called the Ottawa Treaty.

the International Human Rights Bill more broadly protected human rights as compared to the Geneva Conventions. Those findings were applied to the 1968 International Conference on Human Rights held in Teheran, Iran and the series of resolutions adopted at the 1970 UN General Assembly. It was determined that human rights is to be applied even at times of armed conflict. At the 1993 World Conference on Human Rights held in Vienna, Austria, the Vienna Declaration and Program of Action was adopted, encouraging states to strictly abide by international humanitarian law and to comply with the minimum standards of human rights protections necessary for all affiliated with the armed conflict. In addition, in 1996, the UN CHR recognized the need for basic principles to be applied at times of state violence. It is now evident that international human rights law and international humanitarian law are not separate. Rather, they are mutually complimentary to each other. Simply put, even if it is an individual armed conflict, one must receive protection from not only international humanitarian law but also international human rights law.

The Development of Human Rights Institutions

The UN human rights mechanisms can be broadly categorized as charter-based bodies and treaty-based bodies. The UN Charter mandates six main bodies that carry out the important duties of the UN. These are called “charter-based bodies.” Each body carries out duties mandated in the Charter, and as time passed their role has gradually progressed. Each charter-based

body implements its respective establishment of the body, drafting, and adoption of resolutions and duties of supervision. The six principle charter-based organs consist of the General Assembly, Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice and the Secretariat. Furthermore, the UN CHR that was under the Economic and Social Council was replaced in 2006 by the Human Rights Council (HRC). The HRC introduced the UPR, a human rights mechanism by which member states' human rights situations are periodically evaluated. The advisory committee was created by revising the petition process. The HRC continues to cooperate with the special procedures that are theme based or country based.

The special procedures of the human rights issue was established by the UN CHR when a pro-US military coup, led by Chilean General Augusto Pinochet, occurred in 1973. The CHR organized the special working group to investigate the human rights situation of Chile in 1975 and appointed one Special Rapporteur and two experts to conduct an investigation of missing persons in Chile in 1979. In 1980, the CHR set up the Working Group to examine enforced disappearances of persons. The special procedures consist of a Special Rapporteur, a Special Representative of the Secretary General, Working Group and Independent Experts, whose tasks are to examine how the principles of human rights is applied in reality, to establish a foundation for communication between administrations, to help silent victims raise their voices, and to promote communication with administrations regarding specific measures to protect human

rights. As of 1 November 2014, there are thirty-nine thematic and fourteen country mandates.⁸

The Security Council is responsible for the installation and management of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda and currently the ICC. As of 1995, the Trusteeship Council has placed a hold on actions.

On the other hand, treaty-based bodies are committees that monitor the implementation of core international human rights treaties. The ten human rights treaty bodies consist of the Human Rights Committee (CCPR); the Committee on Economic, Social and Cultural Rights (CESCR); the Committee on the Elimination of Racial Discrimination (CERD); the Committee on the Elimination of Discrimination against Women (CEDAW); the Committee against Torture (CAT); the Subcommittee on the Prevention of Torture (SPT); the Committee on the Rights of the Child (CRC); the Committee on Migrant Workers (CMW); the Committee on the Rights of Persons with Disabilities (CRPD); and the Committee on Enforced Disappearances (CED). The treaty-based bodies review and monitor the reports submitted by the member states signed to the respective international human rights treaties and make recommendations for areas of improvement. In the process of making the concluding observations, the treaty-based bodies can call on the representative of the member states and question them as well as request additional

⁸- See <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx> (Accessed on February 2, 2015)

documentation.

The monitoring and recommendations of the treaty-based bodies are founded on expertise and are implemented effectively, which can bring about cooperation from the treaty parties. However, the limitations of the treaty-based bodies are that there are no appropriate measures to address delays or failures to submit reports by the states and there are difficulties in verifying the contents of reports. Nonetheless, the treaty-based bodies allow for the general evaluation of the human rights situations of the member states. When the international human rights organizations' monitoring and the will of the member state to improve human rights come together, then the treaty-based bodies will be able to contribute to the furthering of human rights.

The UN has utilized these human rights bodies to establish and implement effective strategies to prevent human rights infringements and to protect and improve human rights. As human rights protection is usually the responsibility of the state, much of the strategy is aimed at the state's ability to increase human rights through technical cooperation. In the human rights area of the UN, technical cooperation is managed by the OHCHR. In addition, the UN human rights bodies aim to increase the understanding of human rights through human rights education and publishing human rights material. The main strategy that the UN human rights bodies use to protect and promote human rights is comprehensive approaches, technical cooperation, human rights education and campaigns, human rights monitoring, civil society cooperation, and promotion. Among these, comprehensive approaches, technical cooperation, and cooperation with civil

society will be described in more detail.

The comprehensive approach encompasses, as the name implies, early warning, humanitarian action, maintenance of peace, and development projects. It refers to the integration of human rights to other UN actions, leading to a holistic approach. According to Paragraph 8 of the declaration made at the World Human Rights Conference in 1993 in Vienna, “Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.” Former Secretary General Kofi Anan emphasized the comprehensive approach. This is apparent in his declaration of the *Renewing the United Nations: A Program for Reform* made on July 14, 1997. According to Paragraph 78 of the document, “Human Rights is integral to the promotion of peace and security, economic prosperity, and social equity.” The comprehensive approach to human rights means that the actions of all UN institutions are interrelated. In other words, human rights encompasses all actions of housing, food, education, health, trade, development, security, labor, women, children, native peoples, refugees, migrants, the environment, and humanitarian support. The goals of a comprehensive approach to human rights is first to increase the cooperation of all UN institutions, second to consolidate UN actions that were thus far not affiliated, and finally to show that respect for human rights is not separate from other actions of the UN. Therefore, the four main duties of the UN Secretariat such as the guarantee of peace and security, social economic action, development cooperation, and humanitarian actions are all crosscutting. When the comprehensive approach is taken to human rights, the OHCHR requires

the cooperation of the Office of the United Nations High Commissioner for Refugees (OHCR), the World Health Organization (WHO), the United Nations International Children's Emergency Fund (UNICEF), the International Labor Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Food and Agriculture Organization (FAO), and the United Nations Development Program (UNDP).

International Human Rights Policy

When discussing human rights as a focus of the international community through the UN, the following strategies are used. First is the human rights-based approach to development (RBA), next is the creation of a program that deals with human rights (this is the restructuring of existing programs to have a human rights focus and incorporating human right elements to field work), and finally is the requirement that all development policy and projects have their own human rights programs. The OHCHR plays the key role in making all UN bodies take a comprehensive approach. This section looks closely at the comprehensive human rights approach implemented by the UN.

The first line of defense is the U.N.'s early warning actions. Many times, the main cause of human rights infringements lie in humanitarian disasters, mass evacuations, or the outbreak of refugees. Therefore, it is crucial to make sure that at the time of conflict, the parties are restrained from making human rights infringements and the possibility of humanitarian disasters is reduced. The UN operates the early warning system to identify any possibility of conflict. Focusing on the root cause of conflict

contributes to the prevention of tragedy and finding an inclusive solution. The UN has mechanisms and processes in relation to this, such as the Special Rapporteur, the Special Ambassador, Treaty Bodies, working groups, and field workers. Integrating human rights prevention and the early warning system has the aim to improve the accuracy of the UN's early warning ability through the integration of the general interest in human rights. This is greatly beneficial to effective cooperation before, during, and after an emergency happens.

The second strategy is the integration of human rights and development. At the 1957 UN General Assembly, it was announced that a comprehensive economic development program includes the maintenance and progression of peace and security contributing to the improvement of quality of life as well as respect for human rights and fundamental freedoms. This approach was verified at the International Conference on Human Rights held in Teheran 1968, and thereafter at the World Conference on Human Rights in Vienna 1993. In Vienna it was revealed that genuine and sustainable development requires human rights protection and improvement.

Development went further, from satisfying “basic needs”⁹ to being understood as a right. At the 1986 UN General Assembly, the Resolution on Development (A/RES/41/128) was adopted.

⁹- Basic needs refer to the resources that are absolutely necessary to enjoy material well-being in the long term. Access to food, water, shelter, clothing, hygiene, education, and health are also included here. See Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, Second Edition (Princeton, NJ: Princeton University Press, 1996).

According to Article 1, development is defined as follows:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

When development was treated as a rights-based approach it was at first confused with humanitarian aid and was also considered to be charity. However, now development is being accepted as a legal right and as a duty. At present, the responsibility of the state includes its positive duty regarding what must be provided and its negative duty regarding what should not be done. When accepting the frame of rights, the elements of housing, health, food, child development, rule of law, and sustainable human development can be discussed. The concept of duty here does not only include attending to individual needs, but also responding to human rights that are not transferable. Through this concept, people demand justice as a right and the community requests international support. Therefore, the international economic order establishes the argument for the respect of human rights.

The UN institutions are founded on rights, and through policies and programs they coincide with international human rights norms and standards. The UN development support can be seen as an example. The goals of development programs are as follows:

1. To maximize the effectiveness of the donor institutions and the program
2. To strengthen cooperative projects while taking into consideration developmental priorities
3. To guarantee the coherence and interaction between development programs

To accelerate the process of integrating human rights and development, the UNDP and the OHCHR signed an agreement to work to improve the effectiveness of their mutual activities through cooperation and adaptation. Both entities emphasized the design of the methods to implement rights and developing an index within the social sector that at the same time works toward a comprehensive approach to human rights and development. There are also the efforts at integrating human rights and peace as well as human rights and humanitarian activities into a comprehensive approach to human rights.

The third strategy for the UN's protection of human rights is technical cooperation. The UN Technical Cooperation Program in the Field of Human Rights assists states, at their request, to create and strengthen national structures that have direct influence on the observance of human rights and the maintenance of the rule of law. The program emphasizes the "incorporation of international human rights standards"¹⁰ in

¹⁰- Domestic implementation of international human rights standards refers to instances in which signatories to international human rights conventions establish or revise relevant domestic laws and establish implementation mechanisms for the implementation of conventions.

national laws and policies to strengthen and build national institutions that are capable of promoting and protecting human rights and democracy under the rule of law. This program is achieved through technical advisory and support of the designated state and its civil society. Technical cooperation, which is led by the OHCHR, is by no means a replacement for the investigation and monitoring of human rights programs. Rather, it is a supplement.

A country wanting to receive benefits from the UN's technical cooperation unit must fill out and submit an application to the UN Secretariat. The Secretariat then evaluates the human rights situation of the country. During the evaluation, the following elements are investigated:

1. Recommendations from the UN Treaty Bodies
2. Recommendations from the HRC and related mechanisms
3. Recommendations from the UN Trusteeship Council
4. Considerations and opinions of NGOs and national human rights institutions

Regarding this, the Vienna Declaration and Program of Action adopted by the World Conference on Human Rights in Vienna on June 25, 1993 encourages each state to reflect international human rights conventions in its constitution and relevant laws for the fulfillment of the conventions. It also advises that each state establish an independent national human rights institution that suggests plans for human rights policies to the administration and monitors the implementation of the policies.

After the evaluation process by the state, the OHCHR implements the necessary technical cooperation program. Thereafter, the effectiveness of the program is evaluated. The main subjects of the technical cooperation program are countries that are in the process of democratization. Specifically, the technical program is carried out based on the results of the evaluation process of the necessary elements of the state. That includes advice on the establishment of the state's national human rights institutions, the training of legal professionals and civil servants in the justice department, support in the development of human rights legislation, training on rule of law for military personnel, support for democratic elections, the training of civil servants in writing human rights reports, support for NGOs, and training in writing and documenting records.

The fourth strategy of the UN is cooperation with civil society. The participation and contribution of the civil society in all aspects is very important in the progression of human rights. Specifically, the human rights mechanism at the UN HRC, with the human rights organization's making of a statement to protect native peoples, protect minorities, support torture victims and those enslaved, enforce the human rights protection responsibilities of corporations, and to strengthen the protection of human rights.

Next, the international human rights institution's activities focused on the UN will be explored. However, aside from the special case of a country with a dire human rights situation and the UN response to the international community's efforts to improve the area's human rights, we can also think about the

various multilateral policy measures.

The first method can be when a victim of human rights abuse points out the status of human rights infringement and responsibilities. In addition, with a human rights abuse victim, the advocacy activities of the victim's supporters are also available. A human rights dialogue with the state that committed the human rights abuse is also possible. The methods of dialogue are as follows:

1. Discussing the human rights issue of the specific state
2. Discussing the human rights issue of both states at the same time
3. In the process of discussing the overall mutual topics of interest for both states, the human rights situation of one state may be discussed

A human rights dialogue is only possible when both parties have developed trust or at least the state in question has an open attitude in the discussion of its own human rights issues. Of course, when considering the attributes of a state that places a high priority on national interests and its dignity, an active dialogue is unlikely. However, when a membership application of a state is reviewed for the European Union (EU), the non-member state's human rights situation is evaluated to decide on membership. When a state wants to establish diplomatic relations with the EU or receive aid, it must work to improve its human rights situation. At that time, the EU and the state can attempt a human rights dialogue or have a separate human rights discussion.

North Korea had a few human rights dialogues with the EU in the late of 1990s and early 2000s.

On the other hand, there are also the hard line measures such as diplomatic pressure, sanctions, and humanitarian intervention. Diplomatic pressure includes resolutions being adopted that criticize the human rights infringements of the state by the UN General Assembly or HRC, or a number of countries coming together to criticize the state in question. Comparatively, the level of pressure of sanctions is very high. As far as sanctions go, we can consider general sanctions as multi-level strategies with economic and legal aspects. However, all sanctions have the goal of changing the state's actions. Sanctions hurt the state being sanctioned, bring support for the human rights abuse victims, and attract international attention the state's human rights infringement.¹¹ This approach should be taken cautiously, because a hard line approach may bring about suffering for the general population. Indiscriminate sanctions in the name of human rights can compel the state to resist by citing a threat to its sovereignty and lead to a stronger commitment to the existing system, which could ultimately threaten people's right to survival.

Humanitarian intervention is one of the toughest measures taken against a state. In order to halt human rights infringements, intervention takes legal force on the country committing the human rights violations. To implement this measure, several requirements

¹¹- Aryeh Neier, "Economic Sanctions and Human Rights," in Samantha Power and Graham Allison (eds.), *Realizing Human Rights: Moving from Inspiration to Impact* (New York: St. Martin's Press, 2000), p. 307.

must be satisfied, such as mass human rights violations or the imminent threats of violation, multilateral authority (i.e.: a UN Security Council resolution), and use of military means as the last resort, proportional usage of military force, rational prospects, and conditions.¹² “Mass human rights violations” here refers to when human rights violations are intentionally targeted at a specific group (unilaterally by the state’s administration) and display a consistent pattern¹³ and is continuous. Humanitarian intervention must be thought out carefully, as it has the possibility of being resisted by the target state and can undertake military conflict, taking citizens as hostages. Currently, the discourse of humanitarian intervention has transformed into the Responsibility to Protect (R2P) discourse. The R2P became official when it was mentioned at the 2005 World Summit Outcome (A/RES/60/1, para. 138-140) and in 2009 through the Report of the Secretary General (A/63/677). The R2P refers to the following:

1. Each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.
2. The international community accepts the responsibility by using appropriate diplomatic, humanitarian and

¹²- International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Report of the ICISS* (Ottawa: International Development Research Center, 2001), pp. 11, 31-39.

¹³- Eric A. Heinze, “Humanitarian Intervention: Morality and International Law on Intolerable Violations of Human Rights,” *International Journal of Human Rights*, Vol. 8, No. 4 (Winter 2004), pp. 475-477.

other peaceful means.

3. If the state manifestly fails to protect its citizens from the four above mass atrocities and peaceful measures have failed, the international community has the responsibility to intervene through coercive measures.

These points were used in the international community's response to the Libya situation in 2011 to justify the expulsion of the Gaddafi dictatorship. Currently, there is the widespread view that these conditions also apply to the situations in Syria and North Korea. In fact, the R2P logic is being applied even though there are problems in both cases.

3. The Interconnectedness of Human Rights, Humanitarian Intervention and Development

Human Rights Correlations

Human rights is indivisible. Depending on the perspective, human rights can be emphasized in certain sectors, or, in contrast, can be ignored in certain areas. In actuality, we cannot deny the selective emphasis placed on certain sectors or aspects of human rights depending on one's individual perspective. During the Cold War there was a large difference in opinion between the liberal camp and communist camp's perspective on human rights and the role of the state. The liberal camp emphasized

CPR and believed that human rights would progress with less state intervention. On the other hand, the communist camp placed more significance on economic, social, and cultural rights and at the same time emphasized the role of the state. The reason that the international human rights conventions were not made as one and rather separated by the ICCPR and the IESCR is because of the Cold War system. However, this does not mean that the scope of human rights is from point A to point B. Human rights has continuously progressed through humanity's striving toward freedom and equality and especially through the efforts to secure rights for the most vulnerable groups.

The CPR has emerged as the result of civic revolutions and at one time was considered as the entirety of human rights. Those rights mean equality in the individual freedoms of religion and all other common rights. Today, CPR refers to personal liberty; the CPR from slavery and forced labor; freedom from arbitrary arrest and detainment; freedom of movement and residence; equality before the law; prohibition of the application of post ex facto law on penal codes; protection of personal privacy; freedom of thought, conscience, religion, expression, assembly, and association; the right to survival; and the right to suffrage. However, as modern civil society developed into a patriarchal bourgeois class, the socially vulnerable such as laborers, the poor, and women became of primary interest. With equality of gender and theories of socialism as a foundation, the various social and political movements demanded the protections of civil rights for them through the active intervention of the state. The ESCR mainly consists of labor rights, the right to unions, social security,

the right to health, and the right to education, and so on.

The focus of human rights evolved over time. In the first generation, the focus was CPR. The ESCR became the focus of the second generation. The third generation of human rights arose in the 1970s from the background of the appearance of third world countries on the international stage, the easing of Cold War tensions, and the increasing gap between the rich and poor (mainly the North/South problem). For example, the right to self-determination, the right to development, the right to protect the cultural assets of minorities, and the right to peace became the scope of third generation human rights. It can be concluded that overall, the focus of third generation human rights is the rights of vulnerable groups. The right to self-determination is clearly stated in both Article 1 of the ICCPR and ICESCR. The main agents of self-determination can be seen as the individual and the group. Therefore, self-determination is categorized into two concepts: The individual's right to decide his or her fate and the self-determination of the nation.

Along these lines, the scope of human rights expanded with the times. This is the reason that human rights can be difficult to operationalize. Today, with the advance of science and technology, the interest in protecting the environment has rapidly increased and expanded the discussion of the right to survival. This has also transferred over to interest in animal rights. A fourth generation human rights is beginning to take form. With the introduction of new interests, human rights will broadly expand. So human rights is a continuously evolving concept. Each generation of rights and society in which they

flourish must be preserved, and through it we have the right to increase all rights. In order to realize “all human rights for all”, basic rights must be respected, protected, and fulfilled everywhere and at all times.

Correlating Human Rights and Other Universal Values

Thus far, the progression of comprehensive human rights has been discussed. In order to increase human rights, the various types of human rights is correlated and indivisible, even human rights and other universal values are correlated and indivisible. Therefore, if human rights organizations are not interested in universal values in the process of increasing human rights, that in itself will not be effective in the progression of human rights.¹⁴

The comprehensive human rights approach by UN is emphasized based on the premise that the reason for human rights infringements and efforts to improve human rights is

¹⁴- Regarding this, the I argued that “comprehensive approaches, such as humanitarian aid, peace building, and developmental assistance are required for the substantial improvement of human rights in North Korea” at the Conference on the North Korean human rights held by National Human Rights Commission of the ROK on 30 March 2010. A consultant on North Korean human rights for HRW said, “International human rights organizations only deal with human rights.” On 16 September 2006, the HRW, along with several other organizations, however, delivered a letter to the representatives of the UN Security Council members that required them to deal with the North Korean human rights issue in the future. Although a separate discussion is required to decide whether it is appropriate to address North Korea’s human rights issue at the Security Council, the letter shows that the human rights issues are relevant to international peace and security issues.

correlated with of the state and its achievements when it comes to democracy, economy, rule of law, security, social integration, and other domestic elements. Therefore, there is a need to go beyond simply stopping the human rights infringement phenomenon or punishing those related to the infringement. Rather, it is possible to improve human rights when they are approached from a comprehensive perspective. The UN and other international institutions have already applied this principle, emphasizing the inter-relatedness of human rights and other universal values such as democracy, peace, development, and humanitarianism.

The correlation between human rights and democracy was recognized in 1948 with the adoption of the UDHR. According to the Article 21 Clause 3 of the UDHR, “The will of the people shall be the basis of the authority of administration.” This was made into official international law through the adoption of the ICCPR in 1966. Discussions of human rights and democracy did not proactively start until after the end of the Cold War. At that time, the UN CHR took the lead on these discussions. As a result, the UN CHR suggested through resolutions that democratic governances should have the rights of freedom of speech, freedom to information, rule of law, suffrage, a responsible and transparent administration, and an equal approach to providing public services.¹⁵ At the 59th Session of the UN CHR in 2003, two resolutions (2003/35, 2003/36) were

¹⁵- “Promotion of the right to democracy,” CHR resolution 1999/57, E/CN.4/RES/1999/57, April 28, 1999.

adopted on the correlation of human rights and democracy, expanding their interdependence.¹⁶ In particular, in Human Rights Resolution 2003/36 Line 15 recommended that all administrations, inter-administrational institutions, and NGOs have clear goals on development and the strengthening of human rights and democracy.¹⁷ E/CN.4/RES/2003/36 mentions the issues discussed at the Expert Seminar on the Interdependence between Democracy and Human Rights, which took place November 25-26, 2002 in Geneva. A closer examination of the twelve issues addressed at this seminar will help fully explain the interdependence between democracy and human rights. The twelve areas include the following: International standards of democracy; impact of inequality and poverty on democracy; representativeness, responsibility, transparency, and accountability of public organizations and public officers; democratic requirements for political activities and finances; economic factors affecting democracy; impact of corruption on democracy; the rights of minorities and neglected classes to democracy; benchmarking for democratic transition; promotion for efficiency and activity of democratic organization; civic education on human rights advocacy and democracy; the role of congress; and the role of media. It is apparent that human rights and democracy supplement and strengthen each other. Therefore, it is necessary

¹⁶- The title of E/CN.4/RES/2003/35 is "Strengthening of popular participation, equity, social justice and non-discrimination as essential foundations of democracy," and that of E/CN.4/RES/2003/36 is "Interdependence between democracy and human rights."

¹⁷- E/CN.4/RES/2003/36.

to be cautious about movements and actors that identify human rights and democracy to be restrictive. There is value in listening to the following principle: “As civil and economic and social rights is interdependent, so political democracy and economic democracy.”¹⁸

Human rights and peace are very much interrelated. This is the case when handling the human rights issues of those involved in conflict areas. The recognition that peace is necessary in guaranteeing basic rights can be easily found in the UN Charter, the UDHR, and the International Covenants on Human Rights. Human rights and peace were mentioned at the International Conference on Human Rights in Tehran,

Recognizing that peace is the universal aspiration of mankind and that peace and justice are indispensable to the full realization of human rights and fundamental freedoms... (Preamble)
Gross denials of human rights arising from discrimination on grounds of race, religion, belief or expressions of opinion outrage the conscience of mankind and endanger the foundations of freedom, justice and peace in the world. (Article 11)

Thereafter, peace began to be recognized as a right. The right to peace can be defined as the right for people to live in a safe and non-violent world. More specifically, it would mean denying war initiated by the state through invasion, denial of the

¹⁸-A. Belden Fields, *Rethinking Human Rights for the New Millennium* (New York: Palgrave MacMillan, 2003), pp. 151, 206.

right to collective self-defense, denial of the possession of military arms, exclusion of the hindrance of the state's peace (involvement in invasions, export of arms), elimination of the state obstruction of peaceful survival, a ban on the restrictions to fundamental rights for military purposes (seizure of assets, limitations on freedom of speech, etc), and the right to be free from the danger of war can all be included in the right to peace. Even though the right to peace or the right to live in peace may not be indicated in the constitution, it can be recognized as an innate right.¹⁹ For a long time, including the time of the Cold War, the right to peace was not able to advance as expected. However, with the George W. Bush Administration's invasion of Afghanistan and Iraq on the basis of the War on Terror as well as the ethnic cleansing in Kosovo, Bosnia, and Rwanda, the significance of the right to peace started to gain attention. Therefore, the UN HRC began to promote the Right to Peace Declaration to move forward on institutionalizing that right.

On the other hand, in developing countries, human rights cannot be differentiated from the eradication of poverty, or social, economic, and human development. The characteristics of the right to development can be found in the resolution adopted at the UN General Assembly in 1986 and the 1993 Vienna World Conference on Human Rights. The right to development can be verified in the Vienna Declaration.

¹⁹- Kyeong-Ju Lee, *Understanding of the Right to Peace* (Seoul: Sapyoung Academy, 2014), pp. 17-62.

The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.(Article 1 Clause 10)

The methods for advancing the right to development include the following:

1. To create equal opportunities through the distribution of basic resources, education, public health, food, housing, and earnings
2. To guarantee opportunities for women to take active roles
3. To suggest economic improvement for the eradication of social corruption

However, the right to development should not be mistaken only for economic development. What was suggested through correlating development and human rights to progress on human rights is the “Rights Based Approach (RBA)²⁰” and the UN Millennium Development Goals (MDG).²¹ They have great

²⁰- Philip Alston and Mary Robinson (eds.), *Human Rights and Development: Towards Mutual Reinforcement* (London: Oxford University Press, 2005).

²¹- United Nations Millennium Declaration (A/RES/55/2), which was adopted by the UN General Assembly on 8 September 2000, declared that the international community will lead an effort to achieve the following eight goals by the year 2015. 1) To eradicate extreme poverty and hunger, 2) To achieve universal primary education, 3) To promote

potential for receive attention.²² The RBA received much attention from the standpoint that human rights is indivisible in the process of development. The methods for realizing RBA include establishing human rights regulations, promoting regional human rights mechanisms, changing the perception of international development institutions, monitoring human rights violations in the process of development, and promoting the rule of law.²³

Human rights and humanitarian aid are also very much interconnected. Humanitarian aid can be defined as aid given without any conditions based on maintaining neutrality, equality, and independence for the implementation of humanitarianism. Humanitarian aid can be viewed as one of the fundamental rights advocacy activities, as it places focus on protecting the survival and safety of people in an emergency situation. Especially in the context of armed conflicts and natural disasters after the Cold War, there was a sharp rise in threats to humans, increasing the international community's interest in protecting human rights. Since most of the time, countries that are aid beneficiaries are developing countries where corruption and human rights violations

gender equality and empower women, 4) To reduce child mortality, 5) To improve maternal health, 6) To combat HIV/AIDS, malaria, and other diseases, 7) To ensure environmental sustainability, and 8) To develop a global partnership for development.

²²- Philip Alston, "Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals," *Human Rights Quarterly*, Vol. 27, No. 3 (August 2005), pp. 755-829.

²³- Peter Uvin, *Human Rights and Development* (Bloomfield, CT: Kumarian Press, 2004), pp. 177-178.

are prevalent, humanitarian aid has begun to be used as a tool for improving the beneficiary countries' human rights and changing their political systems. Because humanitarian aid has the goal of leading the beneficiaries' political systems to be more human rights-friendly, it brings forth issues of political neutrality and objectivity.²⁴ However, humanitarian intervention can be politicized when donors demand that recipient countries make human rights improvements as a condition for assistance, even though aid itself has human rights improvement as a goal. The interconnection between humanitarian aid and human rights will continue in the future.

In order to make realistic improvements in the overall human rights situation there is a need for understanding the mutual correlation and dependence of human rights and other fundamental values. In particular, there must be efforts to improve human rights within each region, within each state's politics, and in the economic and security realms, as stipulated by the Vienna Declaration.

²⁴ Keum-Soon Lee, *Study on the Influence of Humanitarian Assistance to North Korea* (Seoul: The Korea Institute for National Unification, 2003), pp. 4-7.

4. The International Human Rights Regime and North Korea

In different to universal human rights perspective of South Korea, the human rights view of North Korea seems anachronistic. North Korea has recognized human rights in terms of classism, collectivism, relativism. DPRK is a member of UN, and it has joined five International Human Rights Conventions such as the ICCPR, ICESCR, CEDAW, CRC, and the Optional Protocol to the CRC on the sale of children child prostitution and child pornography. Given the facts, it is hard to understand that North Korea has ignored the universalism of human rights, of course. In spite of that, North Korea has not lowered political sensitivity in regards to human rights issue. So to speak, as North Korea has not denied universalism of human rights, they are afraid of double standard and politicization of human rights and still take a relativist view.

First of all, DPRK regards national sovereignty and dignity as its lifeline. North Korea places national sovereignty above human rights. Even in human rights issue, taking collective rights precedence over individual rights also can share many things in common with the perspective that human rights is subordinated to national sovereignty.

Secondly, North Korea's attitude toward international human rights mechanism is also depending on how outside world recognizes national sovereignty of North Korea. For example, a high-level diplomat of the DPRK recently urged that bilateral dialogue and cooperation between DPRK and EU in the area of

human rights, which had started in June 2001 for the first time in their history, was at an excellent stage at that time. A North Korean diplomat at Geneva said that “there was no reason whatsoever for those countries to unilaterally and deliberately ignore this ongoing process of human rights dialogue and cooperation and to resort to hostility and confrontation had they not really been harboring ulterior motives against the Democratic People’s Republic of Korea.”²⁵

Thirdly, the commission of inquiry (COI) and the Special Rapporteur, according to North Korea’s assertion, run counter to the current trend against politicization and moving towards genuine dialogue and cooperation in the area of human rights. Different from UPR, which was introduced in 2006 when the HRC had been established, country-specific mandates such as COI and special rapporteur institution are seen from the eye of DPRK as the breeding ground for politicization, selectivity and double standards. North Korean administration strongly denounced that COI is a product of political confrontation and a plot against them, and has no relevance to human rights. North Korea regards current international concerns issues as invasion towards Iraq and Afghanistan by the United States, civil war in the area of Arab and the Israeli-Palestinian conflict, and related massive crimes against humanity. In this context, they insist that what international human rights organization and western

²⁵- Letter dated 3 February 2014 from the Permanent Representative of the Democratic People’s Republic of Korea to the United Nations Office at Geneva addressed to the President of the Human Rights Council, *A/HRC/25/G/6*, February 12, 2014.

countries have oppressed innocent countries like them by COI, not dealing with above those human rights violation issues, should be hypocrisy and double standard. North Korea are opposed to international human rights mechanism which threatens their national sovereignty and dignity, what's more, they have raised human rights issue of the main actors involved. It is a kind of strategy to fight fire with fire.

North Korea recognizes that South Korea and the United States join Japan and EU to oppress them by raising human rights issue in the UN. One of countermeasures, North Korea has tried to criticize human rights situation of South Korea and the U.S. This is exactly the same as China announced 'Human Rights Record of the United States' toward human rights attack of the U.S. The accusation that North Korea announced a paper on 'Accuse South Korea as the most serious human rights situation in the world', what's more, the U.S. citizenship is the worst in the world is also same examples.²⁶ With regards to North Korean human rights, confrontation between North Korea and western countries reminds of human rights debate of the U.S. and the Soviet Union, and North and South Korea during past Cold War period.

North Korea has been passive in its cooperation with international human rights institutions. It is not participating in the OHCHR's technical cooperation and is refusing site visitations of the Special Rapporteur. Given North Korea's intransigence, it is tempting to take a more hard-line approach and impose sanctions

²⁶- KCNA, April 29, 2014; April 30, 2014.

on North Korea, but as mentioned above, such a strategy can have unintended consequences. That is the reason the Report of the COI on Human Rights in the DPRK (A/HRC/25/63) noted, “In the light of the dire social and economic situation of the general population, the commission does not support sanctions imposed by the Security Council or introduced bilaterally that are targeted against the population or the economy as a whole.” However, North Korea intermittently had human rights dialogues with its western counterparts.

Part II

Evaluating North Korean Human Rights





Part II

5. Trends in North Korean Human Rights Policy

South Korea

Currently, there is a large gap in the stance between South Korea's political parties and within civil society when it comes to North Korean human rights. The difference in positions is related to the perception of unification and North Korea, the direction of policy toward North Korea, and the best strategy for improving North Korean human rights.

First, when looking at this by political party, the ruling party, or Saenuri Party, holds the position that the North Korean human rights is very dire and must be addressed separately from other issues related to North-South relations, and takes a “universal” approach. The current Park Geun-hye administration and its predecessor, the Lee Myung-bak administration, have the position that the country must move beyond the engagement policy or quiet diplomacy that the Kim Dae-jung and Roh Moo-hyun administrations developed. Instead, they argue, we should take action with the international community. After the

Lee Myung-bak administration took office in February 2008, the conservative South Korean administration has voted in favor of the North Korean human rights resolution at the UN HRC and General Assembly and maintained its consistency in voting. It seems to be driven by diplomatic posturing rather than an effective strategy given that the two Koreas have been engaged in a showdown since 2008. During the time of President Roh's term, as the opposition party, the Grand National Party (GNP, now Saenuri Party), had a history of promoting the "five clauses for North Korean human rights improvement," such as the amendment of the North Korean Escapee Protection Act, the establishment of the North Korean Human Rights Act, the amendment of the National Prisoner of War Act, the establishment of the Support for Kidnapped Families Act, and the establishment of a commemoration day for the reunification of separated families. Founded on anti-communist and anti-North Korea conservative tendencies, the GNP along with conservative CSOs that agreed with the policies have shown great interest in the establishment of the North Korean Human Rights Act by Japan and the United States. Since then, the conservatives have insisted on the establishment of the North Korean Human Rights Act. The heart of the act lies in the establishment of the North Korean Human Rights Foundation and the North Korean Human Rights Archive. Through this, it aims to provide stable support for the North Korean human rights movement as well as reduce human rights violations committed by the North Korean administration, eventually punishing those responsible. Many times, the Saenuri Party and other conservatives have received

criticism that when it comes to providing humanitarian aid to improve the right to survival of North Korean residents, they are rather passive. The criticism points out that the conservative party has strained North-South relations and that they are not very active in exchanges, dialogue, and humanitarian assistance.

In contrast, Kim Dae-jung and Roh Moo-hyun administrations (Feb. 1998 ~ Feb. 2008) had developed engagement policy toward their counterpart, resulting in several reunions of separated families and contributing to the protection of North Korean's right to food through exchanges and aid. Of course, the liberal administrations were blamed by conservative forces for their abstention from voting or non-voting on the resolutions at the UN. Since 2008, the liberal political forces became the opposition. The New Politics Alliance for Democracy and the former Democratic Party do not deny the universality of human rights and the seriousness of the North Korean human rights situation. They have for a long time insisted that neither the establishment of the North Korean Human Rights Act, nor the international community's pressure on North Korea have contributed to the actual improvement of North Korean human rights. Instead, they have stood firm on the stance that humanitarian aid and quiet diplomacy are the most realistic solutions for improving the right to survival of North Korean residents and the protection of North Korean escapees.

However, with regards to the North Korean Human Rights Act, there has been a change in the stance by the largest opposition party. Opposition parties has criticized the Saenuri Party's North Korean Human Rights Act as being CPR focused and for adopting

more of a pressure oriented approach. They assert it better to focus on the right to survival through more exchanges and aid. The creation of the North Korean Human Rights Foundation and the North Korean Human Rights Archive were removed from a ruling party's proposed bill. Since the early of 2015, the ruling party and the leading opposition party are discussing about the possibility of enacting a North Korean human rights and passed a compromised bill on March 2, 2016.

However, overall the other smaller progressive parties still have a negative view of the establishment of the Act, stating that rather than improving the human rights of North Korea, North Korean Human Rights Act will only provoke resistance by North Korea. In addition, liberals are placing emphasis on exchanges and humanitarian aid when it comes to the improving relations with the North. North Korea's Achilles heel, the issue of CPR, is seen to be better resolved through a multi-lateral approach involving the UN human rights mechanism. Other smaller progressive political parties are passive when it comes to North Korean human rights, due to concerns about inter-Korean relations, the effectiveness of the North Korean Human Rights Act, and the possible use of the North Korean human rights issue as a political weapon.

In the political arena, the focus on North Korea may vary according to a particular party's positions, but once in power, support for North Korean human rights may depend on trends in the North Korean nuclear issue or other North Korea-related issues. When the Lee Myung-bak administration took office, interest in and criticism of North Korean human rights increased.

This does not mean, however, that other North Korean issues such as North-South relations or the nuclear issue were ignored. This is the same for the Park Geun-hye administration. During her presidential campaign, Park pledged to actively provide humanitarian aid and adopt the North Korean Human Rights Act as central to her North Korea policy. Since taking office, however, she has yet to implement any of her goals. During the Kim Dae-jung and Roh Moo-hyun administrations, North Korean human rights issue was raised in a more limited manner as an extension of North Korea policy. Instead, the humanitarian assistance and the right to survival took precedence for the sake of the North-South relationship.

On March 2, 2016, South Korea's National Assembly approved the bill on North Korean human rights. The passage came after 11 years of partisan wrangling. The ruling-party and the first opposition-party leaderships negotiated and reached an agreement on major issues concerning the North Korean Human Rights Act between December 2015 and February 2016. The Act was finally enacted on February 26, 2015 with bipartisan support. It is the first law to comprehensively prescribe the human rights improvement of the North Korean people. It contains such institutions as the Advisory Committee for the Promotion of Human Rights in North Korea, Ambassador-at-large on North Korean human rights, the Foundation for Human Rights in North Korea, and the Center for Investigation & Documentation on Human Rights in North Korea. The enactment of the North Korean Human Rights Act will contribute to the international efforts to enhance the universal value of

human rights and build an institutional foundation to open the pathway for unification in which all Koreans are granted the right to enjoy a peaceful and happy life, said the South Korean administration²⁷ Meanwhile, North Korean administration has strongly opposed a series of human rights acts in Washington, Tokyo, and Seoul, arguing they are products of political plots against their own socialist system and top leader.

The positions on North Korean human rights is even more diverse in civil society. With the UN North Korean human rights resolutions, CSOs in South Korea became divided between those that approved and those that disapproved. For example, when the North Korean human rights resolution was introduced at the UN CHR in 2005, conservative organizations like the Network for North Korean Democracy and Human Rights and the Liberal Solidarity stated that it will be “a test to see President Roh’s political and human conscience,” thereby calling on the administration to support the resolution. On the other hand, other progressive organizations like the Sarangbang Group for Human Rights criticized the resolution as “too politically contaminated and biased,” and rejected the resolution. Progressives and conservatives were in disagreement in 2004 too when the North Korean Human Rights Act was adopted in the U.S., which opened up the argument again in South Korea over its own North Korean Human Rights Act. Liberal Solidarity and

27- “Ministry of Unification of ROK, Explanation of the North Korean Human Rights Act,” March 3, 2016. <http://eng.unikorea.go.kr/content.do?cmsid=1834&cid=44821&mode=view> (Accessed on April 2, 2016).

the New Right National Solidarity along with 30 other conservative organizations held “Liberty in North Korea Week” in the US at the end of April 2010 and also in Seoul, making it clear that they were in full support of the establishment of the North Korean Human Rights Act. On the other hand, Lawyers for a Democratic Society (MINBYUN), People’s Solidarity for a Participatory Democracy (PSPD), and 11 other progressive CSOs released a statement on April 27, 2010, declaring that the “the main purpose of the adoption of the North Korean Human Rights Act would be to pressure North Korea and has the political intention to reduce human rights to a confrontational interest.” They also complained that the “Act is nothing new and is simply not an effective enactment.”²⁸ These differences in stance are shown at the debate of the pros and cons for urgent action including referral to the ICC to address the human rights situation since the report of the COI on Human Rights in the DPRK was released in 2014. Similarly, when it comes to North Korean human rights in the political sphere, there is difference in approach between conservatives and progressives. The conservative stance is given how dire the human rights situation is in North Korea, a strong resolution should be found like the enactment of the North Korean Human Rights Act. On the other hand, progressives focus on improving of human rights through the addressing food shortages and the right to survival, congruently with the

²⁸—Lawyers for a Democratic Society (MINBYUN) and People’s Solidarity for a Participatory Democracy (PSPD) et al, “A Written Opinion of Human Rights Groups on the North Korean Human Rights Bill,” April 27, 2010.

improvement in North-South relations.

Of course, there are those within the progressive and conservative circles who have radical positions on North Korean human rights. Within conservative circles there are organizations that believe that the North Korean regime is mainly responsible for the dire human rights situation and that it lacks the will and capacity to improve the situation. These organizations that approach North Korean human rights through democratization often emphasize regime change in North Korea. Within progressive circles, on the other hand, those who advocate unification of the Korean Peninsula are sometimes against mentioning North Korean human rights. Unification organizations criticize conservatives for using the North Korean human rights issue as a political weapon and ignoring the peaceful reconciliation of the two Koreas. The unification organizations embrace the stance of first improving North-South Korean relations and then improving human rights.

In general, people are considered progressive when they are active in pursuing human rights and conservative when they are passive, but when it comes to North Korean human rights in the context of division of the Korean Peninsula, these defining characteristics of conservatives and progressives are switched. There are several reasons that conservatives in South Korea are suspected of not being human rights friendly. First, their stance is based on extreme abhorrence of the North Korean regime, which is not particularly concerned with human rights. Second, a focus on CPR and a hardline approach is far from the comprehensive approach that defines human rights advocacy.

Third, using the human rights issue to bring regime change is a political approach, not a human rights approach. Fourth, only focusing on North Korea's human rights issues and ignoring other universal values like reconciliation, peace, and development does not necessarily improve human rights. Fifth, conservative forces have been silent on human rights violations by past authoritarian administrations in South Korea and are still indifferent about the current human rights situation in the South. In contrast, progressives have a very different stance.

As I mentioned in Chapter 1, when recalling the interdependence of human rights, Korea lacks the ability to implement a reconciliation and cooperation between the two Koreas as well as improving human rights and achieving peace in a harmonious manner. It is clear that groups on both sides of the political spectrum are not free from the structural and historical limitations created by division and war.

Of course, CSOs immersed in North Korean human rights do not show clear differences in stance. It is a fact that differences exist. However, the reason that the camps are in conflict to the extent that compromise is impossible may be because of the commercialization and politicization of the human rights issue by the mass media and political forces. Many moderate CSOs that are working to improve North Korean human rights is not putting their energy into advertising their actions. These organizations are conducting a variety of programs, such as improving the right to survival through humanitarian aid, implementing development aid based on the human rights-based approach (RBA), implementing projects that concurrently

focus on humanitarian aid and human rights improvements, protecting escapees, and assisting escapees to enter South Korea. Their positions were never flaunted, nor was regime change in North Korea insisted upon. Rather, they carried out their roles quietly. Those moderate groups have been effectively carrying out their activities in contrast with the more political groups. Until now, progressive and conservative organizations dealing with North Korean human rights issues have broadened each other's understanding through many interactions and have become more empathetic toward each other. Despite their different perspectives, there are many areas of agreement between the two groups:

1. The North Korean human rights issue includes the human rights of all residents of North Korea and escapees. It also includes the humanitarian issues between the North and South that arose from the division of the Korean Peninsula and Korean War.
2. Human rights within North Korea must include a well-balanced understanding of CPR and ESCR.
3. The responsibility for the North Korean human rights situation lies within the North Korean administration; however, attention must also be paid to the division and armistice system.
4. For the improvement of North Korean human rights, a variety of strategies must be used harmoniously, such as dialogue and pressure, and a bilateral approach versus multilateral approach.

On the other hand, the National Human Rights Commission of Korea (NHRCK) is also a key player in North Korean human rights issue.²⁹ For many years, the NHRCK, an independent institution, has researched the North Korean situation and developed policy. Through these efforts, the NHRCK was able to make an official statement on North Korean human rights on December 11, 2006. The NHRCK's North Korean human rights approach is based on four principles:

1. The universality of human rights
2. Harmony of human rights with peace on the Korean Peninsula
3. Realistic improvements
4. Cooperation between the administration and CSOs

Based on these principles, the NHRCK recommended five policies. First, through expanding international solidarity and cooperation, the South Korean administration should work toward the improvement of North Korean human rights. Second, the administration must continue to provide humanitarian aid to the residents of North Korea on the level of providing protection of life and keeping it separate from political matters. Third, the

²⁹- Although NHRCK is not a policy enforcement agency, it investigates trends in the North Korean human rights, gathers public opinion and suggests policies for the South Korean administration. It also plays an important role in providing a forum for communication and understanding given the controversies over North Korean human rights in South Korean society.

administration must actively use diplomacy and develop a policy to improve the dire human rights situation of North Korean escapees. Fourth, the administration must put in place more proactive measures to resolve the humanitarian issues of separated families, prisoners of war (POWs), and kidnapped persons. Fifth, the administration must conduct objective research and have a firm grasp of the facts on North Korea.

However, once the Lee Myung-bak administration took office, it quickly took action to turn the NHRCK into an administrative body controlled by the administration, reducing projects and downsizing employees.³⁰ Despite this, on July 20, 2009, the Lee administration appointed Hyun Byung-chul as the chairperson of the NHRCK and stated that “there is a need to focus more on North Korean human rights,” thereby increasing the NHRCK’s interest in North Korean human rights. According to Article 4 of the NHRCK Act (amended on May 19, 2011), the act applies to “all citizens of the Republic of Korea and all foreigners residing therein.” In November 2006, the NHRCK stated, “Because the ROK administration does not have jurisdiction over the North Korean region, the NHRCK does not include

³⁰—In early 2008, a not-so-funny thing happened under the Lee Myung-bak administration. After the Commission of Presidential Transition announced that the NHRCK would come under the direct control of the president, the OHCHR wrote a letter to the Presidential Transition Commission. It is “not-so-funny” because the commission, which was unaware that the NHRCK is an “independent national institution” according to the Paris Principles, attempted to place the NHRCK under the control of the president simply because of its name (most of the commissions in the ROK are placed under the president or the prime minister).

North Korea as a subject in investigating human rights violations. At the same time, the NRHCK added, “However, the respective human rights situation of POWs, kidnapped persons, separated families and escapees are to be included within the scope of the NHRCK’s investigation pool, as those issue areas directly impact the people of the ROK.”

After Hyun took office, the NHRCK actively conducted policy research and surveys and recommended the enactment of the North Korean Human Rights Act and propaganda broadcasts toward North Korea. However, the recommendations have not been safe from criticism. That could be seen when the NHRCK took great interest in the enactment of the North Korean Human Rights Act and declared that it should be the institution in charge. In 2010, the NRHCK released a statement on the enactment of the North Korean Human Rights Act indicating its objective to create a North Korean Human Rights Archive and not establish a North Korean Human Rights Foundation. Amidst the continuing dispute between the opposition and ruling party on the North Korean Human Rights Act, on March 24, 2014, the NHRCK released the following recommendation to the Chairperson of the National Assembly, “[The National Assembly] must separate the currently pending North Korean human rights regulation from the policy related to the livelihood of North Korea, placing the NHRCK in charge of the North Korean Human Rights Act and the Ministry of Unification in charge of North Korean livelihood policy.” However, after the Lee Administration, the NHRCK recommended propaganda broadcasts toward North Korea and the dropping of leaflets

over North Korea, as well as supporting anti-Pyongyang CSOs. Through those events, the NHRCK received criticism for its weakening status as an independent institution and non-realistic approach to the sensitive issue.

International Trends

When looking at the international trends in policy on North Korean human right, we can look into related states, Inter-governmental organizations (IGOs), and International Non-governmental organizations (INGOs).

First, when looking at the trends by states, it appears that the U.S. has been the most interested in North Korean human rights issues. Since the Carter Administration, the U.S. has placed human rights issues as a primary focus of foreign policy. Of course, during the Cold War, the U.S. overlooked human rights violations of authoritarian regimes of its allies in the name of ideological competition and national interests. The U.S. has also been complicit in the process of bringing down anti-U.S. and anti-democratic forces, which has led to the death of many innocent lives.³¹ Every year, the U.S. Department of State has been publishing the *Country Report on Human Rights Practices*,

³¹– For a discussion of criticism of the U.S. human rights policies as ‘double standards’ in the context of “American Exceptionalism,” see Michael Ignatieff (ed.), *American Exceptionalism and Human Rights* (Princeton, NJ.: Princeton University Press, 2005). To read about historical criticism against major powers’ human rights policy, including the U.S., see Kirsten Sellars, *The Rise and Rise of Human Rights: Human Rights and Modern War* (Stroud: Sutton Publishing, 2002).

which evaluates North Korea's human rights situation. During 2003 ~ 2007, *Supporting Human Rights and Democracy* has been published five times with discussions of foreign policy on human rights for countries where human rights violations are rampant. This publication has classified North Korea to be a "Country of Particular Concern" and has called for continuous sanctions. In addition, based on the 1998 International Religious Freedom Act, the U.S. State Department published the *Report on International Religious Freedom* annually, which concluded that religious freedom in North Korea does not exist. Internationally, since 2003, the U.S. played a key role in introducing the North Korean human rights resolution to the UN and consistently voted in favor of these resolutions.

The reason for U.S. interest in North Korean human rights is clearer when looking at the enactment of the North Korean Human Rights Act. Before the passage of the North Korean Human Rights Act of 2004, the North Korean Freedom Act of 2003 was introduced in the U.S. Senate and the House of Representatives. This act garnered much criticism from South Korea and within the U.S., as well as from North Korea. The act was criticized for disturbing the peace of the Korean Peninsula, since it seeks to induce the collapse of the North Korean regime in the name of human rights improvement. The act looked very similar to the acts that promoted the regime change of U.S. enemy states including Iran, Iraq, and Cuba. The North Korean Freedom Act of 2003 was a unilateral foreign policy led by the neo-conservatives within the George W. Bush Administration. Thereafter, the act was repealed, and in March 2004, the North

Korean Human Rights Act of 2004 was introduced in the House of Representatives. The Act was then passed both in the House and Senate in October of the same year, and was immediately signed into law by President George W. Bush. The Act's main points were to support North Korean defectors, provide support for radiobroadcasts to North Korea, and appoint a special envoy who advocates for North Korean human rights. However, it was revealed that within five years, the budget was not used to implement these actions. In 2009, the U.S. Congress extended the act for an additional five years and passed a resolution to make the Special Envoy a full time position within the Department of State. President Barack Obama made known his deep interest in North Korean human rights, but it did not become a priority for the President following another outbreak of the North Korean nuclear issue and other foreign affairs. Therefore, during his presidency, little substantive action was taken in regards to the human rights situation. Following the 2012 appointment of Special Envoy for North Korean human rights, Robert King, North Korea allowed the envoy to visit North Korea to observe the status of North Korea's food situation. However, additional visits by the special envoy did not follow due to the conflict between the US and DPRK on the North Korean long range rocket launching and nuclear test. Instead, the two countries used other channels to resolve issues including the return of US citizens who were detained in North Korea which resulted in no American detainees.

Following the United States, Japan also enacted its own North Korean human rights law. The full name is the "Act on

the Disappearance of Persons and Resolution for Human Rights Infringements of the North Korean Regime.” Japan’s law on North Korean human rights issue is more hard-lined in comparison to the U.S. Japan’s main interest in enacting this law is the repatriation of Japanese abductees by North Korean.³² Between 1997 and 1998, there were two incidents of which Japanese citizens were able to return to visit Japan in exchange for Japan’s humanitarian aid to North Korea. Thereafter, on September 17, 2002 at the Summit held in Pyongyang between North Korean top leader Kim Jong-il and his Japanese counterpart Prime Minister Junichiro Koizumi, Kim Jong-il acknowledged and apologized for the abduction of Japanese people to Prime Minister Koizumi. In his subsequent visit to North Korea, Koizumi succeeded in bringing back five survivors for a visit to Japan. However, with the controversy regarding the remains of Megumi Yakota, who was abducted at the age of 13 by the North and died in North Korea, the Japanese administration refused to return the surviving abducted Japanese back to North Korea.³³ Through this incident, the relationship between North Korea

³²- Tessa Morris-Suzuki, “Refugees, Abductees, ‘Returnees’: Human Rights in Japan-North Korea Relations,” *The Asia-Pacific Journal*, Vol. 13(3) (March 29, 2009).

³³- In September 2002, North Korean leader Kim Jong-Il publicly admitted to the abduction of Yokota Megumi when Japanese Prime Minister Junichiro Koizumi visited Pyongyang for the first time as a Japanese Prime Minister. At the time, North Korea claimed that she had committed suicide and returned what it said were her cremated remains. However, when the authenticity of the remains was questioned, Japanese public opinion turned sharply against North Korea.

and Japan deteriorated. Political parties in Japan came face to face with the anti-North Korea public. Undoubtedly, both the opposition and the ruling party competed to enact Japan's own North Korean Human Rights Act.

On June 16, 2006, the North Korean Human Rights Act that was jointly introduced by the three political parties was passed in Japan's House of Councilors. This law emphasized "if there is no improvement in the Japanese abduction issue and North Korean human rights," Japan has no choice but to place economic sanctions on North Korea. Japan's North Korean Human Rights Act restricts foreign currency exchange deals, prevents North Korean boats from docking in Japanese harbors, etc. This act, with the existing North Korea restrictive regulations, is seen as a sanction act rather than one that worked on human rights violations in North Korea. In addition, Japan actively voted in favor of the UN North Korean human rights resolution. Since May 2014, Japan and North Korea have had official diplomatic talks intermittently on the disappearances of persons and have been used to stabilize relations between the two countries.

EU's North Korean human rights policy has many similarities with that of Japan and the U.S., but there are also clear differences. The EU took the lead in introducing the North Korean human rights resolution at the UN, bringing it to international attention. In the case of the EU, the chair country along with the executive committee created a draft resolution on North Korean human rights and shared it with its member states, South Korea, the U.S., Japan, and other friendly countries. It was then introduced at the UN HRC and General Assembly.

However, the difference between the EU and the U.S. and Japan is that the EU proactively reached out to North Korea on their human rights issue through humanitarian and development aid as well as bilateral dialogues. Most EU member states took former South Korean President Kim Dae-jung's advice in 2000 to normalise relations with North Korea when he introduced his Sunshine Policy.

The EU's North Korean aid projects included their normal development cooperation projects such as sustainable development, transition into the global economy, and the eradication of poverty, all aimed at the rule of law and democracy. In addition, the EU raised the issue of North Korean human rights along with discussing political issues such as the North Korean nuclear issue, economic cooperation, inter-Korean relations, and the North Korean food shortage issue. It was even decided in June 2001 that a human rights dialogue would be held in Brussels. And, although there were at least six political dialogues and one human rights dialogue between two parties during 1998-2004, DPRK stopped those dialogues unilaterally while at the same time denouncing the EU's initiation of North Korean human rights resolutions at the UN.

On the other hand, North Korea's long-term ally, the People's Republic of China, has agreed with North Korea that the North Korean human rights situation is a domestic issue and that the international community's concern was an infringement on state sovereignty. China and North Korea signed a bilateral agreement called the "Mutual Cooperation for the Maintenance of State Safety and Social Order", defining North Korean escapees

not as refugees, but as illegal economic migrants, arresting them when caught and repatriating them back to North Korea. During the mass defection of North Korean residents due to the food shortage in the late 1990s, the Chinese administration overlooked defection into the Northeast region of the country.

However, with the engagement of aid organizations and brokers and an increase of escapees forcing entry into foreign embassies in Beijing to seek asylum, the escapee issues became an issue of public order from the perspective of Chinese administration. In the case of escapees successful in entering foreign embassies, the Chinese administration has overlooked their entrance into South Korea on the grounds of domestic laws, humanitarianism, and international laws. Although China has been handling the North Korean escapee problem with “quiet diplomacy,” China has in the meantime conducted many crackdowns, causing escapees to change their defection route to Southeast Asia. Despite this, there are a large number of North Korean escapees residing in China as illegal laborers or in-common marriages.

To avoid China’s crackdown, many North Korean escapees pass through the southernmost border of China or Mongolia and illegally enter Thailand or other Southeast Asian countries. Thailand, a country adjoined by the Mekong River, Laos, and Cambodia may be dangerous, but has become a popular defection route. Thailand, like China, considers North Korean escapees illegal migrants. Therefore, once escapees are caught, appropriate judicial action is taken and they are deported to a country of their choice. The deportation procedures of Laos and Cambodia are known to be similar to that of China and Thailand. Moreover,

these Southeast Asian countries do not bring up North Korean human rights issue at the UN. The ROK administration has been accepting those deported escapees into the country and they are taken through a process of background search and assimilation training. As of March 2016, according to the data of South Korean administration, there are over 29,100 North Korean escapees residing in South Korea and 71% of that population is women. As most of those escapees are separated from their families, many of them send money back to their families in North Korea or work to bring their families into South Korea.

At the UN North Korean human rights issue has been discussed in the charter body and the treaty body. During meetings of the Charter bodies, at the 59th UN CHR in 2003 and the 60th UN General Assembly in 2005, after the North Korean human rights resolution was passed, resolutions of this caliber have consistently been passed. The contents of the resolution specifically point out that despite North Korea's efforts to provide measures to protect the human rights of its people and to improve the human rights situation, the fact is that the North Korean human rights has not improved. The UN has also urged the North Korean administration to improve the human rights situation on its own or with the cooperation of the UN or international community. In the charter body, the UN has made efforts to address the North Korean human rights issue by dealing with human rights violations that the North Korean regime has committed including North Korea's public executions, the existence of camps for political prisoners, infringement of freedom of religion, forced repatriation of North Korean escapees,

punishment of repatriated escapees and the restrictions on access to food.

At the 60th CHR in 2004, a resolution was passed appointing a Special Rapporteur on the Situation of Human Rights in DPRK. Since then, this position has been continuously maintained. After Vitit Muntarbhorn's term as Special Rapporteur came to an end, the former of the President of the National Human Rights Commission of Indonesia Chair Marzuki Darusman was appointed as the new Special Rapporteur to the DPRK and held office until June of 2016.

At the 22nd UN HRC in March 2013, for the first time through the North Korean human rights resolution, the COI on Human Rights in the DPRK was installed and maintained for one year. The Commission was composed of three Commissioners and over 10 investigators. Through the report (A/HRC/25/CRP.1) submitted on March 2014, it was concluded that North Korea government has systematically committed crimes against humanity. Accordingly, the COI made recommendations to the international community and the UN, especially the UN Security Council as follows:

The Security Council should refer the situation in the Democratic People's Republic of Korea to the International Criminal Court for action in accordance with that court's jurisdiction. The Security Council should also adopt targeted sanctions against those who appear to be most responsible for crimes against humanity. (1225 (a))

Since then the UN HRC and General Assembly have reconfirmed the conclusions of the COI report, requiring the UN Security Council to moot the issue on the table. Since the passage of the North Korean human rights resolution at the 69th UN General Assembly, the issue was brought up for discussion at the Security Council, while China and Russia, permanent member states of the council, opposed the resolution.

North Korea has criticized the UN resolutions as a violation of state sovereignty and as being filled with double standards and political intent. On these grounds, North Korea refused to let the Special Rapporteur enter the country. However, North Korea has cooperated in the newly formed UPR and has completed two cycles thus far, in the fall of 2009 and the spring of 2014. The DPRK was evaluated on the four international covenants in the field such as CPR, ESCR, CRC, and CEDAW that were ratified in the state. However, North Korea frequently submitted the reports late and with insufficient content. For example, the first implementation report on the ICCPR was submitted in 1983 with a supplement in 1984. Then, fifteen years later in 1999, a second report was submitted. North Korea ratified the ICCPR and the IESCR before South Korea on September 14, 1981. It is apparent that the ratification of these covenants was due to competition between political systems during the Cold War.

North Korea signed the CRPD on July 31, 2013, and ratified the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography on November 10, 2014. DPRK has yet to sign the ICERD, the International Convention

against Torture, and the Convention on the Protection of the Rights of All Migrant Workers. In comparison to the charter body, the evaluation of the human rights situation of member states through the treaty body cooperate more, due to the its functional process. However the problem is that the process and the final opinion are not binding.

Finally, we will explore the activities of international NGOs that deal with North Korean human rights. In the late 1990s, many humanitarian aid organizations took interest in North Korea's food shortage and the protection of North Korean escapees. In the 2000s, on the basis of escapees' testimonies, international human rights organizations became interested in the internal North Korean human rights situation and provided information to introduce the North Korean human rights resolution by the UN mechanism.

In addition, international human rights organizations in solidarity with South Korean organizations working on North Korean human rights worked to block the forced repatriation of escapees and impeached those responsible for human rights violations through monitoring and campaigning. The activities of the International Coalition to Stop Crimes against Humanity in North Korea (ICNK) are a clear indication of this. The installation of the COI in March 2013 by the UN HRC was largely due to the lobbying of INGOs, especially ICNK. However, other than criticizing the North Korean administration or placing pressure on the state, those North Korean human rights organizations have yet to come up with a realistic resolution to improve the North Korean human rights. It is difficult to suggest an effective

human rights improvement solution considering the various internal and international factors, such as the North Korean nuclear issue, economic difficulty, and the division system of the Korean Peninsula. In regards to North Korean human rights, international human rights organizations place focus on raising awareness through criticizing the North Korean regime based on the international covenants.

There is a need to think about whether the work of international human rights organizations on North Korean human rights actually contributed to improving the situation. For example, the idea of Six-Party Talks to improve North Korea's human rights situation was devised by some of INGO activists. The Defense Forum Foundation, headed by Suzanne Scholte; Freedom House, which has been held the Convention on Human Rights in North Korea; Michael Horowitz, Senior Fellow at the Hudson Institute; and human rights specialist David Hawk raised the need to address human rights in the Six-Party Talks. This position was modeled after the Conference on Security and Cooperation in Europe (CSCE) Final Act in which 35 countries agreed to during the Cold War.

In the Helsinki Final Act, adopted in 1975, an article on human rights was included in the "Principles Guiding Relations between Participating States." However, the reason the Soviet Union and other communist states accepted the article on the protection of human rights was so that they would be accepted by the Western forces as their zone of influence expanded into the mid-Eastern part of Europe after World War II. Specifically, communist states accepted the human rights article in exchange

for receiving security benefits. At that time, West Germany and France were stabilizing diplomatic relations with the Soviet Union and other communist states and providing economic aid and making efforts to cooperate with the Soviet bloc. When looking at the case of the CSCE which brought about the Helsinki Process, participant countries in the Six-Party Talks must recognize the North Korean system and its security concerns, and develop a balanced framework through which North Korea will be willing to accept the human rights agenda proposed by the five counterpart countries.

Those that argue that the North Korean human rights situation should be included in the Six-Party Talks argue that North Korea must take responsibility for the mass human rights violations and the leaders of the administration should be tried at the ICC.³⁴ Due to this campaign by non-governmental actors, this argument has been officially discussed at the UN HRC. Similarly, others argue that the North Korean human rights issue should be discussed at the UN Security Council. This is so that countries that are not members of the ICC are held responsible for human rights atrocities are mandated to go through a resolution process of the UN Security Council.

³⁴ On 15 September 2006, Hyun Yoon, a Representative of Citizen's Alliance for North Korean Rights, sent a letter to the UN Security Council along with other international human rights advocates including Sophie Richardson (HRW), Joel R. Charny (Refugees International), Debra Liang-Fenton (U.S. Committee for Human Rights in North Korea), Aidan Mc-Quade (Anti-Slavery International). The letter requested that the UN Security Council take a stronger role in addressing human rights in North Korea.

This can be easily determined when looking at the unique characteristics of the ICC regulations. First of all, the ICC will handle significant crimes where respective countries do not have jurisdiction or have given up their right to jurisdiction.³⁵ Secondly, the issues that can be discussed will be limited to the four main crimes which the international community actively addresses which include genocide, war crimes, crimes against humanity, and crime of aggression. Thirdly, court regulations must be within the scope of the international common law agreed by all countries. According to the COI report, North Korea can be taken to the ICC and those responsible for human rights violations or the installation of a special law can be recommended for prosecution.

However, this approach can be criticized as being implemented too quickly or as another strategy to overthrow the North Korean regime. The Rome Statute, ratified on July 1, 2002 and followed by the ICC has been deemed limiting in having all four international crimes to be discussed freely. This would give criminals a free pass to commit international crimes to super powers such as the U.S., displaying the unfair ways of the international human rights regime. This gives North Korea the shorter end of the stick. Alternatively, North Korea benefits from having to go through a security resolution in order to prosecute the North Korean leader in the ICC. Immediately after the release of the COI report, the Ministry of Foreign

³⁵. Jaeho Sung, *International Organization and International Law* (Hanul Publishing Group, 2003), Korean version, pp. 274-276.

Affairs of the People's Republic of China stated that they would reject any discussions that include North Korean human rights as a security issue. The China's position was reconfirmed by the Chinese Ambassador to the United States of America Cui Tiankai who said at an interview with the *Foreign Policy* in October 2014, "Other countries, including the United States and China, should try not to interfere in the domestic affairs of North Korea."

China and North Korea, the two nations most often criticized by the US over human rights, have lined up to return fire after the Senate published its damning report on the CIA's use of torture to interrogate captives suspected of terrorist involvement in December 2014. A foreign ministry spokesman in Beijing said the US should "correct its ways", while Chinese state media accused it of double standards for presenting itself as a defender of human rights while committing gross abuses. China has expressed its official opposition at least three different times, citing interference to domestic affairs and politicization of the human rights issues, to the UN HRC and General Assembly in 2014 and recommended that the North Korean human rights situation be discussed at the ICC. North Korea also embraced the release of the torture report. Its state news agency, the *Korea Central News Agency* (KCNA), urged the UN Security Council to address the US record.³⁶

The international community's interest in addressing

³⁶- Tania Branigan, "CIA Torture Report: China and North Korea Quick to Settle Scores," *Guardian*, December 10, 2014.

the North Korean human rights issue is clearly shown by its efforts to call out the violations that the regime commits against its own people and shaming or even trying to pressure the North Korean regime to change its ways. They even go so far as advocating actions for regime change. However, there is concern that labeling North Korea as an enemy will not allow for substantive improvements in the situation. A rapid unilateral approach to North Korean human rights can also bring about violent results. This approach has the characteristics of not allowing North Korea to improve the situation on their own, and states that human rights has to be improved for the North Koreans by outside forces.

The basis for such thinking is that the universality of human rights gives one the right to ignore the party concerned and act unilaterally. There is the naïve logic that peace, humanitarian and other universal values are cohesive. This type of understanding of North Korean human rights is limited within the basic fundamental rights of man, economic and social rights. Humanitarian issues due to war, and the division of the Korean peninsula is currently ignored. This type of approach is ironic as every action in the name of human rights seems to go against everything that is human rights. However, history shows that the goal of human rights is a strategy and process and discreetly shows that it progressed through engagement and solidarity rather than through polarization and discrimination.³⁷

³⁷- For distinguished works explaining on the historical, cultural, and ideological development of human rights, see Paul Gordon Lauren,

6. Issues Surrounding North Korean Human Rights

Conflict in the Perspective of North Korean Human Rights

The so called *South-South conflict* is a term used to convey the conflicting ways that South Koreans view North Korea and the degrading human rights conditions. North Korea is a companion that needs to be reunified with South Korea and at the same time it is an enemy with whom South Korea is still at war technically. When looking at North Korea as an ally, reconciliation and cooperation are what come to mind. Therefore, North Korean human rights should be approached in a sensitive way. On the other hand, when looking at North Korea as the enemy, there is a need to prioritize their most vulnerable point, one of which is human rights. Between these competing perceptions, what is the best way for South Korea to improve North Korean human rights?

Looking at human rights through a universalistic perspective, North Korean human rights should not only be dealt with proactively, but the international community should utilize all its strategies to improve human rights. This is because the North Korean human rights issue not only involves the unique characteristic of being located in a divided peninsula, amid challenging North-South Korean relations, influenced by

The Evolution of International Human Rights (Philadelphia : University of Pennsylvania Press, 2003); Micheline R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (London: University of California Press, 2008).

the historical background of the peninsula, and the involving people of the same ethnicity, but it is also a universal problem. Furthermore, the North Korean human rights has been used systematically against its own people and is so severe that it requires the international community to engage North Korea with extraordinary measures including the ICC's intervention. For these reasons, efforts to improve North Korean human rights should not be delayed any further. When looking at North Korean human rights through a universal perspective, ROK-DPRK reconciliation, peace on the Korean Peninsula, and emphasizing humanitarian aid can be seen as actions to place North Korean human rights on the back burner.

It seems to be a waste of time to continuously play ping pong with arguments when the world's worst human rights violations are happening. It is absolutely necessary for the international community to come together in solidarity and find a reasonable solution. A reasonable solution may include criticism of the North Korean regime, economic sanctions, and diplomatic isolation.

In comparison, those who have relativistic perspective hold the view that when considering the human rights of a certain community, their culture and historical background must be taken into consideration on a case by case basis. Countries that are accused of human rights infringements by the international community counter argue unfair criticism and the relativistic human rights perspective. They confirm that human rights is of high value, but they argue that criticizing the human rights of a certain country sets up a double standard. Those with relativistic

positions indicate that the particular state's person in charge of human rights and the human rights situation vary depending on their culture, customs, or economic situation. Therefore, it is dangerous to hold uniform standards. As a result, relativistic human rights advocates reject interference in human rights from the international community.

In the eyes of the relativistic group, North Korea must find its own way of improving their situation by taking into consideration the communitarian culture, the hierarchical social order, the primitive economic level, and the current ROK and U.S. military situation.³⁸ In reality, North Korea's rejection of criticism from the international community on the grounds that they are placed in double standards and that it is meddling in its sovereignty, we can conclude that North Korea has a relative human rights perspective. Of course, because North Korea is a signatory of four international human rights covenants and the

³⁸—A famous debate concerning the universalism and cultural relativism of international human rights is one between Kim Dae-jung, the former Korean president, and Lee Kuan Yew, former prime minister of Singapore. See Fareed Zakaria, "A Conversation with Lee Kuan Yew," *Foreign Affairs* 73(2) (March/April 1994), pp. 109-126; Kim Dae-jung, "Is Culture Destiny? The Myth of Asia's Anti-Democratic Values," *Foreign Affairs* 73(6) (November/December 1994), pp. 189-194. It is interesting to note that by prioritizing the right to survival in regards to North Korean human rights, Kim Dae-jung, who upholds the universality of human rights, advocated the "Sunshine Policy," a policy that aims to promote the gradual improvement of human rights in North Korea by improving inter-Korean relations through political cooperation and economic exchanges. Then, is it legitimate to say that Kim Dae-jung took a relativist approach in disguise as a universalistic approach to issues concerning North Korean human rights?

protection of human rights is clearly indicated in the national constitution, it is difficult to say that North Korea is completely relativistic.³⁹

Within South Korea, there are both the universal and relativistic perspectives when it comes to the North Korean human rights issue. Basically, many people who experienced democratization and the improvement of human rights, believe in the universality of human rights. However, when people think of North Korean human rights, the majority of the public do not hold on to the far left or far right of the issue. Rather, most are in the moderate position, meaning slightly relative and slightly universal. Many people are rational in that they support the creation and implementation of an active North Korean human rights policy or movement that is approached in peaceful ways and balanced with reconciliation. In reality, however that kind of moderate approach is difficult to realize. The basic positions may differ, but for the most part the two moderate positions appear to be prevalent. However, in the media, the most extreme positions usually receive the most attention.

There is no doubt that human rights is universal. In actuality, the relative perspective is not a position held by most human rights activists. It comes, rather, from the study of anthropology.⁴⁰

³⁹- In April 2009, for the first time, North Korea inserted a human rights clause stipulating that “the state shall defend the interests of the workers, peasants, working intellectuals and all other working people·····, and respect and protect human rights,” (Article 8) in its Constitution.

⁴⁰- When the UN CHR was preparing the UDHR in 1947, the American Anthropological Association (AAA) raised serious objections and declared a statement arguing that the ‘Universal’ Declaration cannot be

However, international human rights regulations cannot be applied like the Bible to every country's human rights issues. Radical universalism⁴¹ or ex-contextual universalism is also unrealistic. Attempting an unrealistic approach is very dangerous. Of course, as Jack Donnelly states,⁴² human rights is essentially universal, requiring only relatively modest adjustment in the name of cultural diversity. At the same time, when we recognize the different levels of human rights such as concept, interpretation, and form, it can be said that the universalism of human rights and an absolute approach are issues on very different dimensions. In order to bring the fruition of universalism of human rights to a particular reality, it is necessary to first identify its foundation and context.

The universalism versus relativism debate over human rights characteristics ended with universalism taking victory. However, it is not human rights when "universalism" is emphasized and a method far from reality is forced in the name of universalism

valid all over the world because the so-called 'Universal Declaration' in fact contains Western values and anthropological science teaches that values are culturally relative. This statement, however, confuses the universality of human rights and cultural distinctiveness of a community. Cited from the American Anthropological Association, "Statement on Human Rights," *American Anthropologist* 49(4) (1947); Eva Brems, *Human Rights: Universality and Diversity* (Hague: Martinus Nijhoff, 2001), p. 24.

⁴¹ This expression is a kind of radical universalism, one of the four positions on human rights theories classified by Jack Donnelly. Radical universalism holds that human rights is universally valid across cultural and historical variation. For Donnelly's four types of human rights theories, see Jack Donnelly, *International Human Rights* (Kewwick, South Australia: Westview Press, 1993), pp. 35 ~ 36.

⁴² Ibid., pp. 36, 37.

in a field where practical methods are needed in order to increase human rights. In order to materialize an abstract human rights' universalism into a specific human rights improvement method, the relevant historical and present situations must be dealt with. The author calls this approach "contextual universalism." Contextual universalism respects international human rights covenants, but places emphasis on the application of those covenants through a realistic method for improvement of human rights. This approach allows for a richer universalism in human rights.

The Current Situation of North Korean Human Rights

It is well known that North Korean human rights condition in and out of North Korea is serious. The UN Special Rapporteur to the DPRK and COI Reports, North Korean human rights resolution at the UN human rights mechanism, and all South Korean and international reports written and based on testimonials from North Korean escapees, consistently indicate and assess that human rights in North Korean is deteriorating. This indicates that the residents of North Korea continue to live in fear and poverty and require continuous attention from the international community.

However, the DPRK does not agree with the international community's assessments, partially admitting that their human rights situation, including issues like right to food and right to health, is in jeopardy. In the second report submitted to the Committee on ESCR in April 2002, the DPRK indirectly admitted to the income gap between laborers and that the livelihood of

its people had become difficult due to the reduction of food production. However, they argue that public executions, prison camps, and infringements on the right to religion are a result of following domestic law and the international community's criticism interferes with domestic affairs.

In South Korea, some people sometimes speculate about the stories told by North Korean escapees about their North Korean human rights and a third country. Shin Dong-hyuk, a famed North Korean escapee who helped publicize alleged human-rights abuses inside his country, has admitted to changing parts of his life story, putting his credibility in question in January 2015. But, most of the doubt is not about the actual human rights situation, rather it is about the methodology of research of the situation. It is pointed out that there is uncertainty about whether the human rights evaluation takes into account the entire area and whether all the testimonies in the report are true.

For the most part, North Korean human rights reports are written based on information taken from testimonials by North Korean escapees. Most escapees are from the DPRK - China border and are in the position to criticize the DRPK. In addition, reports written years ago in which the facts were not verified are still being utilized as truth. Representative of this is the "fact" that there are 200,000 prisoners in the prison camps. This number was first reported by the South Korean information agency about over twenty years ago and still remains in use until past 2010, with some reports reducing the number into 80,000 ~ 120,000.⁴³ Those reports have not

verified the number in general and political offenders in the prison camps in particular. That is the reason some expressed doubt on the accuracy of the COI report on the human rights situation in DPRK. In addition, there is criticism that the North Korean human rights reports and the issues dealt within the international community are usually focused on CPR and are therefore unbalanced.

Discussions of North Korean human rights that place emphasis on CPR are criticized as a Western perspective that overlooks North Korea's ESCR, especially the right to survival. Many point out that the unverified and unbalanced North Korean human rights reports are no more than tools to pressure North Korea. Of course, from the perspective of ESCR, the North Korean human rights is dire. In conclusion, the problem between the objectivity and "truths" of the North Korean human rights reports will continue until entry into North Korea for field research is allowed. Despite these criticisms, the international community is deeply concerned at the systematic, widespread, and gross human rights violations in DPRK.

Root Cause of the North Korean Human Rights Situation

In South Korea, the difference in perspectives on the cause of the North Korean human rights is greater than the difference in perspectives on the status of the North Korean human rights.

⁴³-Do Kyung-Ok, Kim Soo-Am, Lee Keum-Soon, Han Dong-ho, Hong Min, *White Paper on Human Rights in North Korea 2014*, Korean Version (Seoul: The Korea Institute for National Unification, 2015), p. 99.

Overall, many South Koreans believe that the North Korean human rights conditions is a serious situation. Despite this, an agreement has not been reached on the root cause of the human rights situation. Looking at it objectively, the human rights situation is a comprehensive result of internal, international, and natural factors. However, the progressives trace the root cause of the situation to international factors and the conservatives emphasize internal affairs as the root cause of the situation. Both sides agree that natural factors are an intermediate variable and that they have worsened the situation. The progressives have the characteristic of looking at the human rights situation comprehensively as an internal North Korean human rights issue and a inter-Korean humanitarian problem. On the other hand, the conservatives have the tendency to take a narrow position and view the North Korean human rights issue to be a North Korea problem.

The conservatives blame the human rights issue on North Korea's political system. This is based on the view that North Korea has a cult of personality within the dictatorship that infringes upon the people's freedom. The one-leader (*Suryeong*) dictatorship not only creates political repression but also limits economic creativity, therefore resulting in the repression of human rights. Those who say that North Korean human rights is due to internal political factors would see international factors as an excuse and criticize those emphasizing the external factors for irresponsibly overlooking domestic human rights infringement issues.

However, the abovementioned viewpoint is criticized for not completely understanding the North Korean human

rights issue. First, the view that the root causes of human rights violations as arising from internal affairs runs into issues about how to discuss humanitarian issues that arise from the Korean War and the division of the Korean Peninsula. Humanitarian issues that include separated families, kidnapped persons, and POWs come into conflict with the rights of relevant persons to live in the pursuit of happiness. This problem arose from the division of the Korean Peninsula and it is a problem for not only South Korea but also the North. Blaming the human rights situation on internal affairs will not allow for a window to solve these humanitarian issues.

The position that internal affairs are the root cause of the North Korean human rights issue, or, in other words, regarding the authoritarian system as the cause of the problem, leads to the conclusion that if you remove that factor, then the human rights issue will be resolved. This leads to the position that human rights will improve through regime change. A portion of the population that believe in this argument take a hard line emotional stance because of the sense of the animosity of the North Korean regime. However, one cannot stay silent on the North Korean human rights situation. When looking back at the history of the efforts to improve human rights, viewing the unique political system and its change to be the cause and resolution of the human rights issue, respectively, is extremely simplistic and politicized. Can we say that the three points below are not related to the improvement of North Koreans?

1. Human rights education to both North Korean bureaucrats and residents
2. Human rights-based approach(RBA) to development with the poverty reduction strategy
3. Suspension of indiscriminate economic sanctions against North Korea and arms race of the two Koreas

When only looking at the North Korean political system, not only are we not fully able to understand the complicated human rights situation, it also becomes difficult to look for a comprehensive approach to resolve the situation.

The North Korean administration is not free from responsibility for the human rights conditions, but it is clear that internal, international, political, and economical factors all play a role in the human right situation. The progressives who argue that international factors are responsible for the North Korean human rights situation are also not persuasive. The gaps in position that surround the primary causes for the North Korean human rights situation indicate that the cause of the problem is multi-faceted and multi-tiered. In reality, the difference in position regarding the causes creates difficulty in determining a direction for the improvement of North Korean human rights.

The Characteristics of Human Rights for North Korean Escapees

In the late 1990s, North Korea experienced a food shortage resulting in a rapid increase of North Koreans fleeing the country.

The human rights of escapees immediately became an interest of the international community. Until today, there is a long line of North Koreans wanting to escape their country and there is also controversy concerning the reasons why they feel the need to leave. This can be organized by three aspects: 1) scale; 2) motive, and 3) status of the escapees.

First, there is a large gap in the estimated number of escapees. As of March 2016, the number of escapees currently in South Korea is over 29,100. However, the number of escapees residing outside of South Korea can only be estimated. The estimates range from as small as 10-20 thousand to as large as over 300 thousand. These estimates come from a small sample study, but most of those questioned were from the border of China and the DPRK, which leads many to questions if the sample is really representative of the whole area. Recently, there is analysis that in regards to the scale of North Korean escapees in comparison to the late 1990s, during which time many defected due to the shortage of food, the numbers of current escapees have gone down significantly. The reason for this is that starting in the 2010s, the food situation in North Korea improved and China imposed a crackdown on escapees. Regardless of the situation, the estimates of escapees range from 10,000 to 100,000.⁴⁴

Second, there is much controversy on the motives for defection. In the late 1990s, the reasons for defection by North

⁴⁴- Dong-ho Han et al., *Paper on Human Rights in North Korea 2014* (Seoul: Korea Institute National Unification), pp. 542-546.

Koreans were to look for food and for economic survival. When looking at it this way, the escapees can be seen as border crossers or migrants. However, starting in the 2000s, there were cases of many defectors who left North Korea now in better economic positions sending for their family members in North Korea and cases of residents defecting in search of a better quality life after coming into contact with outside information.⁴⁵ Of course, the primary reason for defection is still economic survival, but it is clear that the reasons are becoming diversified and include dissatisfaction with the North Korean regime, the search for a better life, and the fear of punishment for illegal acts. It is important to take into consideration the fact that 70% of escapees are women. North Korean women are not only prone to economic hardship, but also violence, and some have testified that their defection was greatly influenced by the patriarchal mindset.

Last but not least, there is a problem with the status of escapees. Those that focus on escapees from North Korea who leave for economic survival, define escapees as illegal border crossers or illegal migrant workers. On the other hand, there are those who argue that North Koreans who defect due to economic survival distrust the North Korean administration and if the escapees are returned to North Korea, they will inevitably be

⁴⁵- Motivations behind North Korean defections have changed so far: for the sake of political ideology up until the 1980s, for economic conditions after the mid-1990s, and for the better quality of life and reunion of newly separated families from 2000s. The comment of Prof. Gui-ok Kim at the discussion titled with “The Human Rights Conditions and Challenges of North Korean Escapees” held by NHRCK on June 30, 2004.

punished. Therefore, they are refugees. How one views the status of escapees greatly influences policy and is therefore an important issue. In the case that escapees are viewed as illegal border crossers or illegal migrant workers, we cannot express dissent of countries like China, or other countries where escapees reside, that punish escapees according to domestic law. In this situation, the most South Korea can do is request for humanitarian aid to send escapees to South Korea and to protect the basic rights of escapees in the country. We can look at humanitarian aid toward North Korea and economic cooperation as a primary resolution to the escapee problem.

However, if escapees are determined to be refugees, in the case that the country in which the escapee is residing is a signatory of the Convention Relating to the Status of Refugees, the country must protect the escapees according to the convention. In the case the country is not a signatory, forced repatriation is prohibited from the both international law and humanitarian perspective. When an escapee is seen as a political refugee, we can choose between political criticism of the North Korean administration and political pressure as a means of resolution.

On the other hand, there are those that argue that it is meaningless to view escapees as refugees. This is because even if the OHCHR defines escapees as refugees, North Korea and China will not recognize this status, thereby rendering it ineffective.⁴⁶

⁴⁶- Regarding this, a spokesperson for the OHCHR said that “the OHCHR is irrelevant to the determination of North Korean refugee status,” and “there is no need to go through a separate procedure for the determination of refugee status because North Korean refugees are

Those who have this position place priority on practical solutions, such as the protection of rights at the current location of the escapees, stoppage of forced repatriation, safe settlement and protection of escapee. There they can safely enter into their final destination. Whatever one's position may be, it is clear that the forced repatriation of escapees is a human rights violation.

Ways to Improve the North Korean Human Rights Issue

Improvement of the North Korean human rights situation largely depends on how the causes of the human rights issue are viewed. Those who emphasize internal factors as the cause look toward North Korean regime change, while those who emphasize international factors as the main factor of the problem look toward the improvement in the external environment. These are the two sides that North Korean human rights situation has been aggravated, so the basic direction for the human rights improvement should be managed in a balanced way. But, in reality, views on ways to improve human rights in North Korea is badly divided.

already provided with solutions to obtain nationals and protection.” She continued, “if a refugee hopes to live in a third country, including the U.S., other than South Korea, he/she will be sent to the diplomatic mission after an interview,” and “it is entirely up to the country to give refugee status and accept him/her for resettlement.” (The Radio Free Asia, May 31, 2006.) However, some argue that North Koreans who leave their country for economic reasons should be considered refugees because it is clear that there is a constant number of refugees among those defecting from North Korea because economic conditions in North Korea have not improved. They should be considered refugees in a broad sense if they have a valid fear of persecution upon return. In this sense, experts call them *refugee sur place*.

First, the side that suggests regime change as the way towards improving human rights pushes for the democratization of North Korea by external pressure. As seen in the French, American, and Russian revolutions, the most significant table turner in each case was the change in political system. An administration that suppresses human rights should be changed through the will of the people. This is the essence of political rights. However, many outside argue that because it is difficult for North Korean residents to drive regime change while under a strong authoritarian system, it is necessary for international forces to assist in bringing change.

Those who campaign for “democratization in North Korea,” to make North Korea a free democracy through regime change, have the tendency to understand North Korean human rights as political freedom. For example, they emphasize that North Korean residents are denied the freedoms of expression, assembly, and religion, refer to the political prison camps and public executions as justification. They also argue that North Korea’s poverty stems from the administration’s corruption and incompetence. Therefore, in order to improve human rights, the North Korean regime must be overthrown.

However, those who criticize the democracy in North Korea view the approach as a problem of human rights universality that transcends the system. Those that argue for democracy in North Korea fundamentally do not trust North Korea’s political system and believe that only under a free democracy can human rights improve. Human rights do not speak of a preference for a particular political system. Rather, they set limitations on all

systems that are allowed in a society. In addition, those who criticize democracy in North Korea argue that the first task in improving human rights in North Korea is not to overthrow the regime, but rather protect the survival of the residents. They believe that it is clear that the regime cannot run away from the responsibility of deteriorating human rights in North Korea. However, in addition to this, the collapse of the planned economy, the military confrontation between the ROK-DPRK, U.S. economic sanctions, and other factors must also be considered. Without taking into consideration these comprehensive factors and pushing for regime change, it will be difficult to avoid physical collision caused in the process of North Korean human rights improvement creating an anti-human rights situation. As a result, the democracy in North Korea theory falls into the dilemma of not being able to find a role for the residents of North Korea and further deteriorating the situation.

Those that look to outside sources as the cause of the deteriorating human rights situation believe that human rights improvement must involve the improvement of the surrounding environment. They argue that North Korean human rights is a task that North Korea must overcome on its own and that it is important for the international community to create an environment so that the DPRK can efficiently improve its situation. This is in connection to the idea that the armistice system should be closed out and efforts should be placed on creating space for North Korea to step into the international arena and improve their foreign relations.

It is believed that once the armistice system is transformed

into a peace system, the DPRK will normalize relations with the U.S. and Japan. And, with an institutionalized cooperative relationship with the ROK, the DPRK will be able to improve human rights. Regarding this idea, those who advocate for democracy in North Korea do not deny the need for a peace system. Rather, they prioritize the North Korean human rights issue. This is because the peace system has the possibility of extending the time the regime is in office and it is believed that North Korea does not have the ability or will to improve human rights. Furthermore, the main points surrounding North Korean human rights in South Korean society are no longer the subject of rational discussions, and rather have caused political conflict. This is because, depending on the political need, the political forces influence the public. These differences in stance are paradoxically not only one side's view. Rather, this shows that when both sides are taken into account, there is a possibility for a sound understanding and rational approach.

Behind the differences in perspectives surrounding the North Korean human rights issue reside the existence of differences in perspective on North Korea, unification, and human rights. When it comes to North Korean human rights, debates are not only about "human rights," but are connected to all-"North Korea"-related interests, such as inter-Korean relations, peace on the Korean Peninsula, rule of law, and democracy.

7. Critical Analysis of Current Trends

Achievements by Existing Activism

In cases where human rights violations in a country are serious, the international community plays an important role in the first steps to human rights improvement. This is because in the country where the violations occur, the administration is powerful and the civil society weak. Transnational human rights networks highlight the human rights violations of a country to the international community and mobilize moral criticism, diplomatic pressure, and other diverse strategies to isolate the violating country. Through those efforts, the administration's human rights violations are weakened and the people of the country are encouraged to fight back against the administration. At this time, the country will at the least partially compromise to avoid international isolation and to achieve national interests. The country can release a portion of its political prisoners or start a dialogue with international institutions. In particular, in cases where the violating country has a higher economic or military dependence on the international community, the administration may be more vulnerable to international pressure.⁴⁷ Is the DPRK a good case to test the theory?

After the division of the Korean Peninsula, both sides used human rights as a tool of regime competition. However,

⁴⁷-Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (eds.), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999), pp. 24-27, 33-34.

with democratization of South Korean society and the collapse of the Cold War system in the late 1980s and early 1990s, many predicted that the North Korean regime would immediately follow suit. Of course, the prediction proved to be wrong and by the mid-1990s mass starvation occurred in North Korea, attracting concern from the international community. The North Korean human rights issue is being highlighted across the world, not only in Seoul, but also in Geneva, New York, and Tokyo.

Starting in 1993 at the OHCHR, the human rights issue of Oh Kilnam was discussed in the Working Group on Arbitrary Detention (WGAD). During his study abroad in Germany, Oh voluntarily defected with his family in North Korea and eventually applied for political asylum from North Korea in Denmark. The WGAD gathered to verify if the family Oh left behind in North Korea was sent to a prison camp. Then, at the UN CHR meeting in 1995, representatives of the EU and the U.S. raised the issue of North Korean human rights. At the UN Human Rights Committee in 1997 and 1998, the North Korean human rights resolution was adopted. The resolution highlighted the issues of arbitrary detention, restrictions on freedom of movement, the operation of political concentration camps, and North Korea's failure to submit their second report on the ICCPR. The resolution adopted at the 50th UN Human Rights Committee in 1998 recommended that the UN CHR discuss the North Korean human rights situation. Eventually, the international community began to focus on North Korean human rights following the nuclear crisis on the Korean Peninsula.

The UN Human Rights Committee is an advisory com-

mittee consisting of human rights experts and the CHR is a committee developed for discussions amongst the representatives of member states. It is a difficult task to introduce a human rights resolution for a particular country. Finally, in 2003 the EU and its member states, the U.S., Japan, and other relevant western countries decided to introduce the North Korean human rights resolution to the UN CHR. At the time, a few North Korean human rights experts and organizations played an active role in that process. Human rights consultant, David Hawk from the U.S. and Citizens' Alliance for North Korean human rights in Seoul were actively working toward introducing a resolution on North Korean human rights at that time. The Citizens' Alliance held international conferences on North Korean human rights in Prague in 2003 and in Warsaw in 2004, right before the UN CHR meeting in Geneva, to provide content and lobby member states to introduce the North Korean human rights resolution.⁴⁸ Hawk contributed in the efforts and also published a book on Gulags in DPRK with funds from the U.S. administration.⁴⁹

With the introduction and adoption of the North Korean human rights resolution, member states of the EU, especially the chair countries, England and France, played a crucial role. Taking this into consideration, North Korea's claim of "the U.S.'s scheme to kill the republic" is far from being true. After 2000,

⁴⁸- Bo-hyuk Suh, "The United States Human Rights Policy toward North Korea Focused on the Players' Cooperation Involved," *North Korean Studies Review* 9(1) (Summer 2005), pp. 328-329.

⁴⁹- David Hawk, *The Hidden Gulag*, Second Edition (Washington, DC: Committee for Human Rights in North Korea, 2012).

North Korea had friendly relations with many of the member states of the EU, but with the EU's continued submission of the North Korean human rights resolution, all dialogue came to a halt.

Every year from 2003 until 2005, the UN CHR adopted the resolution on North Korean human rights. North Korea responded that the resolutions were an infringement on state sovereignty and were double standards. Only similar authoritarian regimes including China, Cuba and Syria agreed with North Korea's argument. International human rights organizations that were not active on North Korean human rights, like Amnesty International, Human Rights Watch (HRW), and Freedom House, began to change their attitude. In the case of HRW, they met relevant organizations and North Korean escapees in Korea and Japan, and published a report on the harsh and inhuman conditions that they had to endure before fleeing North Korea. The Citizens' Alliance for North Korean human rights and Freedom House were other key players that raised the issue of North Korean human rights as an international issue. Freedom House is an independent non-profit organization, but at the time the North Korean Human Rights Act was being enacted, the U.S. executive branch funded the opening of the North Korean human rights International Conference. This conference was held in the U.S., Belgium, Italy, and other western countries, respectively. The conference was attended by diplomats, human rights scholars, and activists from various countries. Those that attended shared information and discussed a platform for cooperation, set up strategies for

an action plan, and created a transnational network for North Korean human rights.

The adoption of the North Korean human rights resolution in 2003 at the UN CHR is a successful case of transnational networking highlighting the North Korean human rights issue on the international stage. Since 2005, the resolution has continuously been adopted at the UN General Assembly and the HRC. Furthermore, the resolution declared North Korea to be a country that abuses human rights and made it the target of international isolation and criticism. At the 60th UN CHR meeting in 2004, the resolution was passed including the appointment of a UN Special Rapporteur on the Situation of Human Rights in DPRK. The Special Rapporteur is still in office and continues to monitor the situation. North Korea has refused to accept the appointment of the Special Rapporteur, and has rejected all requests for visitation and denounces all reports written by the Rapporteur.

Taking into consideration that the authoritarian administration is concerned with its international image, North Korea will not be able to completely ignore the international community's criticism and pressure. Before the adoption of North Korean human rights resolution at the 69th UN General Assembly in November 2014, North Korean representative Lee Soo Yong expressed their will to hold human rights dialogue again with other countries and consider invitation to the Special Rapporteur for the first time.

Transnational human rights networks play a key role in leading the international community to combat violations of

human rights in North Korea. Those networks demand that the North Korean administration take responsibility for human rights violations in the DPRK and have succeeded in humiliating North Korea by emphasizing its duty to improve human rights. However, increasing international pressures have yet to sync with human rights advocacy or capacity building to improve human rights within the country. This is because the transnational networks do not have clear human rights advocacy power within North Korea. Of course, North Korea is very dependent on overseas economic support to maintain its political system, but the majority of the support comes from China, which makes sensitivity toward human rights networks very weak. Additionally, because North Korea has a long history of sanctions they have not succumbed to international pressure.

North Korea seldom sees human rights issue as an area for improvement in enhancing its national image. Rather, it views this as a matter of protecting its political system, causing the country to display sensitive political reactions. In the early 2010s, North Korea recovered economically with the support of economic reform and good harvesting weather. Despite this, it is still necessary for the international community to continue pressuring North Korea to address its human rights violations and take interest in addressing the issue. It is written in the history books that if we do not take interest the poor human rights situation in those countries, it will not improve.⁵⁰

⁵⁰-For this, see Risse, Ropp and Sikink, *The Power of Human Rights*, Ch.4 and Ch.6.

In the next section, we will explore the issues that arise from the process of discussing the North Korean human rights issue within South Korea. It is difficult to say that just raising your voice in the name of North Korean human rights will improve the situation. When we find that actions do not help or if they are determined to be against human rights, we must then find alternative and actual results.

Criticism of Relativism

Relativism argues that human rights is not universal and is relative based on one community's cultural and historical uniqueness. This is very far from the attributes of human rights. Actually, relativism was first introduced in the field of cultural anthropology, not human rights. In 1947, the American Anthropological Association stated that depending on the culture, values can be varied. Therefore, it is dangerous to make a universal decision. The stance on relativism by cultural anthropologists is understandable considering their research into humans' everyday lifestyles by traveling near and far. However, the 1947 statement was released during the same time that the human rights sector was preparing the UDHR.

Anthropology as a discipline has declined to participate in the dialogue that produced international conventions regarding human rights. For example, in 1947, when the executive board of the Association withdrew from discussions that led to the UDHR, it did so in the belief that no such declaration would be applicable to all human beings.⁵¹ After this statement was released,

the debate on the universalism or relativism of human rights was provoked. The argument did not stop at the relativism theory that denies universalism, but went on to justify human rights violations as instances of cultural distinction.

South Korean President Park Chung-hee also suppressed the democratization movement by claiming a South Korean-style democracy and native democracy. Currently, North Korea justifies human rights violations by taking a relativistic stance. North Korea rejects pressure for human rights improvements and states it is only political pressure by arguing that their political system and ideology is different from that of outside world, particularly Western countries. The human rights perspective of North Korea places emphasis on class, group, and economic and social rights and prioritizes state sovereignty over human rights.

When North Korea came face to face with the US Bush Administration's hard line policy towards the DPRK after 2001, it stood firm on the stance that human rights should be equal to state sovereignty. The KCNA, a North Korean administrative agency, stated on March 18, 2010 in an article titled "Instructions from a Third World Human Rights Country," that "although the U.S. claims to present a report to advocate human rights," its acting as the "judge of human rights" when no one entrusted them with the role is a violent infringement of national sovereignty.

The DPRK faces outside criticism with the rational

⁵¹- Carolyn Fluehr-Lobban, "Anthropologists, Cultural Relativism, and Universal Rights," *Past Chronicle Issues* (June 9, 1995). <http://home.sandiego.edu/~babert/gender/culturalrelativism.html> (Retrieved on January 27, 2015).

that state sovereignty is first and foremost a priority. For instance, on November 23, 2009, through Chosun Worker's Party newspaper, *Rodong Sinmun*, the DPRK criticized South Korea's participation in the introduction of the North Korean human rights resolution to the UN General Assembly as an "act that deters better and cooperative inter-Korean relations and the South is looking to intensify the already tense situation" by participating in these endeavors. The logic here is that the DPRK prioritizes its national security over human rights. Furthermore, the newspaper declared, "under our socialist system that has a high level of human dignity, the issue of human rights from the beginning cannot be considered a problem." By this statement, they are suggesting that depending on the political system, the human rights debate may differ. North Korea sees its political system and political priorities.

Understanding of and perspective on human rights may differ depending on one's relationship with the international community. However, North Korea's position is hypocritical depending on circumstances. With the inclusion of the ICCPR, North Korea ratified four international covenants and participated in the UN's newest human rights monitoring mechanism, the UPR. North Korea's actions are placing its dire human rights situation on the back burner and rejecting the international community's interest in improving human rights.

However, in the human rights discussion, there is value in considering constructive items of relativism not as a human rights attribute, but as an improvement strategy. There is a need to take into consideration that until the late-20th century, cultural

relativism was a mode of resistance to imperialist countries against the universalizing of Western culture and the forceful transplant of western culture. More importantly, there is much value in utilizing the aspect of cultural relativism in the human rights perspective that advocates the protection of minorities, aborigines, and the socially vulnerable.⁵² In addition, in order to specifically acknowledge the universality of human rights, we must understand its juxtaposition with one country's culture, history, and tradition. Also, within that we will need to be able to differentiate the aspects that are human rights friendly and those that are not, so that human right can be accepted as a universal norm.

To acquire the universalism of human rights in reality, we need to expand the concept of human rights, so that it takes into consideration cultural differences as well as context of international relations. There is a need to correct the processes devised by the so-called First World countries and develop universalism.⁵³ In the human rights activism sector, the continued problematic politicization, and the double standard application of international human rights will form a barrier that prevents human rights to be accepted as a universal norm.

⁵²- Michael Freeman, *Human Rights: An Interdisciplinary Approach* (Cambridge: Polity Press, 2002), pp. 101-114.

⁵³- Chinsung Chung, "The Universality and Particularity of Human Rights," Korea human rights foundation (eds.), *Human Rights in the 21st Century 1* (Seoul: Hangilsa, 2000), pp. 93-118.

Criticism of Selectivism

One problem that arises in the process of improving human rights in North Korea is the question of whether to include or exclude the special sectors of human rights, which displays a selectivist attitude. This harms the totality of human rights. Therefore, according to the perspective of a special group, human rights can be treated separately.

In the process of the emergence of modern civil society, human rights were understood to be rights granted only to whites, the bourgeoisie, and men. Even after the Second World War, rights for women in the West, including the suffrage were not fully recognized and the superpowers infringed on the smaller powers' right to self-determination and cultural rights. The representative case of selectivism was the different human rights perspectives of the CPR and the ESCR that were asserted by the liberal world and the communist world, respectively, during the Cold War era. The selective perspectives of human rights were used as competitive tools between political systems.

When the communist bloc fell, the Cold War between the U.S. and the Soviet Union ended. Did this mean that the liberal human right perspective was victorious? The United States, which protected authoritarian regimes that committed human rights violations in order to fight communism during the Cold War, now considers itself to be the world's leader in human rights. However, the US's continuous actions to commit human rights violations with evidence of recent CIA's interrogation and detentions of captured terrorist suspects worldwide⁵⁴

suggest that human rights transcend not only cultural difference not also political system. The U.S. is representative of human rights based on CPR. South Korea, one of the countries that received this influence the most, is overflowing with a CPR-focused human rights perspective. The common idea in the U.S. does not consider ESCR to be human rights. As of April 2016, the U.S. has yet to ratify the ICESCR, the CEDAW, the ICRMW, the CRC, the CED, and so on. The annual *Country Reports on Human Rights Practices* published by the United States Department of State is focused on CPR and it is not a coincidence that the U.S. established and manages the U.S. Commission on International Religious Freedom.

In the 2013 *Country Reports on Human Rights Practices* released by the State Department, North Korea is defined as “an authoritarian state led by the Kim family for more than 60 years.” The report discusses the North Korean human rights situation through seven sections. Excluding a section on the right to work, one by ESCR, it is all related to CPR. It should be noted that US reports cannot be seen as similar to the assessments and recommendations provided by the Committee on ESCR to the DPRK.

HRW, headquartered in the United States, actively works on CPR-centered human rights. In regards to North Korean human rights, HRW places emphasis on the issues of freedom of movement, collective punishment, and the severe punishment

⁵⁴–Senate Select Committee on Intelligence, “Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program, Finding and Conclusion: Executive Summary,” Declassified, December 3, 2014.

of the imprisoned. Of course, HRW also demands humanitarian aid and a field approach.⁵⁵ When taking into consideration that it is modeled after the group that advocated highlighting the human rights issues of communist countries during the Cold War, Helsinki Watch, one might not be able to understand why infringements of CPR are the focus of the group. In addition, the leader in internationalizing the American perspective of human rights that is centered on CPR is Freedom House. As is clearly indicated by its name, this organization researches and evaluates the status of human rights, focusing on the various freedoms of the respective countries in the world. Every year, in the evaluation of freedoms of various countries in the world, Freedom House evaluates North Korea as the world's worst.

The reason that Western countries including the U.S. consider the DPRK to be the world's worst human rights violating country is because it is not a democracy and it is not a Christian state. With a prevailing Christian culture in the United States, lack of freedom of religion shapes the perception of a communist country like North Korea. In the U.S., most presidents that have been elected have been known to be Christians. Susan Sholte has been at the forefront of North Korean human rights activism in the U.S. and others. As a devoted Christian, Sholte has for over ten years stressed that because of the DPRK's human rights abuses such as suppressing freedom of religion, North Korea is in need of a regime change and should be liberated.

⁵⁵- HRW, "North Korea: Harsher Policies against Border-Crossers," March 2007.

The American lifestyle has greatly influenced South Korean society and the way of thought for South Koreans. This is the case with human rights. The CPR focused understanding of human rights is representative of this. An interesting example is from January 2006, when the NHRCK recommended the *National Action Plans for the Promotion and Protection of Human Rights (NAP)* to the Korean administration. The recommendation included the issues of the employment of irregular workers as well as labor management and unions. The Federation of Korean Industries (FKI) and the managers of five organizations stated that the NHRCK recommendation was “concerned about sectors it should not” be concerned about and that “the NHRCK should no longer be concerned about labor management.”⁵⁶ They have never learned that economic and social rights were also human rights. Those that exclude economic and social rights from human rights take the view that economic and social rights is not human rights, but rather something offered by the state depending on economic conditions, or a problem that should be solved individually.

What will happen if the CPR-centered human rights view is applied to North Korean human rights? If the North Korean human rights debate is focused on political prison camps, oppression of freedom of belief, and public executions the

⁵⁶- *Hankook Ilbo*, January 18, 2006. Since 2001, the UN Committee on ESCR and the UN Special Rapporteur on Freedom of Expression and Opinion have advised that the South Korean administration eradicate discrimination against irregular employment, guarantee labor’s three primary rights to public employees and teachers, and ensure compensation for victims of forced evictions.

resolution to these issues would be regime change. This is because, as we can see from the propaganda leaflets criticizing North Korea that are released near the 38th parallel on the Korean Peninsula, the authoritarian administration is viewed as the root cause of the human rights violations of North Korea residents. However, talk about the most important right to survival of the North Korean residents is hard to find. Selectivism centered upon CPR is looked upon as a way to maintain the North Korean regime paradoxically rather than as a tool to improve the life of the residents through humanitarian support and economic cooperation.

The fact that North Korean human rights organizations in South Korea and the U.S. pay attention to public executions and freedom of religion is a direct example of selectivism in human rights. Of course, focusing on the right to survival within North Korean human rights is another example of selectivism. Those that focus on the right to life when dealing with North Korean human rights search for the reasons in the sanctions instituted by the U.S. and do wrong by ignoring the responsibility of the North Korean administration in all sectors of human rights. Understanding North Korean human rights selectively creates a misguided perspective of human rights and creates a larger problem of limiting the full eradication of human rights abuses.

Criticism of Fundamentalism

Human right fundamentalism is a one-sided position that considers international human rights norms to be scriptures and determines human rights issues dogmatically, at the same time ignoring other

universal values besides human rights. A representative case of fundamentalism is when one believes the Bible word for word and believes that the Bible is the ultimate scripture and the only right way of faith. Human rights fundamentalism also has this same logic. It is said that Christian fundamentalism is at the core of human rights fundamentalism, and the two fundamentalists are very amicable. In the name of freedom of religion, Christian fundamentalists protest against countries that are not Christian or oppress Christians, calling for “holy war,” or “war of justice,” and regime change. It is not a coincidence that a portion of conservative Christians in South Korea and the U.S. take a fundamentalist view on North Korean human rights and support a regime change in North Korea.

A unique characteristic of South Korean churches is their rapid expansion and anti-communism. Politically conservative South Korean churches and religious fundamentalism are two sides of a coin. What connects the two is their perspectives on North Korea. The Christian Council of Korea (CCK) is the mouthpiece of Korean conservative churches. The CCK indicates through its articles of association that the Bible is the sole source for determining religion norms, and advised through the Mutual Announcement of Belief that the Scripture is the official position. We can find that religious institutions with a fundamentalist foundation like the CCK, have a high interrelationship with conservative social cognition through their statement that “they will be at the forefront of protecting the identity of the ROK that is founded on market economy and democracy.”⁵⁷ In December of 1989, the CCK declared and established the ecumenical

movement of churches in South Korea. In fact, ecumenism was started in September 24, 1924 by the Association of Chosun Christianity, and it was continued until the present by the National Council of Churches in Korea (NCCCK). There is curiosity about why the CCK established a separate solidarity group when one was already in existence.

If you take into consideration the time period when CCK was established on anti-communism, the NCCCK released the “Declaration of Korean Christian Churches on the National Reunification and Peace” on February 29, 1988. The declaration is a landmark in the history of civil unification movement in terms that it provided new principles and comprehensive way to unify the two Koreas. At that time, however, the declaration brought about the oppression of Roh Tae-woo administration and incurred a censure from conservative public opinion. Therefore, one can assume that the establishment of the CCK was a way to challenge NCCCK-led unification movement by anti-communist sentiment.⁵⁸ The ten years that CCK spent criticizing the Kim Dae-jung and Roh Moo-hyun administrations’ North Korea engagement policies by holding “a save-the-nation prayer” in front of the Seoul city hall and promoting anti-North Korea and anti-Kim Jong-Il sentiments may be

⁵⁷- The 21th General Assembly Declaration of the Christian Council of Korea (January 28, 2010). <http://www.cck.or.kr/> (Accessed on 20 November 2010).

⁵⁸- Some of founding members of the Christian Council of Korea harshly denounced the declaration issued by the NCCCK and Pastor Moon Ik-hwan’s visit to North Korea as pro-North Korean and leftist.

representative of fundamentalist religious institutions.⁵⁹ The CCK actively discusses the North Korean human rights issue. A portion of conservative leaders in religious circles in the name of anti-DPRK and anti-communism have prayed for the military dictatorship and on the other hand have told the public to return to “sermons” and ask for repentance.

The biggest event concerning North Korean and human rights that was held by Korean christian community was the “George W. Bush Invitation at the 60th Anniversary of the Korean War Peace Prayer” held on June 25, 2010 in Seoul.⁶⁰ Just as the churches of Korea that experienced the Korean War and the division of the Korean Peninsula have a fundamentalist view of the North Korean (human rights) problem, the U.S also has a fierce hard- line North Korea policy that is founded on fundamentalist sentiment. The most representative figure of this stance is former U.S. President George W. Bush. It is a well-known fact that Bush has placed the Southern fundamentalist christian powers as the base of his political backing. As it can be seen in his “Axis of Evil” statement, Nuclear First Strike Doctrine, and the attacks on Afghanistan and Iraq, Bush separated international relationships into good and evil and accordingly started ‘war of justice’. The Bush Administration’s pursuit of regime change in North Korea, the consideration of dialogue with the DPRK as compensation, and the argument for the

⁵⁹- Yoon-Hyeong Gil, “The Japanese Shrine and the Birth of ‘Satan,’” *The Hankyoreh* 21, Vol. 643 (January 12, 2007).

⁶⁰- *Christian Today*, June 11, 2010.

priority of denuclearization stems from the fundamentalist perspective. President Bush sympathizes with North Korea's food shortage, however regime change is his ideal resolution, rather than humanitarian aid.

The special characteristics of human rights fundamentalism are simplistic understanding and dangerous actions. Human rights fundamentalism ignores the progress of the development of international regime and utilizes human rights to attack the opposite forces. The movement of placing full responsibility of the North Korean human rights on its leader to argue for regime change and to take him to the ICC has now been included in UN reports and resolutions. However, there is doubt about how effective this approach will be in bringing change.

Of course, it will be difficult to completely call this approach fundamentalism in regards to North Korean human rights. However, the portion of those that take this stance have animosity towards the North Korean administration and have a fundamentalist perspective when it comes to North Korean human rights. For example, Suzanne Scholte stated that "the regimes that terrorize the world with weapons of mass destruction... are also regimes that terrorize their own people" and that "human rights and nuclear proliferation are fundamentally connected."⁶¹ Those with a fundamentalist approach to North Korean human rights consider the best solution to be regime change and punishing the leader. In this plight, the ICC and the UN Security Council are efficient tools

⁶¹- *NK Chosun*, January 28, 2004.

in actualizing their efforts. When looking at the trend of how the North Korean human rights situation is being discussed in the international community, it appears this argument will gain more support. While the UN Charter-bodies of human rights have been pressing North Korea, dialogues between the UN Treaty-bodies and the OHCHR with their counterparts have been minimal.

Prosecuting North Korea's leader in the ICC is founded on the theory of R2P. Without a doubt, North Korea and the international community will eventually reflect on their R2P North Korean human rights. Realistically, in relation to the ICC, as North Korea is not a member of the Rome Statute of ICC, there must be a resolution at the UN Security Council to be taken into court when China and Russia, which can exercise veto power as the permanent member of UN Security Council, object. It is questionable whether those that argue for the prosecution of the North Korean leader in the ICC or other court system really think that this method is effective in improving North Korean human rights. Rather, we will have to see if it is for self-satisfaction or if it will further the cause of human rights.

Fundamentalism's take on the human rights situation does not acknowledge the interdependence of human rights and other universal values. Rather, fundamentalists take the unilateral position that human rights is the most important value. This kind of position is far from the currently trending comprehensive approach of considering other universal values when discussing a specific country's or the regions human rights issue. Already, in 1984 and 1986, the UN General Assembly adopted Right of

Peoples to Peace (A/RES/39/11) and Declaration on the Right to Development (A/RES/41/128). Thereafter, international human rights organizations began to accept that the right to peace and right to development are not requirements to further human rights, but are rather human rights as a whole. Human rights fundamentalists separate the North and South and therefore do not consider the right to peace and right to development as issues for the people belonging to the Korean Peninsula. To them it seems that the strategy of the nuclear-possessing countries and the global issue of income disparity and the gap between the rich and poor has no relation to the human rights issue. As a result, human rights fundamentalists limit themselves to understanding the human rights situation of a country and lack consideration to look into resolving the issue through a comprehensive approach and/or a rational approach.

Both the fundamentalist argue that because the North Korean human rights issue is an internationally universal problem we must approach it correctly (no matter what the sacrifice is) and the relativist argue that the North Korean human rights issue arose from the division of the Korean peninsula and its military tensions. They argue that in order to resolve the issue, North Korea's historical background should be taken into consideration. There are arguments made by people that are ignorant and highly misunderstand the concept of human rights universality. Those two political positions are different, but they are same in the sense that they harm the universality of human rights.

Fundamentalism is a dangerous position that approaches

North Korean human rights coercively in the name of universal human rights. On the other hand, relativism, because of the international human rights regime's prejudice and discrimination, denies the universality of human rights and turns a blind eye to human rights violations. This is one of the reasons contextual universalism receives much attention. Contextual universalism is a contrast to human rights fundamentalism and places a focus on the actualization of human rights universalism.

Criticism of Instrumentalism

Another problem we can find in the basic North Korean human rights policy is instrumentalism. As indicated in the name, instrumentalism is the position of utilizing the North Korean human rights argument as an instrument to achieve other purposes.

In terms of North Korean human rights, the instrumentalist approach comes in the following forms. First, it is the most apparent in the country's North Korea policy and how that country handles North Korea. For example, South Korea has a history of taking a passive position on North Korean human rights in order to improve relations with North Korea or to resolve the North Korean nuclear issue. There is much criticism that the Kim Dae-jung administration was silent on the North Korean human rights issue. The Kim Dae-jung administration placed emphasis on North Korea policy aimed at changing the hostile relations brought about after the division of the Korean Peninsula toward the direction to reconciliation. In that process, the issue of North Korean human rights, which was sure to bring

rebuttal from North Korea, was openly left untouched. In order to resolve the North Korean nuclear crisis, the Roh Moo-hyun administration's North Korea policy aimed at structuring a Korean Peninsula Peace Process, and the North Korean human rights issue was to be approached 'strategically.' With the ROK administration riding on the momentum of the Six-Party Talks, North Korean human rights has been placed on the back burner in terms of priorities, especially in the process of attempting to bring out a positive response from the North on nuclear non-proliferation.

In contrast, when North Korea carried out nuclear tests, thereby aggravating the situation, ROK administration supported the adoption of the UN's North Korean human rights resolution as a strategy of placing pressure on North Korea. In conclusion, it is without a doubt that for 10 years during the two administrations, the North Korean human rights issue was considered low priority and only dealt with strategically. However, these two administrations worked effortlessly to resolve the humanitarian issues of the North Korea residents by supporting the right to survival.

In comparison, as can be seen in Lee Myung-bak "Non-nuclear, Openness, \$3,000," the North Korea nuclear problem was the main focus of South Korea's North Korea policy and further placed North Korean human rights as its highest priority. As a result, the ROK started to vote in favor of the adoption of the UN North Korean Human Rights resolution. The strained North- South Korean relations throughout Lee's term did not allow for much progress. The Lee Administration was not

able to follow the previous administrations' achievements in terms of humanitarian issues such as supporting the right to survival for North Korean residents and reuniting separated families. Also, there were times when North Korean human rights were used as political tools showing a different type of instrumentalist approach compared to the previous administration.

The Lee Myung-bak and George W. Bush administrations coincide in their instrumentalist North Korean human rights policies. This type of approach founded on pressuring North Korea can be traced back to the liberal and communist policies toward each other during the Cold War era. The basis of the policies was not to actually improve the human rights situation of the other party, but rather to pressure the other.

The decade-long "democratic administrations" North Korean human rights policy with the Lee and Bush Administrations is inclusive in using North Korean human rights policy as an instrument. Taking into consideration that all respective administrations either used North Korean human rights as a political tool or placed the issue in the lowest priority, it is not surprising that we have not seen significant improvement in the North Korean human rights situation. In those approaches we can find some differences. The Kim Dae-jung and Roh Moo-hyun administrations' instrumentalist view can be defined as the cooperative type of instrumentalism. Those administrations advocated for both improvements in inter-Korean relations and in North Korean human rights. As a result, partial success for separated families, kidnapped persons, and the right to survival

of North Korea residents was seen.

On the other hand, the instrumentalism of the Lee Myung-bak and George W. Bush Administrations can be defined as conflictual. Although those administrations prioritized North Korean human rights and supported the adoption of the UN North Korean human rights resolution the conflictual nature of their policies prevented them from achieving many results in North Korean human rights and in humanitarian issues within North- South Korean relations.⁶² Of course, as the limitations of the instrumentalist approach have not been overcome, those differences must be evaluated separately.

Utilizing North Korean human rights as a tool to achieve North Korea policy or to guarantee the highest card in negotiations is not only found in the policies of South Korea or the United States, but can also be found in the Japanese and the EU policies. In the case of the United States, the North Korean human rights issue is used as a tool to pressure North Korea to bring regime or behavior change or resolve the nuclear issue. At every opportunity, the U.S. has repeatedly mentioned that North Korean human rights improvement is a key task in normalizing relations with North Korea. When the Barack Obama Administration took office,

⁶²- During the Kim Dae-jung administration and Roh Moo-hyun administration, a total of 19,960 people had reunions face-to-face or via television and there was a great success in protecting North Koreans' rights to survival and resolving humanitarian issues. Only two gatherings, however, were organized for family members of whom 1,774 people had reunions during the Lee Myung-bak administration. As of April 2016, family reunion among 1,785 was held twice under the current Park Geun-hye administration.

North Korean human rights ambassador Robert King stated on March 12, 2010 that “unless North Korea improves the human rights situation, the U.S. will not normalize relations with North Korea.” The remark is the same with James Kelly’s remark at the table of the first round of Six-Party Talks in August 2003. Japan has approached the North Korean human rights issue in the context of resolving the kidnapping issue, which is addressed in Japan’s North Korean Human Rights Act.

In comparison, the EU deals with North Korean human rights in the context of furthering general relations with North Korea to further exchange. The EU has had political dialogue in which North Korean human rights were discussed within the context of the development of North Korea and humanitarian issues, in addition to the stability of the Korean Peninsula. In retrospect, it can be said that the EU has approached North Korean human rights policy from the perspective of realistic improvement, while the U.S. and Japan approached it from an instrumentalist perspective. The U.S., which has hostile relations with North Korea, clearly is resonant with Japan’s North Korea policy, while standing far from the EU’s policy, which have included active exchange with the North Korean administration.

On the other hand, North Korea’s tendency to regard the international community’s request for human rights improvement as political pressure and its resistance can also be seen as instrumentalist. This is because North Korea utilizes the human rights situation as a propaganda tool to maintain its regime, or as a shield, as they have a history of having the position of *Military-First Policy* and ignoring human rights. North Korea’s instrumentalist

position when it comes to human rights is connected to its patriarchal mindset, international isolation, and its feelings of being threatened by the United States. At the 64th UN General Assembly in New York on October 28, 2009, in the third committee meeting, the representative from the DPRK argued that “in the human rights sector, the value of national sovereignty must be strictly complied with.” The representative described Iraq and Afghanistan as “nations where national sovereignty is threatened without exception and human rights is being infringed.”⁶³

The second type of instrumentalism can be found in the links of South Korean domestic politics. In other words, the North Korean human rights issue can be used to criticize the opposition party or to gain support from the public. This means that North Korean human rights can be discussed on the level of partisan politics. This indirect approach to the politicization of human rights that brings no expectations of human rights improvement is typical of instrumentalism. Some of those who support the adoption of the North Korean Human Rights Act in South Korea show an instrumentalist approach of achieving a political effect. Many human rights organizations are concerned that the enactment of the North Korean Human Rights Act will be used as a means to politically attack North Korea rather than as a means to bring actual improvement to North Korean human rights.

In addition, with the establishment of a North Korean Human Rights Foundation, there is concern that it will financially

⁶³- *Yonhap News*, 3 November 2009.

support anti-North Korea conservative organizations that have been already supported by administration. Of course, handling the North Korean human rights issue within domestic politics can be seen as a pluralistic political phenomenon. However, the instrumentalist approach to North Korean human rights brings division within the public and brings about opposition on North Korea, so it is far from creating effective human rights improvement. For the anti-North Korea conservatives, reversing goal and means will bring criticism that they are pursuing personal or organizational interests in the name of human rights.⁶⁴

The third type of instrumentalist approach of the international community including South Korea can be found in the relevant countries' foreign policies that North Korean human rights is used to strengthen alliances and improve their national image. Among the countries that voted for the North Korean human rights resolution at the UN, there are few countries that have actually been influential in improving North Korean human rights conditions. Of course, the repetitive adoption of the resolution shows the international community's interest in North Korean human rights, which alleviates the worsening of the human rights situation and has the effect of placing attention on the North Korea administration.

But for countries to participate in the introduction of the

⁶⁴-Hyo-Je Cho, "When would normalization of conservatives be possible?" *Changbi Weekly Commentary*, 28 July 2010. <http://weekly.changbi.com/470> (Accessed on 20 November 2010).

North Korean human rights resolution at a specific time is to display a common position on the problem, thereby strengthening solidarity and alliances among the countries in favor of the resolution. For the most part, this type of participation is primarily focused on improving the image of the voting country. As a result, in the instance North Korean human rights is approached through instrumentalism, the sincerity of the acting agent appears suspicious and without a doubt will inspire criticism from North Korea. It can be concluded that North Korean human rights improvement is hard to achieve through instrumentalism.

Criticism of Discrimination

The final problem in addressing human rights abuses in North Korea is the discriminatory approach toward other's human rights issues based on feelings of superiority. It is not apparent, but there are two false premises. First is the idea that the other's human rights issue is dire compared to one's own and therefore must be handled first. A nation is concerned about the human rights of another nation because of the universality of human rights. Dialogue about human rights is possible only when a nation has an open attitude and is willing to talk about its own human rights issue at the same time as talking about the other's human rights issue. However, criticizing only the other's human right problem and placing a relative distance on the human rights situation of the other is violating the universality of human rights and can be seen as a suspicious political approach in the name of human rights.

Furthermore, this approach is based on the subjective judgment that there exists superiority of one over others. In the case of the international human rights issue, instead of self-encountering oneself as a human-rights-advanced country or as the voice of international human rights norms, many countries are more likely to place labels on the other country as a underdeveloped country that violates the international human rights norms. The relationship of dominance between an advanced country conscious of the universality of human rights and an underdeveloped country that infringes on human rights is greatly expanded as an overall image of the country and is restructured as civilized country versus barbaric country. The target countries, for example North Korea, are generally labeled as barbaric states. Even if that underdeveloped country implements an open policy and tries to protect human rights, the western “civilized world” will still look at them with suspicion. On the other hand, the U.S. and Great Britain, which illegally detained and tortured terror suspects, will be considered exceptions for the civilized world.

The relationship between an advanced democratic country and an underdeveloped repressive country can become an asymmetric power relationship as opposed to a symmetric relationship based on equality and cooperation. The side that is in the position of giving guidance will use methods to maintain the differential relationship and the side receiving guidance will reject it. The resolution would be regime change of an underdeveloped or barbaric state. However, there is no evidence that countries like Russia, Eastern European nations formerly belonging to the Soviet bloc or nations like Iraq after the downfall of the Saddam

Hussein regime have become advanced states that advocate for better human rights. Human rights transcends political systems and sets limit around them. The argument that the political system of liberal democracy is the only absolute of human rights would be a statement based on superiority. Once the human rights conditions are raised, it is clear that the issue-raising country will use malicious human rights politics rather than make efforts to improve the human rights conditions of the violating country.

The advanced democratic country versus an underdeveloped repressive country set-up will be transformed into a relationship of something that is desirable versus something that has to change. A democratic advanced state is going to have to be in an ideal status in which countries that are not advanced will be able to follow, and the repressive developing countries become entities that need to change or collapse. Therefore, all things negative about the other become justified.⁶⁵ Human rights only become a far-fetched goal that is beyond attainable. And even though the process of human rights improvement is nowhere near resolved, human rights is accepted. Through this process, rather than addressing the other's human rights issue, the agent that speaks of the human rights issue is given the role to take the leadership on international human rights, giving an exaggerated effect of their abilities.

The process of Western countries approaching non-Western countries on human rights issues poses the possibility

⁶⁵- See Costas Douzinas, *Human Rights and Empire* (New York: Routledge, 2007).

of perpetuating 'orientalism.' Since the 18th to mid-20th century, imperialist powers have exploited the people of Asia, Africa, and Latin America and labeled them uncivilized in order to argue that their enlightenment and development into an advanced state lies in their colonization. This false superiority based on discrimination and bias by the imperialist powers can be found in the history and culture of the non-Western region and in the understanding of human rights issues.⁶⁶ For example, Japan and the Western world such as the U.S. and the EU lead in the adoption of the UN North Korean human rights resolution. Some of the countries that vote for the North Korean human rights resolution may place their respective countries weaknesses and the conflicts in foreign policy issues they have with participating countries aside and instead unite in solidarity in the sense of fighting together against a common issue. The introduction and adoption of the North Korean human rights resolution at the UN is actively supported by many countries. Underneath their external appearance that they are fighting for the common good of the North Korean people, there lies underneath a sense of self-satisfaction and political interest.

UN member states are involved in North Korean human rights because of the universality of human rights and not

⁶⁶ For more on Orientalism, see Edward Said, *Orientalism* (New York: Vintage Book, 1979). For criticism against Western Orientalism regarding the North Korean issue, see Kab-woo Koo, "The Political Circuit of North Korean Perception—Critique of Orientalism in International Relations," *Critique of Politics* 10 (2003), pp. 290-310.

because they ignore North Korea's special characteristics that are worthy of consideration when improving North Korean human rights. However, if the international community targeted a specific country's human rights situation while ignoring their own, it would be distant from the universality of human rights. In particular, for countries that have different political systems or hostile relations with North Korea, there is a higher probability that the North Korean human rights issue will be approached in a hostile and discriminatory manner.

Despite their various ideological backgrounds and activities, civil organizations in South Korea that deal with North Korean human rights issues can be separated into two different groups. The first are organizations that handle North Korean and South Korean human rights issues together. The second type are organizations that only handle North Korean human rights issues. On the other hand, organizations in the U.S. for the most part only handle North Korean human rights. It is easy to find phrases like "North Korean human rights," "Free North Korea," or "Democratization of North Korea" in the name of the organizations that only handle North Korean human rights. Those organizations usually defer handling the human rights issues of their own community and have a prejudicial approach when speaking only about a specific issue outside of human rights. In regards to North Korean human rights, those organizations use universal human rights as their rationale, but in reality this approach distorts the idea of universal human rights in a way that promotes the group's interests. This approach does not bring any realistic improvement to human rights.

When taking into consideration the double standard of the understanding among states or the state's status, the problem can become bigger. The international community can discuss the human rights issue of a specific state in the name of universal human rights. However, calling out a state's human rights issue with a sense of superiority and bias against the state in question does not only lack sincerity, but it also simply does not help the improve the situation.

Toward a Realistic Progress

Aside from the North Korean administration, no one denies that the North Korean human rights is detrimental. The seriousness of the issue lies in the complication of the cause and problem. The root of North Korean human rights issue can be found in the political and economic limitations of North Korea's political system, undemocratic social culture, the division of the Korean Peninsula, the competition between political ideologies, natural disasters, and the U.S. sanctions against North Korea. On the other hand, the serious human rights situation and the complication of its cause are connected to the comprehensiveness of the method of resolution. As previously discussed, North Korean human rights activism lacks an understanding of the history and structure of North Korean human rights and rather only focus on one particular aspect of the issue.

Before the mass defection of North Koreans in the mid-1990s, North Korean human rights issue was not well known despite the poor situation. North Korean human rights organ-

izations played a key role in opening the eyes of the international community to the situation mainly through the testimonies of escapees. In addition, they played a key role in bringing international and public interest to UN mechanisms criticizing the North Korean administration and requesting human rights improvement. Although it was on the partial, formal, and primary level, there were changes in the way that the North Korean administration viewed the issue.

However, there have been significant issues in activism in South Korea and international community to improve North Korean human rights. Those issues have combined with the passive attitude of the North Korean administration, bringing limitations to improving North Korean human rights. There is concern that relativism violates universal human rights and that human rights infringements are justified. Selectivism has the problem of violating the indivisibility of human rights and exaggerating or removing some part of human rights. Fundamentalism betrays the mutual respect and international cooperation mindset clarified by all of the international standards and promotes pressure on the other in the name of human rights. Instrumentalism prioritizes the organization's interests, giving the pretext for North Korean administration opposition. Due to the attitude and bias toward the other, the approach seems insincere and rather looks more self-satisfactory. Those issues have become interconnected and create the concern of aggravating the situation. Due to those problems, the North Korean human rights issue has become much politicized, militarized, and divides and confuses the public.

The efforts by the international community which includes South Korea to improve North Korean human rights have arrived at a stage where it must move beyond researching the status of human rights and criticizing North Korea. They must find a concrete and realistic method for bringing change. However, the current North Korean human rights movement has come to a stalemate. Until now, the North Korean human rights movement had only its popular ideology and did not have a systematic strategy for progress. With a combination of relevant organizations' self-evaluations and expert evaluation from outside sources, it is time to progress further and determine what the positive outcomes of the work, thus far. There is a need to humbly reflect on the aforementioned problematic areas. Exaggerated, conflictual, self-satisfactory, and repetitive activism should be rejected.

Secondly, no work toward finding a common ground on the principle and direction of a specific North Korean human rights improvement activism is being done. Various North Korean human rights organizations exist and operate in aiming to improve the North Korean human rights conditions but these organizations do not cooperate with others to find a common principle and direction to improve human rights in North Korea. The lack of cooperation between the various organizations has the possibility of causing competition and the diffusion of unverified and/or false information. The propaganda leaflets with American dollars dropped near or in North Korea as one of the advocacy strategies of the anti-North Korea conservative North Korean human rights organizations that are filled with unverified information about the North Korean administration

and leader have the potential to receive criticism as instrumentalist and fundamentalist. It was criticized for politicizing North Korean human rights by involving a right-wing Japanese organization in the summer 2010 campaign. Being silent on the North Korean human rights issue by simply denigrating it as a mere political movement to change the North Korean regime is also a cowardly attitude.

It is now time to really reflect on finding and implementing realistic solutions to the problem of North Korean human rights. In this regard, South Korea can and should be the main agent in improving North Korean human rights. South Korea working with its northern neighbor which it would have to eventually reunify with has the vast task of having to cooperate with North Korea to realize humankind's universal values. In actuality, not only does South Korea have the most information on North Korea, but it also has been the most active in its regard for North Korean human rights. As such, it has the most potential to take on a critical leading role in improving North Korean human rights conditions. At the same time, South Korea has the task of having to cooperate with the international community to actively improve the human rights conditions in North Korea as well as achieve reunification with North Korea. With South Korea having to juggle both endeavors and cooperate in the name of brotherly love, the question remains what principle and direction that South Korea will take to approach the North Korean human rights issue.

Part III

The Needs and Direction for Korea Human Right





Part III

8. Comparing Human Rights in North and South Korea

In examining a country's human rights record, how much trust can one place in the administration's statement? Is it not common to overestimate achievements, but to cover up wrongdoing when we assess our own performance? The differences between political systems have no effect on assessment. This points out why human rights organizations or human rights experts should impartially assess a country's human rights record in accordance with international human rights standards. However, when assessing the human rights situation in North and South Korea on a relative scale, it is easy to find that South Korea's human rights situation is far superior to that of North Korea. A variety of factors such as democratization, economic development, international cooperation, and growth of civil society may have been factors to this assessment.

However, the relative evaluation of the North and South Korea's human rights situations seems meaningless. Human rights is the objectives that humanity should persistently pursue,

regardless of the essence of a community, as long as humanity continues to exist. The danger of political approach using the relative differences between human rights situations was pointed out earlier. Here, I will examine North and South Korea's human rights situations and policies in the view of the absolute standard, in other words, international human rights standards, and take this as a foundation for creating the path towards a *Korea Human Rights* standard. Following the examination of South Korea's laws and policies related to human rights, I will assess administration positions and NGOs responses to human rights situations. Next, I will examine North Korean human rights in a similar manner.

Current Situation of Human Rights in South Korea and Policy Evaluation

Human rights in South Korea have evolved significantly since the 1987 democratization. In the field of CPR, arbitrary arrest, detention and torture by administration powers have almost disappeared and civil freedom has significantly increased because of democratization and international exchange. South Korea has entered a phase where it can be considered an advanced nation in the international community in terms of both economic power and human rights. NHRCK, an independent national institution established in November 2001, has been contributing to the improvement of human rights.

An establishment of independent national human rights institutions is based on 'the Paris Principles' which were adopted

in a resolution by the UN General Assembly in December 1993. The Paris Principles include the basic rules of the international community regarding an establishment of national human rights institutions. They also suggest roles of national human rights institutions including human rights monitoring, policy recommendation, international cooperation, and human rights education. The NHRCK was established in May 2001 as a result of a movement for an establishment of national human rights institutions developed by human rights organizations. The basic task of the Commission is developing human rights policies through conducting human rights research and issuing policy recommendations, investigating discrimination and human rights violation cases, and providing access to remedies, promoting human rights education and raising public awareness of human rights, promoting and monitoring national implementation of international human rights treaties, cooperating with administration agencies, CSOs, UN human rights bodies and international national human rights institutions, and other matters deemed necessary to protect and promote human rights.⁶⁷ When the UN HRC was established in June 2006, South Korea was elected as a member state, re-elected to serve from 2008 to 2011 and from 2012 to 2015, and is currently serving as chairperson state of HRC.

The Constitution of the South Korea comprehensively stipulates the guarantee of human rights. In Chapter 2 “Rights

⁶⁷- See the homepage of the NHRCK. <http://www.humanrights.go.kr/english/main/index.jsp> (Accessed on April 20, 2016).

and Duties of Citizens,” Articles 10-38 deal with human rights guarantees, from CPR to ESCR, except for Articles 38-39, which require the duty to pay taxes and the duty of national defense. In particular, Article 37 (1) states that “freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution.” Article 37 (2) specifies that “Even when restriction is imposed (on the rights for national security, the maintenance of law and order, or for public welfare), no essential aspect of the freedom or right shall be violated.” In principle, basic rights of citizens shall be protected by criminal punishment and compensation given for damages. In a case where basic rights is neglected, all citizens shall have the right to request the Constitutional Court to review the legality of judgment. Moreover, if anyone’s basic rights has been infringed upon by the administrative power and is not given due process by having exhausted all related laws, then he or she can file a constitutional complaint. Above this, any person whose human right has been violated shall have the right to issue a complaint to the NHRCK or the Anti-Corruption and Civil Rights Commission of Korea.

Constitution Article 6 (1) stipulates that “The generally recognized rule of international law shall have the same effect as the domestic laws of the Republic of Korea.” Thus, the international human rights treaties to which South Korea is a party have the same effect as domestic laws. Since democratization, the South Korean administration has considered related international human rights treaties when it enacts or amends a law. As of April 2016, South Korea has signed and ratified nine

human rights international treaties (Table1). Of course, South Korea has not joined the ICRMW, the ICPED, the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty (ICCPR), and the Optional Protocol to the CAT.

Table1. Ratification Status for North and South Korea

Treaty name	North Korea (signature /ratification)	South Korea (signature /ratification)
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT)		-/09 Jan 1995
Optional Protocol of the Convention against Torture (CAT-OP)		
International Covenant on CPR (CCPR)	-/14 Sep 1981	-/10 Apr 1990
Second Optional Protocol to the International Covenant on CPR aiming at the Abolition of the Death Penalty (CCPR-OP2-DP)		
Convention for the Protection of All Persons from Enforced Disappearance (CED)		
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	-/27 Feb 2001	25 May 1983/ 27 Dec 1984
Convention on the Elimination of All Forms of Racial Discrimination (CERD)		08 Aug 1978/ 05 Dec 1978
Covenant on Economic, Social and Cultural Rights (CESCR)	-/14 Sep 1981	-/10 Apr 1990
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)		
Convention on the Rights of the Child (CRC)	23 Aug 1990/ 21 Sep 1990	25 Sep 1990/ 20 Nov 1991

Treaty name	North Korea (signature /ratification)	South Korea (signature /ratification)
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (CRC-OP-AC)		06 Sep 2000/ 24 Sep 2004
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children Child Prostitution and Child Pornography (CRC-OP-SC)	09 Sep 2014/ 10 Nov 2014	06 Sep 2000/ 24 Sep 2004
Convention on the Rights of Persons with Disabilities (CRPD)	03 Jul 2013/-	30 Mar 2007/ 11 Dec 2008

* Source: The website of the OHCHR. (Accessed on 15 May 2016)

South Korea, which is subject to the UPR, had its human rights situations assessed thrice in 2008, 2012, and 2016 since the UPR was introduced when the HRC was established. The UPR published a reported that human rights have been significantly improved in terms of the legal system, and the administration of South Korea had been taking actions to improve human rights in its country.

First of all, various Korean administration ministries and agencies had been allocating roles to administration officials that protect and promote human rights in regards to the activities of domestic human rights. The South Korean administration established the Human Rights Bureau in the Ministry of Justice as a working group for domestic human rights policy and organized an interagency meeting for national human rights policy presided over by the Minister of Justice. The bureau has a mandate to launch the National Action Plan for the Promotion and Protection

of Human Rights (NAP) and to adjust individual human rights policies. The administration has expressed that it has been strongly implementing human rights policies such as 1) The Second National Plan for Action for the Protection and Promotion of Human Rights; 2) Expanding the scope of the NHRCK investigation; 3) Withdrawal of reservations to international human rights instruments; and 4) Enactment of Framework Action International Development Cooperation and expansion of official development assistance (ODA) since the 2008 UPR.⁶⁸

In South Korea, not only the South Korean administration, but also national human rights agency and human rights organizations are striving for the protection of human rights, and their opinions and activities may have an effect on the administration's human rights policy. The NHRCK has the authority to conduct research on policies, laws, systems, and practices related to human rights in addition to advising the administration on human rights policy according to the National Human Rights Commission Law. The chief of the administrative agency should respect the recommendations and strive to implement them; if he or she does not carry them out, he or she must explain the reason to the Commission in written form. Non-governmental human rights organizations may issue opinions during the pre- announcement of legislative proceedings for enactment or revision of laws and request the improvement of independent policies, laws, systems,

⁶⁸- ROK, "National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21," A/HRC/WG.6/14/KOR/1 (August 13, 2012).

and practices related to human rights through the broad consultation process by the relevant authorities or by civil complaint.

Externally, the South Korean administration states that it has sincerely fulfilled the obligations to the UN Charter as a member of the UN as well as a member state of the HRC and has pursued the status of an advanced nation in terms of human rights through implementation of the international human rights treaties to which it is party. Unlike North Korea, South Korea has been cooperating with the activities of the UN Special Rapporteur on Human Rights. The administration expressed its willingness for a regular visit of the UN HRC Special Rapporteur in March 2008 at the Seventh High-Level Segment of the HRC. The UN Human Rights Special Rapporteurs on freedom of expression, human rights defenders, and elimination of racial discrimination visited South Korea in 1995, 1996, 2010, 2013, 2014, and 2016. For example, the UN Special Rapporteur for Freedom of Opinion and Expression Frank La Rue issued a report that the situation of freedom of expression was severely curtailed under the Lee Myung-bak administration. The report was the first report from a UN special rapporteur for freedom of opinion and expression containing recommendations to the administration regarding the domestic human rights situation since a report issued 16 years ago in 1995. During his visit to Seoul and investigation in May 2010, Mr. La Rue was under watch by South Korea's National Intelligence Service, the intelligence arm of the Korean administration.

In South Korea, there is also the gap between extensive human rights protection provisions written in the Constitution

and reality, just like in other nations. Economic factors, such as the IMF economic crisis and the 2008 financial crisis, and political factors such as the low regard for human rights by policy decision-makers and neo-liberal economic policies responsible for creating income disparities. In reality, of course, those factors might complicated human rights. In the second national report on the UPR of the ROK submitted to the UN, South Korea evaluated its human rights record as favorable in general. In particular, it described the efforts made to implement recommendations made during the first cycle in 17 areas. The following are included in the report: 1) implementation and dissemination of the recommendations of human rights treaty-bodies; 2) freedom of association and assembly and freedom of expression and assembly of students; 3) investigation of torture and ill-treatment by law enforcement officers; 4) anti-discrimination laws; and 5) countermeasure against human trafficking.

The South Korean administration, however, did not accept every recommendation made by the UPR. It has played a passive role in the abolition of the death penalty, the National Security Law, the Security Surveillance Act, the adoption of the alternative service for conscientious objectors, additional ratification of international human rights instruments, and the withdrawal of reservations demanded by the UN human rights institutions as well as many domestic and international human rights organizations. The administration did not accept the demand on the grounds of conflicts with its Constitution and domestic laws, and the nature of Korea's labor market and the

reality of the income gap between the rich and poor.

However, the criticism made against the South Korean administration's assessment of human rights situations was made explicit by NGOs in South Korea. Some of the NGOs claimed that the binding force of international human rights treaties written in the constitution is, in fact, denied in South Korea. They also noted that the administration has minimized, distorted, or disregarded the recommendations rendered by the NHRCK, thus hindering overall improvement in human rights situations. This is related to the fact that the NHRCK has been passively dealing with human rights violations committed by a public power. The analysis of 20,050 human rights violations cases during over four years (2006-March 2010) indicates that "the citation rate of the human rights violations committed by administration authority (such as the public prosecutor, the police, and detention facility) is only 5.5%." Regarding this, one newspaper wrote an article titled "Why does the NHRCK not take actions against administration authority?" Since the inauguration of the Lee Myung-bak Administration, the percentage of the administration accepting policy recommendations made by the Commission dropped from 79.3% of the "Participatory Administration" or Roh Moo-hyun administration to 65.6%.

NGOs also criticized the Lee Administration for reducing the ministry responsible for gender affairs by combining the Ministry of Gender Equality & Family and the Ministry of Health & Welfare, thus leading to a huge setback for Korean women's human rights. Furthermore, human rights groups highlighted that the NHRCK has not taken an explicit position on issues such

as the National Security Act, the death penalty, and the right of conscientious objectors to escape military draft while launching the NAP. Those issues are challenges for the South Korean society, including the administration. Moreover, it is pointed out that clearing up past incidents still has not been realized due to perpetrators' denials of crime and a shortage of means of criminal punishment.

There were also doubts about the administration's willingness to clear up past affairs of so many infringements of human rights during and by military authoritarian powers. For instance, although clearing up past incidents, organizations such as the Truth and Reconciliation Commission could extend the period for activities in accordance with laws if the administration had the will, most of their activities ended in late 2010. Civil human rights organizations assessed that labor rights had been significantly reduced due to overall economic repression and the administration's pro-business economic policies. As the Non-Regular Workers Protection Act, which took effect in July 2007, was abused to avoid transition from non-regular to permanent employment, the ratio of non-regular workers in South Korea's workforce increased by 50%. As of 2014, the number of non-regular workers increased to over 70% in the construction sector consisting of over 300 companies. According to human rights organizations, the wage disparity and social discrimination between non-regular workers and regular workers are growing and a lot of female workers hold the status of non-regular workers. Affirmative action schemes for non-regular workers and transitions from non-regular to full-time employment are hardly being enforced.

In reality, non-regular workers' struggles for their rights often lead to family break-up, or even death. In addition, although it has been a long time since South Korea has entered a multicultural society, the care and protection of migrant workers is still a mere slogan. In the early 2015, a few conservative civic organizations expressed their position against multi-cultural policies and opposed protecting sexual minorities while dropping propagandistic fliers with balloons on North Korea. If the current situation persists, there is a concern that the socially disadvantaged or vulnerable groups might be neglected. This explains why South Korea's suicide rate is the highest among the members of the Organization for Economic Cooperation Development (OECD).

There are those who criticize the South Korean administration that ESCR as well as CPR, which had evolved since 1989, have been severely curtailed during the Lee Administration. For instance, there is the ruling party's revisions of the Law on Assembly and Demonstration, which place restrictions on the freedom of assembly; allegations of torture and ill-treatment by law enforcement officers; an overuse of voluntary interrogation; illegal surveillance by administration agencies; correctional administration producing concerns about human rights violations of prisoners; and the administration's excessive measures restricting freedom of speech, assembly, and demonstration.

The cases where Freedom of Assembly/Association/Press are severely curtailed under the Lee Myung-bak Administration include the arrest of an Internet blogger 'Minerva,' deletion of online posts, the Internet real-name policy, restriction on rights to free opinion and expression for administration employees,

violation of independence of the public broadcasting system, and the excessive use of force against the candlelight vigil demonstration in 2008. Frank La Rue, Special Rapporteur of the Right to Freedom of Opinion, pointed out them as well.⁶⁹ Among them, freedom of opinion and expression had been significantly curtailed. Such situations raise concerns at home and abroad. Amnesty International and the Special Rapporteur on the Promotion and Protection of the Rights of Opinion and Expression expressed concern about excessive use of force in law enforcement during the candlelight demonstration and dismissal of journalists on their visit to South Korea. Twenty-four South Korea human rights civil organizations published “Report on the Realities of the Freedom of Expression, Two Years into the Lee Administration” at “The General Meeting of the Freedom of Expression” on April 28, 2010. They stated, “The freedom of expression is like a ‘messenger’ that tells us that other human rights is being repressed,” and “such retreat in freedom of expression during the two years since the Lee Myeong-bak administration was unthinkable in South Korea.”

The human rights civic organizations summarized the administration’s violation of freedom of expression as regulation by law, which became the weapon of power, intensification of self-censorship on the Internet, excessive use of a public power and exercise of force. They reported that the reality of human rights in the 11 fields of the freedom of expression, such as the freedoms of thought and conscience, of expression through video

⁶⁹- *The KyunghyangShinmun*, May 17, 2010.

and literature, of assembly and association, of expression on the Internet, and youths, disabled, sexual minorities, and detainees through the 90-page report.⁷⁰ In discussing South Korea's human rights situation, it is also important to note that the NHRCK has failed to carry out its responsibilities in monitoring the administration's human rights policies and making alternative policies at independent position.

According to the summary prepared by the OHCHR around the Second Universal Period Review of ROK,⁷¹ South Korea has neglected its obligation to implement international human rights treaties in the following eleven areas: 1) Equality and non-discrimination; 2) Right to survival, liberty and security of the person; 3) Administration of justice and the rule of law; 4) Right to privacy, marriage, and family life; 5) Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life; 6) Right to work and to just and favorable conditions of work; 6) Right to social security and to an adequate standard of living; 7) Right to health; 8) Right to education; 9) Rights for persons with disabilities; 10) Rights for migrants, refugees and asylum-seekers; and 11) Right to development and environmental issues. The UN HRC rendered seventy recommendations for improvements to South Korea through the UPR second cycle.⁷² Even though it is true that

⁷⁰- *The Kyunghyang Shinmun*, April 28, 2010.

⁷¹- OHCHR, "Compilation Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21," A/HRC/WG.6/14/KOR/2 (August 13, 2012).

democracy and human rights in South Korea have significantly been improved since 1987, there are still many areas in which to make efforts at an international level. Furthermore, the ruling of the conservative party, which has the legacy of the authoritarian regime, is raising such concerns.

Since inauguration in February 2013, the current Park Geun-hye administration has been criticized for violating human rights at home and abroad. The rights of minority groups including non-regular workers have been continuously infringed upon although the administration from the start pledged itself to improve the human rights conditions and “economic democratization”. The rationale that economic growth is the first priority is still prevailing and one argument used for human rights violations.

One incident of the South Korean administration violating international human rights laws was the 2014 incident against Miryang villagers by South Korean administration and Korea Electric Power Corporation (KEPCO). The Miryang villagers have protested at the construction sites of 765kV electronic transmission towers number 101, 115, 127 and 129. These high voltage electronic transmission towers are being constructed without proper consultation with the local residents. The administration legitimized the use of violence by insisting on the legality of vicarious administrative execution. Miryang villagers along with civil society activists and religious groups

72. “Report of the Working Group on the Universal Periodic Review, Republic of Korea,” A/HRC/22/10 (December 12, 2012). The UN HRC adopted the report on March 14, 2013. A/HRC/DEC/22/108.

were brutally attacked by the police while they were protesting peacefully and demanding a right to live in peace. As soon as the June 2014 local elections were over, the administration and KEPCO used police forces to violently crackdown on local villagers and activists. More than 2,000 police forces and over 200 civil servants were deployed in Miryang to crackdown on less than 100 elderly villagers. The international community has already expressed their concerns about the violation of human rights in Miryang.⁷³

North Korea was used as the rationale in these crackdowns even after democratization in 1987. During the presidential election in December 2012, the conservative ruling camp skillfully mobilized public anti-North Korean sentiment and attacked the liberal opposition camp by releasing the transcript of the 2nd Inter-Korea Summit. However, in the latter half of 2014, the Park Geun-hye administration succeeded in dissolving an opposition political party under the guise of high treason and pro-North Korea activities. South Korea's Constitutional Court on December 19, 2014 decided that the Unified Progressive Party (UPP) violated the country's "fundamental democratic order" after the administration accused the party of supporting North Korea. The ruling also disqualified all sitting UPP lawmakers from representing the party. Roseann Rife, East Asia Research Director at Amnesty International commented "the ban on the UPP raises serious questions as to the authorities'

⁷³- PSPD, "The Government Employs Cruel Violence Instead of Persuasion and Communications in Miryang," 12 June 2014.

commitment to freedom of expression and association. The administration is increasingly using national security as a rationale to repress political opposition and curtail freedom of expression.⁷⁴ Amnesty International urged the South Korea administration to curb the mounting restrictions on freedom of expression through the excessive use of the National Security Law (NSL). Recently, South Korea broadened the application of the NSL to new categories and additional groups of individuals, such as politicians, National Assembly members, and now even foreign nationals. The latest clamp down on free speech involves two women who organized and spoke about North Korea during a speaking tour in South Korea. The tour took place in November 2014. US national Shin Eun-mi was deported over the weekend for allegedly speaking positively about North Korea, while South Korean citizen Hwang Seon was arrested on 14 January and has been charged under the NSL for causing social confusion through a speaking tour and allegedly praising the North Korean regime. Ironically, Shin's speech was based on her book, which was previously selected as an excellent book by the South Korean Ministry of Culture, Sport and Tourism. Investigations over alleged violations of the NSL have dropped in 2014, according to official sources. However, there were 129 cases involving alleged violations of the NSL in 2013 which was the highest number in a decade, and had almost tripled since 200

⁷⁴- Amnesty International, "South Korea: Ban on Political Party Another Sign of Shrinking Space for Freedom of Expression," 19 December 2014.

8.⁷⁵ At the 2015 New Year Press Conference, President Park said that the NSL is necessary for protecting national security in the special condition that the North and the South are confronting with each other.⁷⁶ That can be seen as double standard in the sense South Korea administration urges its counterpart to observe universal human rights.

There is a good reason for the South Korean administration to be actively engaged in North Korea's human rights situations. It is because the Constitution of South Korea considers the territory of North Korea to be a part of South Korea. However, the sovereignty of the South Korean administration practically resides only in South Korea. The protection of human rights of South Koreans is the primary responsibility of the South Korean administration. Even if human rights conditions in South Korea have been significantly improved, South Korea should take a practical approach to bringing up the human rights situations of North Korea in a situation where North and South Korea are different from each other.

It is difficult to contribute to effective improvement of human rights when one side of relations, which has a different system and has been in conflict with the other for a long time, directly and openly raises the opponent's human rights issue. That is why mutual trust is needed. Trust-building efforts between the North and the South will work as a catalyst to bring

⁷⁵- Amnesty International, "South Korea: National Security Law Continues to Restrict Freedom of Expression," January 20, 2015.

⁷⁶- *TongilNews*, January 12, 2015.

positive outcomes that can be used in South Korea's North Korean human rights policy and dialogue on human rights between the two countries can begin. It will not be effective to bring up the counterpart's human rights issue in a situation where domestic human rights situations have retreated. In that sense, the improvement of human rights in South Korea, particularly the administration's active human rights policy, will create conditions for effectively engaging North Korea in improving its human rights conditions.

Current State of Human Rights in North Korea and Policy Evaluation

In terms of its legal system, North Korea may be categorized as an advanced country on human rights. In 2009, the North Korean Constitution, which was revised several times, inserted human rights clauses and stated, "A state will ensure that the people fully enjoy a high standard of human rights." Although this expression is not free from the top-down perspective that human rights can only be ensured by state power, the North Korean constitution guarantees basic rights, such as the right to elect and be elected, freedom of speech, of the press, of assembly, of demonstration and association, the right to submit complaints and petitions, the right to work, to relax, to free medical care, to education and social security, freedom to engage in scientific, literary and artistic pursuits, and freedom to reside in and travel any place, and so on. The North Korean administration has claimed that legal safeguards are provided to effectively protect and promote human rights,

as hundreds of laws and regulations relating to human rights have been established. The current North Korean constitution states that the sovereignty of the DPRK resides in their population: the working class, farmers, intellectuals, etc. It is the working people who exercise power through their representative organs -- the Supreme People's Assembly and local people's assemblies at all levels.

According to the Report by the Chosun Human Rights Research Association (Joseon-inkwon-yeongu-hyeobhoi) published on September 13, 2014 in North Korea, the DPRK has systems in place that protect and promote human rights. First of all, the prosecutor's office consists of the Supreme Public Prosecutors Office, the local prosecutor's office at the provincial level (or direct-controlled municipality), the municipal level (or district), the county levels, and the special-city level. The courts were also set up at the central, provincial (or direct-controlled municipality), municipal (or district), and county levels. The Special Courts are separately established. North Korea states that the State defends the national sovereignty and socialist system as well as the constitutional rights and life and property of the state and the people through the prosecution and judicial bodies. The People's Committee at each level is directly responsible for guaranteeing human rights. Any person whose human rights is infringed upon is entitled to compensation by civil law, the Damage Compensation Act, the Law on Complaint and Petition, and other related laws. The application of the laws, however, cannot be found in the national report on the UPR submitted by North Korea. Meanwhile, the North Korean administration states that the State provides

human rights education through formal and special education and conducts training about the Constitution and laws through learning and dissemination.

North Korea has formed a relationship with the international community on human rights issue. North Korea ratified four international human rights conventions – the CCPR, the CEDAW, the CESC, and the CRC – and states that the rights of the Conventions are effectively guaranteed by the Constitution, laws, and regulations. North Korea has submitted progress reports to the each committee of the international human rights conventions and the UN HRC that states that it has accepted and implemented the concluding observations and recommendations made by each Committee and the HRC. North Korea also says that it attaches importance to constructive dialogue and cooperation with international human rights bodies, including the OHCHR. For this reason, North Korea invited the representatives of Amnesty International, the World Organisation against Torture, and the UN Committee on the Rights of the Child, as well as the UN Special Rapporteur on Violence against Women. In terms of diplomatic relations with other nations, North Korea claimed that it responded in a sincere manner to human rights dialogue, especially after establishing diplomatic relations with the EU.

In the national report for the first UPR in 2009, North Korea said it had provided information about North Korea's human rights policy through regular contact with delegations of the EU member states at Pyongyang. When submitting the second report of the UPR in January 2014, the North Korean ad-

ministration included achievements in promoting and protecting human rights in the following areas: 1) CPR; 2) ESCR; 3) Rights of special groups; 4) Education in law observance; and 5) International cooperation in the field of human rights.⁷⁷ In the same report, however, North Korea mentioned that hostile foreign relations constitute serious challenges and obstacles to the improvement of human rights by Korean people. Specifically, North Korea addressed: 1) the nearly 70-year long national division forced by foreign forces; 2) hostile policy towards the DPRK pursued by the United States; and 3) attempts by the United States and other hostile forces to stifle the DPRK and impose harsh economic sanctions.

North Korea argues that a hostile relationship with the United States and long-term sanctions by the United States constitute the most serious challenges and obstacles to the development of human rights. For this reason, North Korea has been passive in cooperating with the international community that demands human rights improvements. North Korea has rejected the human rights resolutions adopted by the UN as interference in its internal affairs. As the EU led the UN human rights agencies' resolutions on human rights in North Korea, which has continued since 2003, North Korea stopped regular political and human rights dialogues with the EU.

It seems that North Korea's human rights record (in the

⁷⁷- DPRK, "National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21," A/HRC/WG.6/19/PRK/1 (January 30, 2014).

field of ESCR in particular) was not in poor conditions in the 1960-1970s when the North Korean economy looked like it was likely to realize the socialist ideal. The free distribution, free education, and free health care policy instituted through state responsibility became the focus of propaganda campaigns lauding North Korea as 'an earthly paradise.' However, as individuals' free thinking and actions were being suppressed, CPR as well as ESCR, of which North Korea was proud, were threatened. Now, on the one hand, North Korea strongly argues that human rights situations are satisfactory, while, on the other hand, North Korea admits that the human rights situations have deteriorated. North Korea puts blame on this deterioration to the hostile policy towards North Korea pursued by the U.S., the anti-North Korea campaigns by the UN, the dissolution of the socialist market, and successive natural disasters.

According to the reports submitted to the UN human rights organizations by the North Korean administration, the human rights situation is evaluated as generally favorable although there are issues caused by external factors and incidental factors in some areas such as food and health care. North Korea has made the same claim at the 2009 and 2014 UPR Report to HRC and in the report of the four international human rights conventions that North Korea joined. The national report on the human rights situation of North Korea is filled with the administration's policies and related legislative and institutional measures.

We will evaluate the North Korean human rights and policies based on the National Report on the 2014 UPR of DPRK, alternative reports of NGOs, and the rough draft of the Report of

the Working Group on the UPR.

A careful examination of North Korea's second UPR report,⁷⁸ raises questions about the objectivity of information throughout the report. In respect of the right to survival, paragraphs 30 states, "In the DPRK, the death penalty is applied to extremely restricted cases. In the case of a crime that harmed a person's life, for instance, the death penalty is not imposed unless it is, though intentional, an extremely heinous and grave act." The phrase "an extremely heinous and grave act" is open to arbitrary interpretation and it is doubtful whether the reasons for the actual public executions – theft or sale of state-owned enterprise property (state property), human trafficking, and religious activities – would warrant the death penalty. Although the explanations about the right to food over the five articles describe the efforts to increase production output in the agriculture and livestock industry and other relevant achievements, it is difficult to find the report on the actual impact of food – such as the availability and accessibility of food and the quality of food – on the quality of life for North Korean residents. The report by the North Korean administration mostly refers to the administration policy and the description of the human rights situation of the residents is largely insufficient. In this sense, access to the site is necessary for accurate and objective assessment since there is a big difference between the national report and the objective assessment of human rights in North Korea.⁷⁹

⁷⁸ Ibid.

⁷⁹ For detail see *White Paper on Human Rights in North Korea* that the Korea

Meanwhile, many of the domestic and international NGOs have criticized and raised questions about the human rights situation reported by the North Korean administration. They submitted “The Alternative Report” to the UN, which refuted and supplemented the report submitted by the North Korean administration. The same applies to the UPR report of North Korea. Before the second UPR on North Korea, twelve NGOs expressed their positions on human rights issues in North Korea. The OHCHR submitted a summary of the report to the HCR. The following is a part of the report:

Regarding the right to survival, liberty and security of the person, Amnesty International referred to the apparent increased numbers of extra-judicial executions by border guards to prevent people leaving the DPRK. On the right to survival, liberty and security of the person, the International Federation for Human Rights reported that since the DPRK’s first UPR, dozens of people had been executed. Regarding migrants, refugees and asylum seekers, Human Rights Watch stated that leaving the country without state permission was considered an act of treason, punishable by lengthy prison terms.⁸⁰

Institute for National Unification (KINU) annually has been publishing since 1996.

⁸⁰ OHCHR, “Summary Prepared by the Office of the United Nations High Commissioner for Human Rights in Accordance with Paragraph 15 (b) of the Annex to Human Rights Council Resolution 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21, Democratic People’s Republic of Korea,” A/HRC/WG.6/19/PRK/3 (January 23, 2014).

This document of OHCHR, however, does not mention the “right to peace,” which is highly critical to all inhabitants of the Korean peninsula, while addressing North Korea’s implementation of international human rights obligations over fourteen articles. The People’s Solidarity for Participatory Democracy (PSPD), the representative South Korean civic group, presented the eight challenges for improving human rights in North Korea in the written statement submitted to the UN. The right to peace, one of the challenges, is described in the following manner: “We call upon the international community to support efforts to transition from an armistice to a peace system to guarantee the right to peace for all people on the Korean Peninsula and to prepare a peaceful reunification for the Korean Peninsula.”⁸¹ The NGOs’ reports create a more accurate understanding of the reality of human rights concealed by the North Korean administration. They are not limited to criticism, but introduce specific measures for improving human rights. Most of them are the same as the content contained in the UN Resolution on the Situation of Human Rights in the DPRK at the UN human rights bodies.

The NGOs’ reports, however, are not always accurate. In particular, as they place a strong emphasis on the nature of the North Korean political regime in regard to the cause of human rights violations, they are less interested in other factors such as marketization, and political and military confrontation between

⁸¹ “Written Statement Submitted by the People’s Solidarity for Participatory Democracy, a Non-Governmental Organization in Special Consultative Status,” A/HRC/25/NGO/83 (February 27, 2014).

North Korea and the United States. An understanding of the socio-economic discrimination faced by residents will become more accurate when the system of ascribed status (*Songbun*) as well as marketization and hostile foreign relations of North Korea are comprehensively considered.⁸²

The first and second review of the UPR report of North Korea took place on December 7, 2009 and May 1, 2014, respectively. On the first and second cycle, fifty-two countries, including Canada, Japan, South Korea, the United Kingdom, and eleven such as Belgium, Germany, and the United States raised questions to North Korea. In the case of the first cycle, fifty-two countries partook in the interactive dialogue after Cheol Lee, ambassador of DPRK to Geneva, announced the human rights report. The interactive dialogue most fully embodies the spirit of the UPR mechanism.

With regard to the 268 recommendations received from the participating countries to the second cycle UPR of the DPRK in May 2014, North Korea rejected 83 recommendations on the grounds that they seriously distorted reality and slandered the country. As a result, out of the 185 remaining recommendations,

⁸²- *Songbun* is the system of ascribed status used in North Korea. Based on political, social, and economic background for direct ancestors as well as behavior by relatives, *songbun* is used to determine whether an individual is trusted with responsibility, is given opportunities within North Korea, or even receives adequate food. Robert Collins, "Marked for Life: *Songbun*, North Korea's Social Classification System," The Committee for Human Rights in North Korea (June 6, 2012). With the spread of market since 2000s, however, the influence of *songbun* has been reportedly decreased.

North Korea accepted 113, partially accepted 4, noted 58, and rejected 10 items. At the second cycle UPR, DPRK accepted 30 items more than the case of the first cycle after examining the recommendations. DPRK also responded positively to the invitation by the UN Special Rapporteur on the right to food and technical cooperation with the OHCHR, which had been rejected before. North Korea said it would in the future continue to attach importance to the UPR mechanism and faithfully implement its commitment to the international field of human rights.⁸³

The following are parts of the recommendations accepted by North Korea at the second cycle UPR.

- Further fulfill the universal obligations as well as join new international human rights instruments;
- Take measures to ensure international humanitarian aid reaches the most vulnerable and needy;
- Guarantee freedom of thought, conscience and religion to all individuals by ensuring the basic rights to freedom of assembly and association;
- Continue to consolidate socio-economic measures to minimize the gap between rural and urban areas;
- Increase access to food, healthcare, education, and adequate housing, throughout the country.

⁸³- "Report of the Working Group on the Universal Periodic Review: Democratic People's Republic of Korea," A/HRC/27/10 (July 2, 2014).

The following are parts of the recommendations rejected by North Korea after examination at the second cycle UPR:

- End the practice of arbitrary, public and private executions;
- Make a list of persons in detention, provide the International Red Cross access to prisons and review all cases of arbitrary arrest or confessions under torture and consider reparation for victims;
- Remove restrictions on movement in and out of the capital and derogate Article 62 of the Penal Code, which prohibits leaving the country without State authorization, thereby removing all sanctions against those who decide to leave and to return to their country;
- Allow the establishment of independent newspapers and other media, allow its citizens to access the Internet and the international media, and abolish compulsory indoctrination sessions;
- Allow reform of the food market in order to ensure adequate food production for its population.

As shown above, North Korea has shown favorable responses to the international community's demands for the improvement of human rights, such as improving related domestic legal measures and the access to food and health facilities. However, North Korea refuses to cooperate in regard to representative human rights violation issues including public executions, kidnapping, and human trafficking and special procedures. All the more, they insisted that they allowed freedom to religious life and ceremonies of religious people, guaranteed freedom to

travel fully, protected freedom of expression, adding that “political prison camps” were a complete fabrication.

On March 21, 2013, at its 22nd session, the UN HRC established the COI on Human Rights in DPRK. Resolution A/HRC/RES/22/13 mandated the body to investigate the systematic, widespread and grave violations of human rights in North Korea, with a view to ensuring full accountability, in particular for violations which may amount to crimes against humanity. Among the violations to be investigated are those pertaining to the right to food, those associated with prison camps, torture and inhuman treatment, arbitrary detention, discrimination, freedom of expression, the right to survival, freedom of movement, and enforced disappearances, including the form of abductions of nationals of other states. The Commission presented its report to the UN HRC at its 25th regular session in Geneva on March 17, 2014.

The COI report (A/HRC/25/CRP.1) confirmed that North Korea government had committed many human rights violations including those stipulated by the COI such as crimes against humanity. Finding systematic, widespread and gross human rights violations committed by DPRK, the 372-page report suggested various recommendations for human rights improvement in North Korea. The COI report recommended nineteen items to North Korea including stop to all kinds of crimes against humanity. It also recommended that China and other states adopt six items which include the consideration of ratifying a final peaceful settlement of the Korean War and fostering an inter-Korean dialogue which leads up to an agenda

for reconciliation. With regard to the international community and the UN, the Commission made ten recommendations such as the following: 1) The Security Council should refer the situation in North Korea to the ICC for action in accordance with that court's jurisdiction; 2) The UN OHCHR should establish a structure to help ensure accountability for human rights violations in North Korea particularly where such violations amount to crimes against humanity.

North Korea said that it completely rejects the recommendations made by the COI. North Korean state media has expressed that the COI report is "a political provocation to demolish our system as well as a product of hostilities by the U.S. which has been lasting for decades."⁸⁴ The Chinese administration has expressed its objections to deal with North Korean human rights issue at the UN Security Council. The international community takes the North Korean human rights and the administration's response very seriously. As North Korea still perceives human rights connected to regime security, it lacks efforts for human rights improvement and is passive in cooperation with the international community.

What can the international community do in a situation where North Korean human rights is dire and the administration reacts in a negative way to the international community's demand for human rights improvement? Is there more constructive and practical means other than expressing concerns and adopting resolutions? In particular, what position and strategies should

⁸⁴- KCNA, April 28, 2014.

South Korea pursue to work on North Korean human rights issue? The examination of human rights situations in North and South Korea in the above is not to argue that both sides have problems with their human rights situations. Thus, it is also not to argue that 'special' interest in North Korea has political intentions. The North Korean human rights is so dire that it is subject to various special procedures by the human rights mechanism of the UN. In such situations, South Korea is given a dual role when addressing the North Korean human rights issue unlike other actors. It is a strategic need to pull North Korea in order to resolve inter-Korean issues while simultaneously contributing to substantial improvement of the North Korean human rights situation. It is time to find a new approach for South Korea to play an active role. The following section will delve into South Korea's active role for substantial improvement of North Korean human rights. I will name the alternative approach of South Korea toward North Korean human rights issue *Korea human rights*.

9. The Need for Korea Human Rights

The aforementioned issues that come to the fore when working to improve the North Korean human rights can be avoided. However, the nature of the issues is not so simple and the harm done by directly attacking it can be serious. Unless they are resolved, the resolution of the North Korean human rights

issue can amount to just a mere slogan. The process of resolving methodological issues requires a change in perspective when approaching North Korean human rights itself. For instance, it requires the sincerity of the side dealing with North Korean human rights in order to avoid an instrumental approach toward North Korean human rights. To do so, an objective view of the North Korean regime is necessary.

It also requires that the actor approach the issue with an open-mind when discussing human rights issues on both ends at the same time in order to change the position that North Korean holds toward human rights in their own country rather than having it discriminately approach the issue. Eventually, the process of resolving the methodological issues of approaching North Korean human rights leads to a new perspective on North Korean human rights. From South Korea's position, a new concept of *Korea human rights*, which would approach human rights within the two countries simultaneously, can be considered to realize substantial improvements in human rights in North Korea. A specific discussion on the definition and direction of Korea human rights will be examined in detail in Chapter 3 below. The next chapter will examine specifically why the implementation of Korea human rights is necessary.⁸⁵

⁸⁵- For five background explanations except the fourth, See Bo-hyuk Suh, "From North and South Korean Human Rights to Korea Human Rights," *Critical Review of History*, Vol. 88 (Autumn 2009), pp. 160-171.

The Cessation of Ideological Regime Competition

First, there is a need to learn from the two Koreas' condemnation of the opponent's human rights situation that stemmed from regime competition during the Cold War. The Korean War, which brought the Cold War to Northeast Asia, created a hostile division that led Koreans to kill their own people due to ideological conflicts.⁸⁶ After the war, North and South Korea became caught up in a maelstrom of regime competition in which they denied the other's lifestyle. The different conceptualization of human rights, which resulted from ideological differences, became the means of regime competition. North Korea regarded the South Korean administration as anti-reunification and subordinate to the U.S. and, thus insisted that the public's political freedom and right to survival were infringed upon under such administration. North Korea pointed out the sexual exploitation of South Korean women by US troops in South Korea and the violation of the right to survival of the residents who live around the US military bases as examples. North Korea argued that it was inevitable that the South Korean administration would repress the public's aspirations for democratization and unification and would exploit and plunder the working class in order to maintain its power.

⁸⁶- For more on the establishment and change of the division system of the Korean Peninsula, see Nak-chung Paik, *The Division System in Crisis* (Los Angeles: University of California Press, 2011); Sun Song Park, "The Division System and Revolutionary Movement: For Critical Understanding on the 'Division System Theory,'" *Trends and Prospects*, Vol. 24 (1994), pp. 159-189.

On the other hand, South Korea condemned North Korea for denying various CPR ensured by liberal democracy because North Korea's totalitarian system inherently oppressed human rights. Moreover, South Korea argued, the life of the public inevitably became impoverished in order to perpetuate the dictatorship of Kim Il-sung and his power elite. South Korea portrayed North Korea's Chosun Workers' Party as "a horned wolf" and propagated the idea that North Koreans would suffer from surveillance and repression until death if they did not return to the bosom of "liberal Korea."

One feature can be found in their mutual condemnation of human rights issues. Both sides regarded their system as superior and the opponent as fundamentally flawed while criticizing each other's human rights situations. The argument that a particular political system or ideology promotes or represses human rights is the typical method of using human rights as a means of propagating the superiority of the system, representing the politicization of human rights. By doing this, the state power can cover up its own human rights abuses. During the Cold War, the states' mutual condemnation justified their leaderships' opposition to reunification and undemocratic governance. Likewise, mutual hostility between them made it difficult to improve their own human rights and to engage constructively in the opponent's human rights issues.

The history of human rights conflict between the two Koreas engaged in hostile relations makes one ponder on the best way to appropriately intervene the opponent's human rights issues. North and South Korea's respect for the mutual system

and compliance with international human rights norms are the new beginning.

Integration of Conflicting Human Rights Perspectives

Second, there is an irreconcilable debate over the relativism and universality of human rights behind the controversy over North Korean human rights. Of course, although it is hard to say that Korean society has reached an agreement on a human rights perspective, the awareness of universal human rights is widely shared. Authoritarian regimes in South Korea suppressed human rights in order to maintain vested rights and seize long-term seizure of power. At the same time, they justified human rights abuses on the ground of indigenous democracy, economy-first policy, and national security.⁸⁷

Having different political systems, the two Koreas have significant differences in human rights perspectives.⁸⁸ North and South Korea believe in universalism and relativism, respectively. Of course, both Koreas agree on the abstract definition of human

⁸⁷- Kyung-seo Park and Nami Lee, *Korea's perception of Democracy in the 1970s through WWC* (Seoul: Jisik Sanup Publications Co., LTD., 2010); Jae-Ho Chun, *Reactionary Modernist, Park Chung-hee* (Seoul: Bookworld, 2000).

⁸⁸- See Suh, "From North and South Korean Human Rights to Korea human rights," pp. 160-161. For a discussion of North Korean's human rights perspective, see Chosun Workers' Party, *Imperialistic Exaggeration of 'Support for Human Rights'* (Pyongyang: Chosun Workers' Party Publishers, 1992); Social Science Publishers, *Juche's Theory of Socialist Constitution* (Pyongyang: Social Science Publishers, 1991); "For Genuine Support for Human Rights," *RodongSimmun*, June 24, 1995.

rights as rights inherent to all human beings. South Korea, however, regards human rights as inherent and enjoyable to all human beings regardless of system and environment. On the other hand, North Korea assumes that there is no single standard for human rights improvements and, thus, there are various ways to approach human rights depending on the political and economic conditions of the country. North Korea views human rights from a hierarchical perspective. For instance, North Korea believes that the emerging bourgeoisie created the modern concept of human rights to attract the working people to the struggle against oppression by the feudal system; thus, at the time, 'human beings,' in the context of human rights, did not refer to the working people, but to the bourgeoisie. North Korea's cultural relativist perspective on human rights was used as grounds to support the hierarchical world view.⁸⁹

Compared to South Korea, which has an individualist perspective on human rights, North Korea takes a collectivist perspective on the same issue. South Korea adopted American Democracy, in other words, liberal democracy as its founding principle. Liberal democracy holds that a society can be developed when the freedom and creativity of individuals are respected as much as possible, rather than allowing the interests of individuals to be undermined in order to achieve collective goals.⁹⁰ On the

⁸⁹- For criticism of North Korea's relativist human rights view, see Ki-hwan Kim, *Relativism and North Korean Human Rights* (Seoul: Tree of Peace, 2009), Ch. 3.

⁹⁰- For more on the introduction of liberalism and development of liberal democracy in modern Korea, see Nami Lee, *Origin of Korean Liberalism*

other hand, as shown in the slogan “One for all, all for one,” North Korea prioritizes collectivism. Although the so-called ‘socialist collectivism’ does not oppose the interests of individuals, it is true that it puts the interests of the state and society before those of individuals.

North and South Korea show different positions on the main content of human rights. For South Korea, the CPR is considered the most important arena of human rights; on the other hand, North Korea places an emphasis on economic and social rights. The CPR includes the right to equality, the right to safety, freedom of movement and residence, freedom of religion, and the right of suffrage. The rights tend to be enhanced as they are less controlled by state power. This is similar to individualistic human rights. During the democracy movement in South Korea, there were protests against human rights violations committed by the administration, particularly against the crackdown on civilians demonstrating for their political freedom. In contrast, North Korea tends to perceive mainly ESCR as human rights. They include the right to labor, right to education, right to survival, right to health, and social security rights. ESCR requires the state to take an active role, which makes them different than the CPR. North Korea has argued, “There is no country in the world like North Korea where everyone’s rights is fully ensured, ranging from the right to work, to food and clothing, to write,

(Seoul: Bookworld, 2001); Byoung Hon Song, Nami Lee and Myeon Hwei Kim, *Development and Character of Korean Liberal Democracy* (Seoul: Korea Democracy Foundation, 2004).

to life, to education, and the right to health care.”⁹¹ Furthermore, North Korea has claimed “the people who lose sovereignty will suffer from human rights violations” and suggested a new theory, which is “human rights equals sovereignty” during the end of the Cold War and while the economic crisis threatened its regime stability. It seems that North Korea puts an emphasis on ESCR, not only because of the influence of socialist human rights perspectives, but also because of the need for the administration to control its own society.

Such different perspectives of human rights between the two Koreas show the different positions of the democratic and communist camps during the Cold War. With the end of the Cold War, one can say that North Korea’s perspectives on human rights is anachronisms in the present day. That is why the international community, including South Korea, is being persuaded by the position that insists on ignoring North Korea’s human rights perspectives and, instead, applying human rights norms that prevail in the international community to North Korea. However, South Korea is engaged in a military confrontation with North Korea and is bound to be the most sensitive to North Korea’s concerns over security threats, underdevelopment, and political and economic changes. In addition, South Korea has the experience of overcoming poverty and authoritarian rule. Such experience, as well as its position, makes South Korea the most qualified

⁹¹- Kim, Jong Il, “Our Own People-Based Socialism is Ever-Victorious (5 May 1991),” *Collection of Kim Jong Il*, Vol. 11 (Pyongyang : The Korean Workers’ Party Publishers, 1997), p. 55.

candidate for addressing the North Korean human rights.

It is difficult for the two Koreas to resolve their different positions on human rights through a debate when they have different systems and are still at war technically with each other. Their perspectives on human rights can change or they can listen to the different opinions in the process of mutual dialogue and cooperation. Korea human rights will reconcile the two extreme perspectives on human rights based on mutual cooperation under the international human rights standards.

Rejection of Consumptive Arguments

Third, it is necessary to stop unnecessary and exhausting debates over human rights and channel energy to resolving the issue in an efficient way. The Chapter 7 of this book introduces the five issues surrounding North Korea's human rights issues that have been discussed in South Korea. Among them, there may be different assessments of the North Korean escapees and North Korean human rights situation in North Korea. This is due to the lack of information and differences in research methods, rather than differences in North Korean perspectives or political perspectives. Therefore, it is possible to reduce the differences in evaluation through more objective information gathering and improved research methods. An integration of different information and research methods will allow for a more accurate assessment of reality and will lead to a constructive discussion of North Korean human rights.

There are, however, consuming and unnecessary disputes.

The controversies over the causes and the means to improve North Korean human rights issue entail the risk of such disputes. The consuming and excessive controversy may not have a positive impact on the improvement of human rights in North Korea. Such disputes lead to conflicts in North Korean human rights policy as well as to the North Korea policy, generally. Furthermore, it can drive Korean society's public opinions surrounding North Korea to conflict and confrontation. The internal conflict may work against South Korea administration's negotiations with North Korea or send the wrong signal to the North, thereby having a negative impact on inter-Korean relations.

The exhaustive and excessive controversy over North Korean human rights in political circles and civil society were results from the major differences in the background, nature, and the purpose of the debate. Consider the example of the controversy over the enactment of the North Korean Human Rights Act. The enactment of the North Korean Human Rights Act of 2004 in the U.S. sparked controversy in South Korea. Members of the Grand National Party (GNP), the minority party in South Korea's National Assembly at the time, prepared legislation on the North Korean Human Rights Act. This legislation was introduced by National Assembly members including Moon-soo Kim, Woo-yeo Hwang, and Jin-ha Hwang in 2005. At the same time, as the movement to ratify a North Korean Human Rights Act was gearing up in Japan, the act jointly proposed by three ruling and oppositional parties passed the House of Councilors (upper house) of Japan's Diet in June 2006. The North Korean Human Rights Acts in the U.S. and Japan, respectively, focused on aid to North Korean

refugees and the resolution of the Japanese abductee issue.

Those in favor of passing the act into law, including the current major Saenuri-party, stressed the need for ratification of the act by arguing that the South Korean administration should not ignore human rights violations in North Korea when the U.S. and Japan promoted legislation to improve the human rights situations in North Korea. Since then, the conservative camp, including the ruling Saenuri-party (former GNP), as well as North Korean human rights organizations, criticized the Roh Moo-hyun Administration for its “silence” on North Korean human rights, and having only “poured money into North Korea” in the name of building better inter-Korean relations and the denuclearization of North Korea.

As this would demonstrate, there was domestic political conflict in South Korea surrounding the North Korean Human Rights Act of South Korea’s allies and the North Korea policy stood as the background of the domestic movement for the North Korean Human Rights Act . Those in favor of the act claim that the enactment itself is more important than an objective analysis of the background and the contents of the North Korean Human Rights Act in the U.S. and Japan, or an evaluation of its effects.

However, those who opposed the act have expressed concerns over its adverse effect on inter-Korean relations as well as its ineffectiveness in improving human rights in North Korea. They were suspicious of the intentions behind the law “for being trapped in the historical perspectives based on the Cold War and anti-North Korean ideology from which to pressure or encourage

the overthrow of the current North Korean regime.” They claim that the enactment of the law cannot avoid such suspicion, particularly in the midst of strained inter-Korean relations under the conservative [Park Geun-hye] Administration.⁹²

Although the North Korean Human Rights Act finally was passed on 2 March, 2016 in the National Assembly, there are many issues as follows: 1) the Ministry of Unification will be the primary department responsible for North Korean human rights; 2) the Ministry of Foreign Affairs will select a North Korean human rights envoy; 3) To establish a North Korean Human Rights Foundation that will support the North Korean human rights movement; 4) To establish the North Korean human rights advisory board for convergence of public opinions; 5) To set up a North Korean Human Rights Archive to reduce human rights violations and to use the collection of human rights violations on record as evidential material in the legal proceedings of human rights abusers after unification.

The issue of North Korean Human Rights Act legislation in the ROK also became a controversial law for the NHRCK. As the act passed in the Foreign Affairs & Unification Committee of the National Assembly, the NHRCK held a Plenary Committee on May 4, 2010 and recommended removing a provision calling for the establishment of the North Korean Human Rights Foundation from the North Korean Human Rights Act instead

⁹²- Baek Ki Cho, “A Human Rights Analysis about North Korean Human Rights Bill of the Grand National Party,” *Democratic Legal Studies*, Vol. 39 (March 2009), pp. 162-207.

of establishing the North Korean Human Rights Archive under the NHRCK. The NHRCK pointed out that “the engagement policy, which remained silent over North Korean human rights conditions, led to the deterioration of human rights in North Korea in the last 10 years.” This served as the background for needing the North Korean Human Rights Act.

However, there were also opinions against the act in the NHRCK. Those who held the minority view pointed out that “if the North Korean human rights has worsened over the last 10 years, it means that the enactment of the act would not contribute to improving North Korean human rights [in the future].” Additionally, they mentioned that “it is highly controversial that the demand for the establishment of the North Korean Human Rights Archive as a national agency would violate the purpose of the Articles 1 and 2⁹³ of the Inter-Korean Basic Agreement.”⁹⁴ Even though the controversy within the NHRCK takes the form of legal argument, it consistently reflects the positions of the progressive and conservative parties on this issue in Korean political and civil society.

⁹³- The Inter-Korean Basic Agreement, which was signed on December 13, 1991 by South Korean and North Korean Prime Ministers, promised to develop inter-Korean relations from hostile confrontation to reconciliation and cooperation. It agreed to see reunification as a process for the co-prosperity of the Korean people and declared that reunification should be achieved by the Korean people themselves free from any foreign interference. Article 1 is “The South and the North shall recognize and respect each other’s system.” Article 2 is “The two sides shall not interfere in each other’s internal affairs.”

⁹⁴- NHRCK, “Recommendations Calling for Enactment of North Korean Human Rights Law,” May 19, 2010.

Those who opposed the act, including the minor opposition Jeongeui-dang (Justice Party) and many human rights groups, argued that the act would hinder humanitarian aid for North Koreans and consequently, it would impede human rights improvements in North Korea. The act, of course, embraces some elements including inter-Korean human dialogue and the coordination of human rights improvement and peace making that opposition groups raised. There is concern, however, the act would contribute to human rights improvements of North Koreans considering the rising military tension on the Korean Peninsula and deep mistrust between the two division states.

Though the controversy over the enactment of the North Korean Human Rights Act addresses the impact of the act on human rights improvements in North Korea, the common interests of political and social groups were the driving force for the bill. In the midst of such controversy, even after the enactment of the act, there are concerns that discussions of human rights in North Korea would neglect the need for improvements in South Korean human rights issues or could have it considered to be a separate issue. In actuality, there has been public concern of the deterioration in domestic human rights and the promotion of anti-human rights policies and legislature since the inauguration of Lee administration in 2008. If the North Korean human rights issue, which is fully objectified, does not move forward toward a constructive discussion, it can become caught in a maelstrom of political conflicts. As a result, the conflict surrounding the North Korean human rights issue within South Korea remains as an origin of political conflict and

has not been mitigated through a rational discussion. Korea human rights adhere to an empirical tradition that prevents politicization of the discussion and helps every discussion contribute to the 'practical' improvement of human rights.

Stepping Stones for Regional Human Rights Cooperation

There is no regional human rights mechanism in Asia unlike Europe, America, and Africa. The UN CHR was established in early 1946 by the UN Economic and Social Council and the UN General Assembly announced the UDHR on December 10, 1948. As two major human rights treaties, the ICCPR and the ICESCR took effect in 1976, efforts for human rights protection developed at the international level. At the same time, as the Cold War began, the world was divided into two conflicting ideological blocs and each country was cautious about the effects of outside intervention on its national interests and domestic affairs. In other words, although international human rights mechanisms were established and operated worldwide, they faced many limitations in their applications at the state level. This is why international human rights advocates began to seek alternative solutions.

International human rights advocates set up thematic human rights protection mechanisms to specifically improve broad and abstract human rights. For instance, there is the adoption of thematic human rights conventions such as the CAT, CEDAW, CRC; the appointment of Special Rapporteurs; and the operation of each international human rights treaty committee that investigates and reviews situations. North Korea

was investigated by the Special Rapporteur on the Freedom of Expression, on the Freedom of Religious Belief, and on the Right to Food from the late 1990s and until the early 2000s. Since the Lee Administration, South Korea underwent an examination by the Special Rapporteur on the Freedom of Expression, on Human Rights Defenders, and on Racism.

Another alternative is the establishment of a regional human rights mechanism. The advantage of a regional human rights mechanism lies in the fact that it can develop human rights education tailored to regional circumstances, maintain peace in the region through it, reduce the use of force, enhance mutual aid activities for human rights, and can understand the issue by paying attention to the voices of victims of human rights abuses and human rights defenders.⁹⁵ Europe, Africa, and the Americas have already developed regional cooperation for the improvement of human rights in their regions with the establishment of regional mechanisms. In particular, European human rights institutions, which are regarded as the exemplary models of regional human rights cooperation, have improved human rights within the sphere of the EU based on the experiences of the two World Wars. The permanent human rights' bodies such as the Council of Europe and the European Court of Human Rights were established and have taken the lead in ensuring the protection of human rights with the cooperation of individual countries or independently.

⁹⁵- Buhm-Suk Baek, "The Medium Foreseeing the Future: The Role of NHRIs in Creating RHRIs in the Asia-Pacific Region," *Socio-Legal Review* 8(1) (2012), pp. 36-112.

By comparison, the establishment of a regional human rights mechanism in Asia is still in its infancy. The Asia Pacific Forum on National Human Rights Institutions (APF) was founded in 1996. Although the establishment of the ASEAN Inter-governmental Commission on Human Rights (AICHR) was decided in 2009, the level and executive force for the improvement of regional human rights is still minimal. The level of regional human rights cooperation is lower than that of other regions because there is unease with establishing a human rights institution that espouses universal human rights and emphasis on national sovereignty on a Western model.

East Asian countries, which stress the importance of a regional culture including Confucian values, place an emphasis on the interests of the community in contrast with Western countries, which emphasize individual rights. The so-called *Asian values* stress regional distinctiveness in the field of human rights. The colonial experience of Western imperialism also makes Asian countries perceive an emphasis on the universality of human rights as a different form of outside intervention, thereby stimulating national sentiments. In addition, although there is a growing interest in human rights along with other transnational concerns such as ecology, terror, the proliferation of weapons of mass destruction, an emphasis on national sovereignty still prevails in Asian countries, which prioritize national development through economic development. Of course, though human rights defenders insist that international intervention is required for serious human rights abusers, the opposite side counters that such logic merely represents the national interests of certain countries that

influence international organizations.⁹⁶

In a situation where regional human rights cooperation is minimal, inter-Korean cooperation for the improvement of human rights on the Korean Peninsula means building a foundation for cooperation to improve human rights in Asia. In reality, there are big differences in human rights perspectives, human rights situations, and human rights policies between North and South Korea and underlying ideological differences and military confrontations divide them. Therefore, cooperation is not an easy task in the field of human rights, where systematic differences clearly appear.

However, as long as both sides are member states of the UN and key UN international human rights conventions and human rights protections are written in the Constitution, in principle, there is no reason to delay human rights cooperation. The two Koreas will be able to cooperate with each other in other areas as well as in human rights (e.g. humanitarian and developmental aid and human security) if there is progress in exchange and cooperation with underlying respect of mutual systems, thereby raising a level of trust. The support, arbitration, and technical cooperation of relevant international organizations can be added here. In addition, relevant organizations can cooperate in connection with human rights training for the officials, human rights friendly laboratory operations, and publication and utili-

⁹⁶- Dong-Yoon Lee, "Present Status of Human Rights and Human Rights Policies in Southeast Asia: Focusing on Regional Cooperation," A paper at the Annual Academic Conference of the Korean Association of International Studies (Hanyang University, December 11, 2009).

zation of human rights textbooks for domestic implementation of international human rights standards in North Korea.

Inter-Korean human rights cooperation is desperately needed in an absence of practical human rights mechanisms in the Asia. Korea human rights can be an alternative solution to applying international human rights norms to the entire Korean peninsula in the situation where support of human rights bodies is impossible in Asia. If the two Koreas stop using slander against each other and instead cooperate, they will be able to facilitate the development of inter-Korean relations as well as contribute to the establishment of an Asian human rights regime.

Solving the Humanitarian Problems

Fifth, in considering North Korean human rights, there is a need to include humanitarian issues stemming from the Korean War and division of the Korean peninsula, such as North Korean escapees, separated families, abductees, and POWs. If we define North Korean human rights as human rights within North Korea, there is a possibility of mistakenly excluding some by restricting geographical areas. Moreover, if we limit the scope of North Korean human rights to the issues within North Korea, we may fall into the error of objectifying North Korean human rights and voluntarily limit the degree to which the international community can be involved. This is not only because of a false understanding of the universality of human rights of a country, but also reflects that the reality of human rights violations in North Korea is not limited to the North Korean region. An

understanding of “North Korean human rights as human rights in North Korea” may also impede the effective improvement of human rights by placing the responsibility with North Korea. So to speak, the personal principle is more useful than the territorial principle for North Korean human rights.

The number of North Korean escapees has slow pace increase and the number of escapees staying abroad is estimated to be in the tens or hundreds of thousands of people, although it is still difficult to grasp the exact number of North Koreans who have escaped. Moreover, separated families, victims of kidnapping, POWs and their families, and those affected by the division of and war on the Korean Peninsula were forced to live undesirable lives regardless of their intentions. In fact, it is not an exaggeration to say that those massive human rights violations were results from the quarrel between two regimes that were and are caught in the trap of the Cold War.

Therefore, the two Korean administrations and international community involved in the war and division have responsibilities to resolve humanitarian issues. If the two administrations’ arguments concerning denuclearization-first policy or implementation of inter-Korean agreements have not contributed to solving humanitarian issues, there is a good reason to believe that their arguments serve the interest of their division regimes, respectively. The desire to live like a human being with the right to having a family, the right to self-determination, and the pursuit of happiness are humanitarian issues. It is reasonable to discuss North Korean human rights issues along with these lines. In that sense, North Korean human

rights is a part of Korea human rights, which are closely related to South Korea. That is why the role of the South Korean administration and the special attention of the international community are necessary to solve those issues.

The total number of people kidnapped by North Korea during the Korean War is estimated to be 2,438-126,325 depending on the reports. A total of 3,835 persons have been abducted to North Korea since the cease-fire of the Korean War. A total of 3,310 of them (86.5 percent) returned to South Korea after being held for six months to a year. Eight of them defected from North Korea and returned to South Korea. During the Roh Moo-hyun administration, there were at least three reunion meetings for families separated by the war which also included the families of abducted persons.⁹⁷ As of December 31, 2013, 129,255 persons were registered in the administration-run Integrated Information System for Separated Families as members of separated families, of whom 57,176 persons had passed away, leaving 72,079 survivors.⁹⁸ The South Korean administration is mainly responsible for the North Korean refugee issue because of the denial of the North Korean administration and the crackdown of North Koreans in China by the Chinese administration. The South Korean administration and NGOs are striving to bring the defectors to South Korea.

⁹⁷- Dong-ho Han et al., *White Paper on Human Rights in North Korea 2014*(Seoul: Korea Institute for National Unification, 2013), pp. 612, 619-620.

⁹⁸- The Ministry of Unification, *White Paper on Korean Unification 2014*(Seoul: The Ministry of Unification, 2014), p. 121.

Separated families, North Korean escapees, and POWs have been significantly affected by inter-Korean relations. During the Kim Dae-jung and the Roh Moo-hyun administration which pursued inter-Korean reconciliation and cooperation, North and South Korea held family reunions several times and also discussed the abductees and POWs within the framework of family reunion meetings, considering the position of the North. There were also attempts to solve the problem of separated families by establishing the Mt. Geumgang Reunion Center and launching Video Reunion Meetings. The administration also made efforts to lead the cooperation with the North to confirm the fates and whereabouts of abductees and POWs. So, the fact that North and South Korea agreed to call them “missing people during and after the Korean War” shows the change in the attitude of North Korea, which had previously denied the existence of the abductees and the POWs. At the time, the South Korean administration refrained from publicly discussing North Korean human rights. In contrast, since the Lee Myung-bak administration, the South Korean administration has shown a high interest in North Korean human rights, such as the president’s direct reference to North Korean human rights. He showed particular interest in the issues of abductees and POWs by linking humanitarian assistance with the abductees and POWs issue. However, during all his term, the family reunion was intermittently held only three times. While the family Reunion Center is not being used, no tangible progress has been made in regard to the abductees and POWs.

If we include humanitarian issues in North Korean human

rights, there is no need to say that inter-Korean cooperation is the primary concern of solving the issues. No matter how clear and persuasive the position of one side may be, if there is neither mutual trust nor the atmosphere of mutual cooperation, it is difficult to improve human rights issues. In that respect, humanitarian assistance and joint projects correspond with humanitarianism and will build mutual trust, which will serve as the foundation for the overall improvement of North Korean human rights. A broad definition of North Korean human rights which includes defector and humanitarian issues between the two Koreas has meaning for preventing objectification and discrimination of North Korean human rights. Furthermore, the comprehensive approach expands the opportunity for South Korea to constructively engage in improving North Korean human rights. In short, the dialogue and cooperation for resolving humanitarian issues between the two Koreas will act as a foundation as well as a bridge for Korea human rights.

10. The Future of Korea Human Rights

Discussion in Civil Society

A similar attempt at a Korea human rights initiative was discussed in South Korean civil society. It is “the Committee for the Preparation of the Conference on Human Rights on the Korean Peninsula.” This committee was created in response to the North Korean Freedom Act of 2003 by progressive and modest civic

groups – such the Sarangbang Group for Human Rights, the Good Friends, the Peace Network, and the PSPD – and several figures in spring 2004.

However, the activities of the committee dwindled as participating organizations failed to reconcile their differences in the process of preparing the report on the human rights condition in North Korea to be submitted to the UN CHR later in the year. At the time, there were two issues. The first one was about North Korean escapee's status and their numbers. There was debate over whether to regard those who fled North Korea as refugees or migrants and over how many escapees there were.⁹⁹ The other debate was over the authenticity of testimonies of escapees and various reports about North Korean human rights conditions. Then, as the Sarangbang and the Catholic Human Rights Committee (CHRC) along with some figures had meetings, they submitted the 'alternative report' three times to the UN human rights mechanism, formed a joint monitoring team on North Korea's human rights situation, and published a bimonthly newsletter, *Hanbando-Ingwon* (Korea human rights) *Newsletter*.¹⁰⁰ They understand South-North Korean human

⁹⁹– On October 5, 2010, the Ministry of Unification announced that North Korean refugees in China are estimated to be about 100 thousand people. *North Korea Newsletter*, No. 126 (October 7, 2010).

¹⁰⁰– The Committee for the Preparation of the Conference on Human Rights on the Korean Peninsula is currently dispersed. "Korean Peninsula Human Rights Newsletter" was published up to No. 19, co-published by the Sarangbang Group for Human Rights, and the CHRC. For reports concerning North Korean human rights, see the Center for North Korean human rights at the Sarangbang Group for human Rights.

rights in the historical context through the framework of Korea human rights, transcend systemic differences, pay attention to human rights violations committed by nationalism, comprehensively address human rights issue within North and South Korea and those between the two Koreas, and pursue human rights improvements from the bottom-to-up.

The Sarangbang and the CHRC criticize the objectification of North Korean human rights through the newsletter. The criticism against the enactment of the North Korean Human Rights Act by the GNP under the Lee Administration is an exemplary case. They judged that “those in favor of ‘the North Korean Human Rights Act’ are not sincerely concerned about the right of ‘universal human beings’” and “although they assert ‘human rights improvements,’ it is hard to expect them to approach the sincere measure that will promote ‘the right of people’ who are in the North Korean society as long as they are trapped in a Cold War mentality.” Accordingly, they said “the North Korean Human Rights Act’ raises concerns about using the act as a means of political pressure on North Korea just like the ‘the North Korean Human Rights Act’ enacted in the United States and Japan.¹⁰¹

They are also critical of the Lee administration’s North Korea policy, which deals with human rights separately from other inter-Korean issues based on the name of human rights

<http://sarangbang.or.kr/bbs/list.php?board=north-pds> (Accessed on June 4, 2014).

¹⁰¹ “The Tragedy of ‘North Korean Human Rights Law’ under the Name of ‘Human Rights,’” *Hanbando-Ingwon Newsletter*, Vol. 8 (April 10, 2008).

universality. In particular, they mentioned that “it will be a relief if the efforts of the Lee administration lead to the North’s efforts to improve human rights by connecting the change of humanitarian aid to non-humanitarian aid¹⁰² and human rights issues. But we are worried that if it breaks trust and exacerbates inter-Korean relations, it would lead to even more serious human rights violations, since North Korea, which is in an emergency situation, no longer receives humanitarian aid.” This article, which was written in the opening of 2008 when the Lee administration was inaugurated, is pessimistic about the outlook, saying “if the administration adopts a hostile approach to North Korea or a unilateral approach based on capitalism as it does in South Korea, and if the administration policy leans toward the conservative party, which upholds such a perspective, it would be hard to achieve the practical improvement of North Korean human rights.”¹⁰³

They argue that even though North Korean human rights organizations in South Korea mention North Korean human rights based on the name of human rights universality, “they are allowing human rights infringements to persist in South Korean

¹⁰²– If one of the characteristics of humanitarian aid is the principle of non-conditionality, the characteristic of non-humanitarian aid is the principle of linkage. In the latter, donor countries may seek to achieve certain goals from beneficiaries through aid. If characteristics of the aid program changes from humanitarian to non-humanitarian, it raises a serious concern that helping hands for survival may turn into a means of achieving political goals. The points above are the reflections of this concern.

¹⁰³– “Prospects and Criticism of South Korea’s North Korea Policy during Lee Myung-bak Administration,” *Hanbando-Ingwon Newsletter*, Vol. 7 (January 22, 2008).

society by keeping silent,” and question their sincerity about North Korean human rights. After all, their argument is that “North Korean human rights organizations need a fundamental reflection on human rights ... to be human rights organizations,” specifically, “to insist upon human rights, not only the sincerity of human rights improvements should be ensured, but also the methodology of the movement should respect human rights. Moreover, they should reflectively seek empowerment for those affected and maintain financial and political independence from the power and the human rights values must harmonize or coexist with other universal values.”¹⁰⁴

The discussion on North Korean human rights by the *Hanbando-Ingwon Newsletter* is significant in that it has earnestly raised the issue of what kind of perspectives and methods are useful in the practical improvement of North Korean human rights while escaping from biased perceptions and political orientation about North Korean human rights. It is also highly appreciated that it goes beyond the limits of the progressives who have dealt with North Korean human rights, considering so-called distinctive qualities, such as inter-Korean relations and domestic environment of North Korea, and deals with North Korean human rights issues from an international human rights perspective. Although the progressives still reserve the judgment of North Korean human rights on the grounds of the lack of

¹⁰⁴ “The Paradoxical Name of ‘North Korean human rights Organizations,’” *Hanbando-Ingwon Newsletter*, Vol. 11 (May 6, 2009); “The Unbearable Lightness of ‘the Universality of a Human Rights,’” *Hanbando-Ingwon Newsletter*, Vol. 10 (October 21, 2008).

objective information or denounce the international community, including South Korea, for their double standard on the North Korean human rights issue, they have not come up with a viable solution.

The above progressive civic groups in South Korea have continuously developed anti-authoritarian democratic and human rights movements. The groups have been showing vigilance toward human rights issues since the late 2000s and started to approach the North Korean human rights situation and policies with criticism. They have expressed “deep concerns toward North Korea’s perception” that argues “human rights is not even an issue to be raised in our general public-based socialist society.” These groups have criticized the human rights report that North Korea submitted to the UN and have provided constructive alternatives to it.¹⁰⁵ They have clearly pointed out that single-race discourse of North Korea only “brings the result of being locked up in a frame of nationalism and suppressing immigrant workers or excluding foreigners and other cultures would also bring closed-minded violence.”¹⁰⁶ What’s noticeable is that these groups have directly criticized the Military-First Policy of Kim Jong-Il’s regime for possibly violating human rights.

¹⁰⁵ The Catholic Committee of Human Rights, Peace Network, Sarangbang Group for Human Rights, “An NGO Submission *on the Universal Periodic Review (UPR) of DPRK*,” April 20, 2009; NHRCK (eds.), *A Report on the Universal Periodic Review (UPR) of DPRK, ROK, NGO, and INGO*. pp. 92-98.

¹⁰⁶ “Concerns about of North Korea’s View on the Homogeneous Nation-State,” *Hanbando-Ingwon Newsletter*, Vol. 5 (September 5, 2007).

North Korea should be able to acknowledge the correlation between the *Military-First Policy* and militarism as well as their attribute, which leads to human rights violations, and reflect on the *Military-First Policy*..... if they fall into the trap of militarism in the name of the right of self-defense and maintenance of a system, it will lead to a garrison state, a military dictatorship, and a society where human rights violations are concealed.¹⁰⁷

Of course, the progressive civic groups are not interested in suggesting a new discourse on North Korean human rights and refuting that of the conservatives. They aimed to present a constructive way to contribute to the improvement of human rights in North Korea. First of all, they responded to the CPR, in particular to public executions and violations of the right to safety, in which the domestic and international community are most interested, as “a condition for speaking out the CPR on the Korean Peninsula.” 1) The need for the principle of freedom, 2) An attitude to reflect on human rights issue of the opponent and ourselves, 3) Mutual correlation with other human rights, 4) Avoidance of conflicting attitude, 5) Cooperation for human rights improvements based on respect for mutual systems and ideology are included here. They have emphasized these principles because “as the North and South Korean administrations, who are in military confrontation on the Korean Peninsula,

¹⁰⁷-. “Militarism, the Trap of the Military First Policy,” *Hanbando-Ingwon Newsletter*, Vol. 13 (September 3, 2009).

have traded accusations of conditions for the CPR, the CPR of people who live on the Korean Peninsula has been distorted and diminished in the end.”¹⁰⁸

Specifically, it is argued that “it is required to carefully approach to human rights issues of detention procedures and detention facilities in North Korea instead of a political offense regarding ‘political prison camps’ in North Korea.” They also insisted that “‘public’ execution as well as the death penalty, which is against human rights, should be abolished completely.” They have suggested actively utilizing the UN special procedure on thematic mandate such as the WGAD, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression as one of the means of international cooperation.¹⁰⁹

It is the understanding of the *Hanbando-Ingwon Newsletter* that issues of escapees and kidnappings can be used politically within the conceptual framework of North Korean human rights and these issues can be properly addressed only when it is understood in the context of human rights for the whole Korean peninsula. The *Hanbando-Ingwon Newsletter* voiced their criticism that “the conservatives as well as North Korean human rights organizations, to meet their interest, have had escapees

¹⁰⁸ “To Speak about Civil Rights on the Korean Peninsula,” *Hanbando-Ingwon Newsletter*, Vol. 16 (November 6, 2009).

¹⁰⁹ “The North Korean Human Rights Regarding ‘Political Prison Camps’ and ‘Public Execution’ ②,” *Hanbando-Ingwon Newsletter*, Vol. 18 (February 9, 2010).

seated in witness stands, and induced them to make exaggerated or even deceptive statements that worked to demonize North Korea and objectify escapees.” As an alternative, they argue that “South Korean society should find ways for North Korean escapees to overcome their past sufferings and loss of identity that surfaces while they struggle to settle down in a new society, and should also restore their lost confidence.”¹¹⁰ Specifically, psychological therapy and human rights sensitivity sessions for the escapees are suggested as concrete examples. To their eyes, North Korean escapees are “the issue where rights of individuals suffered a serious infringement by the historical tragedies, namely the Cold War and the division of a nation and the Korean War as the result.”¹¹¹ It should be understood as an overarching problem of North and South, not an issue of North Korea alone. They continued to argue that humanitarian aid should be under the premise that “improvement of human rights is not necessarily a result of the development and stabilization of the economy,” but “we should acknowledge that humanitarian aid and developmental supports are the first step towards improving human rights in the current reality of the Korean peninsula, and must stop any actions to use this issue politically.”¹¹²

¹¹⁰- “North Korean Escapees’—The Birth of Border Riders from the Paradox of Division, the Situation that Has Risen First to South Korea?” *Hanbando-Ingwon Newsletter*, Vol. 15 (October 14, 2009).

¹¹¹- “How to Approach ‘North Korean Abductions Issue,’” *Hanbando-Ingwon Newsletter*, Vol. 6 (November 9, 2007).

¹¹²- “Assistance to North Korea, the First Step toward a Human Rights Guarantee,” *Hanbando-Ingwon Newsletter*, Vol. 4 (August 10, 2007).

From 2013 to 2014, the UN declared the commencement of UN COI on Human Rights in DPRK, in which the North Korean human rights issue was considered to be sent to UN Security Council. Utilizing the special protocol was a clear sign of serious degradation of human rights in North Korea. North Korea has denied the allegation, saying that “the commission of inquiry (COI) was a group of political con men, nothing more than puppets of the United States and the Western World.”¹¹³

There is an increasing chance that the North Korean issues could be overly politicized. Korean progressives, wary of that possibility, have suggested two alternatives that could contribute to improving North Korean human rights. One of them takes a functionalist approach in that technical cooperation in the field of human rights¹¹⁴ should be advanced in various ways with North Korea by not only the OHCHR, but also the South Korean administration, NGOs, and the NHRCK. This approach is to employ an issue-based approach for practical improvement in human rights, and to reduce the resistance of the North Korean administration to the politicization of human rights issues. The other suggestion is a comprehensive approach to the consideration of a peace treaty and the denuclearization of the Korean peninsula. This approach is to expand the engagement of the international community by decreasing the security sensitivity

¹¹³- KCNA, March 30, 2014.

¹¹⁴- For details of technical cooperation in the field of human rights, see Cees Flinterman and Marcel Zwamborn, “From Development of Human Rights to Managing Human Rights Development,” Netherlands Institute of Human Rights (September 2003).

that comes from the North Korean regime's constant rejection of UN demands for improving human rights.

However, the alternative approaches regarding North Korean human rights within the progressive camp fail to go beyond the discussion level. There are only a limited number of organizations participating in the discussions. Those organizations tend to face restrictions addressing North Korean human rights concerns in addition to those of South Korea. They also refer to the "universal realization of human rights respecting historical and cultural background" when approaching human rights issues in North Korea. The backgrounds help in understanding the reality of the human rights condition, but have not led to finding alternative solutions. The alternative approaches discussed above fail to propose practical solutions as they were too precautionary about the possibility of the North Korean human rights issue being used as a political tool domestically. Nonetheless, no one can deny the fact that the civic groups' constructive discussions have become substantial nourishment in formulating *Korea human rights*.

The Direction of Korea Human Rights

Korea human rights is defined as a cooperation process between North and South Korea to improve human rights based on the international human rights standards. Its vision is to realize universal values throughout the Korean peninsula. This is based on the premise that both sides neither instrumentalize nor objectify the counterpart's human rights issue, but acknowledge

the issue as a collaborative task of the Korean peninsula. The two main principles in Korea human rights stand along the spirits of the UN: peaceful coexistence and international cooperation. Also, similar to democratization and conflict resolution process, determination and capacity of a concerned party are the most important elements for improving human rights.

Apart from humanitarian intervention, the appropriate roles for the outsider would be a guide or a facilitator. Obviously, certain standards such as whether: 1) external threat is serious enough to call for outside military intervention; 2) the intervention is for an appropriate purpose and the last resort; 3) the military intervention is minor enough to meet the threat level; and 4) the military reaction is appropriate means to keep the situation from becoming exacerbated, must be met in case of humanitarian intervention.¹¹⁵ These standards must be examined to elaborate the emerging R2P discourse. When there is no civil war and anarchy that results in the gross infringement on human rights, external intervention in the name of human rights improvement creates another human rights violation. As such, it is impossible for the party to strengthen its capacity.

From the South Korean perspective, Korea human rights aims to: 1) practically enhance the human rights situation; 2) prepare for human rights friendly unification; and 3) contribute to the Asian human rights regime. The main strategy to achieve

¹¹⁵- "A More Secure World: Our Shared Responsibility," Report of the Secretary-General's High-Level Panel on Threats, Challenges, and Change (2004). http://www.un.org/en/peacebuilding/pdf/historical/hlp_more_secure_world.pdf (Accessed on June 4, 2014).

those goals is cooperation between North and South Korea to improve the human rights conditions.

In order for South Korea to take lead in the role, introspection on the existing policies toward North Korea and the relations with the North is essential. Nationalistic unification or state dominated policies toward the North should come to an end. Despite the outer homogeneity, nationalism is defined differently in the North and the South. A unification under nationalism will not have a future and will not be able to gain the support of the world. South Korea has already shown a pseudo-imperialist behavior in economic and military aspects. Its role as a nation will not diminish during and after the unification process. However, the nationalistic unification strategies may isolate the public and harm democracy oriented unification. Preparations for unification on the basis of universal values can minimize the North's resistance, share the South's democratic advancement, and maximize international support.¹¹⁶ Korea human rights is a subordinate concept of the universal unification theory. Without the overall improvement of the human rights condition in North Korea, it is difficult to realize Korea human rights. Moreover, Korea human rights along with peace on the Korean Peninsula are the primary foundation and principal idea of the universal unification.

There are three ways to approach Korea human rights. They are contextual universalism, historical structuralism, and

¹¹⁶- Bo-hyuk Suh, "A Search for a Universal Discourse of Unification and Human Rights-Democracy Friendly Relations between the Two Koreas," *The Korean Journal of Area Studies*, Vol. 32, No. 1 (2014), pp. 7-32.

a comprehensive approach.

First of all, contextual universalism is defined as the access principle in applying the universality of human rights to specific human rights issue. It utilizes the background and conditions surrounding certain human rights issues and applies it to methods of improving human rights conditions. The concept is to take advantages of its conditions and background in utilizing specific improvement strategies. Furthermore, it is meaningful in a sense that contextual universalism converts the exhausting universality-relativity debate to constructive improvement strategies. The human rights concept must have consistent commonality and cannot vary according to time and place. The setback is the fact that the universality itself fails to present human rights improvement methods in a specific situation. Thus, to resolve certain human rights issues, it is essential to consider the problematic conditions or background based upon the universality of human rights. In fact, the prevailing notion of the universality of human rights is not a transcendental notion, but the result of historical representations throughout numerous problem solving processes. Therefore, it is necessary to consider the context of the human rights issue when attempting to solve a specific human rights issue. This differs from understanding the universality of human rights as abstract and post-historical. Contextual universalism is far from extreme universalism, which may even worsen human rights situations by approaching all human rights issues just from a single principle: the universality of human rights.

Contextual universalism can be considered a basic perspective on human rights improvement. Concerning North

Korean human rights along with Korea human rights, contextual universalism can be divided into several concrete access principles. It respects the characteristics of human rights: universality, indivisibility, interdependence, and interconnectivity. This not only differentiates the concept from relativism, but also reflects the development of human rights and its interconnectivity with other universal values. The interconnectivity between human rights and other universal values must be significantly emphasized considering an increased level of current global interdependency, tendencies in international human rights arguments, and the complexity of human rights issues in North Korea. The issues, which are connected to North Korean human rights, and the current armistice and division system, complicating the realization of universal values on Korean peninsula, explain why Korea human rights need to be approached in a more comprehensive and peaceful manner.

Second, historical structuralism, which views Korea human rights from a macroscopic perspective, is useful in identifying comprehensive human rights conditions and investigating its causes. Of course, protective and preventive measures against human rights infringement and actions to cease violations are required as well. However, such an approach cannot be the fundamental alternative for the eradication of human rights violations and the promotion of human rights. The microscopic approach ends up as only an allopathic treatment. In particular, the limitations of the microscopic approach are easily exposed when approaching human rights issues of the two Koreas through Korea human rights. Even after solving certain issues, the wounds

from the “resolution” remain and, moreover, conflict between North Korea and the rest of the world will hinder the implementation of general solutions.¹¹⁷ For instance, when dealing with the human rights of North Korean escapees, one can protect them or blame the Chinese or North Korean administration, which is directly related to the issue.

Such an approach, however, cannot prevent human rights violations against escapees and fails to be the ultimate resolution. The historical structuralism comprehensively focuses on the cause of human rights issues of the escapees, their historical background, solutions, and so on. They also consider the remnant of the Cold War system in Northeast Asia, the need for international cooperation including North and South Korea, and the identity crisis of North Korean escapees. Once a human rights infringement case occurs, it is corresponded according to the specific case. This shows a stark difference from the vicious cycle of blaming the North Korean administration, inducing defection, protecting escapees, entering South Korea, resulting in new separated families or moving to a third country. Likewise, historical structuralism goes beyond simple methods such as accusing explicit cases or countries and pursues structural solutions acknowledging various realistic contexts. In short, applying historical structuralism on Korea human rights gives impetus to mutually resolve structural constraints that have been exacerbating human rights in North

¹¹⁷- Kyung-seo Park and Bo-hyuk Suh, “A Third Way of Improving Human Rights in the DPRK: Exploring a ‘dual approach’,” *Korea Observer*, Vol. 41, No. 2 (Summer 2010), pp. 315-316.

and South Korea created by division, war and regime competition.

Henceforth, Korea human rights will be considered human rights improvement of the two Koreas that is in alignment with other major tasks such as the development of inter-Korean relations and the establishment of a peace system on the Korean Peninsula. Would the discussion of North Korean human rights contribute to promoting actual human rights when the Korean peninsula is threatened and inter-Korean relations have collapsed? Of course, neglecting the promotion of human rights for the cause of inter-Korean relations and peace would raise suspicions of anti-human rights collusion among the powers with vested rights. This sums up why inter-Korean cooperation is needed in improving human rights issues on the Korean peninsula according to international human rights standards.

Third, as a contextual universalism and historical structuralism are the two pillars of working towards improving human rights according to Korea human rights standards, a comprehensive approach is appropriate as the basic strategy. This strategy reflects the scope of human rights and the complexity of the related variables. From the view of Korea human rights, the categories of human rights encompass internal human rights in North and South Korea, human rights between the two Koreas and the human rights of escapees. Additionally, the political and economic systems in North and South Korea, their views on human rights, as well as the division system, inter-Korean relations, and international relations, including US-DPRK relations, all act as variables in the categories. In such cases, the comprehensive approach can present the indivisibility of human

rights as well as the cooperation between participating actors, especially North and South Korea, under the interdependency of human rights and other universal values as basic strategies.

Inter-Korean Human Rights Cooperation

What would South Korea's role as the most important stakeholder be in promoting better human rights conditions of North Koreans? The role can be divided into two standpoints: improving human rights in North Korea and advancing human rights within South Korea.

With regards to improving human rights in North Korea, the South Korean administration should share the responsibility and cooperate with human rights organizations and national human rights institution. This can be designated as *inter-Korean human rights cooperation* on three levels.

First, the South Korean human right organizations can: 1) hold forums to draft "Guidelines for Human Rights Cooperation in Korea" and deliver it to North Korea via inter-governmental meetings; 2) host conferences and dialogues on human rights with the North; 3) cooperate with the OHCHR in formulating the proposal of "Technical Cooperation for Human Rights and Advisory Services" and present it to the North and South Korean administrations; and 4) check the consultation and implementation process of the two Koreas.

Second, the South Korean administration can: 1) seek to formulate and implement Human Rights Cooperation and Advisory Services with the North Korean administration and the

OHCHR; 2) prepare the Collaborative Plan for Inter-Korea human rights Education; and 3) jointly propose the UN resolution to promote Technical Cooperation for Human Rights and Advisory Services.

The South Korean national human rights institution can: 1) draft plans for human rights education, human rights norms, and policy consulting services to recommend the action plan to the South Korean administration; and 2) along with the OHCHR, sponsor technical cooperation and the establishment of national human rights institution in North Korea.¹¹⁸

Some may point out that the abovementioned plan is rather idealistic. First of all, the realization of this plan depends on a positive response from North Korea. In the midst of strained or conflicting inter-Korean relations, the feasibility of the plan is doubtful. It reaffirms that Korea human rights and the development of inter-Korean relations are inseparable and complementary. Thus, the establishment of a friendly inter-Korean relationship through mutual confidence is a condition needed for practical improvement of North Korean human rights and building the Korea human rights process. Trust building requires active cooperation based on the mutual respect for the two systems. This suggests the faithful implementation of previous inter-Korea agreements, such as the July 4th Joint Communiqué containing the principles of independence, peace

¹¹⁸- Dae-Hoon Lee "Non-Conflictual Engagement in North Korean human rights issues," A Paper Presented to the Jeju Conference on Human Rights 2008 Hold by the Korea human rights foundation 2008 (June 28, 2008).

and national solidarity in 1972, the North-South Basic Agreement in 1991, the June 15th Joint Declaration in 2000, and the October 4th North-South Summit Declaration in 2007. This is why Korea human rights must be sensitive to peace and reconciliation. Both Koreas should stop criticizing or threatening the opponent and instead open the door to dialogue at all times.

Another condition for inter-Korean human rights cooperation is the improvement of North Korea's external environment. One constructive role for South Korea is to encourage international cooperation. An exemplary case is the former President Kim Dae-jung's effort to normalize DPRK-US, DPRK-Japan, and DPRK-EU relations, thereby leading to international cooperation for North Korea's reform and opendoor policy. Reducing North Korean issues to particular obstacles and taking one particular approach does not lead to the improvement of human rights in North Korea. We should learn from the Lee administration's emphasis of North Korean human rights yet pressuring North Korea in the name of "Denuclearization, Openness, and \$3000."

The improvement of North Korea's external environment including security and the economy is critical in drawing North Korea's positive reactions to human rights interventions by South Korea and the international community. The normalization of diplomatic relations and the lifting of economic sanctions against North Korea would be the priorities. Of course, North Korea's denuclearization process should be carried out in order to satisfy two conditions. In addition, human rights organizations at home and abroad should continue to monitor human rights situations in North and South Korea and protect the escapees in

the process of preparing inter-Korean human rights cooperation.

The two conditions may facilitate North Korea's earnest improvement and, then, South Korea's efforts at improving North Korean human rights will become effective. This coincides with the historical experience of the former Soviet Union and the socialist states of Eastern Europe. Even before the reform and opening of the socialist countries, the Western countries including West Germany brought up human rights issues in the socialist states during the implementation of the Helsinki Final Act since August 1975. However, it was possible as there was a promise of mutual respect for the interests between the East and the West at the Helsinki process (in particular, respect for the principles of national sovereignty and the principles of respect for human rights and fundamental freedom).¹¹⁹

Even after the conclusion of the Helsinki Final Act, there were efforts at trust building between the East and the West and the improvement of the East's external environment through human contact and support for human rights discussions.¹²⁰ Of

¹¹⁹- Thirty-five states, including the USA, Canada, and most European states except Albania, signed on August 1, 1975 the Helsinki Final Act in an attempt to improve relations between the Communist bloc and the West. At Basket I, the act, which consisted of three baskets, mentioned the 'Declaration on Principles Guiding Relations between Participating States. They are as follows: I) Sovereign equality, respect for the rights inherent in sovereignty; II) Refraining from the threat or use of force; III) Inviolability of frontiers; IV) Territorial integrity of states; V) Peaceful settlement of disputes; VI) Non-intervention in internal affairs; VII) Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief; VIII) Equal rights and self-determination of peoples; IX) Co-operation among states; X) Fulfillment of good faith of obligations under international law.

course, the activities of the Western human rights organizations such as protecting refugees and monitoring human rights violations in the socialist countries are similar to those of North Korean human rights organizations.

The decline of economic growth, loss of the will to work, and, in particular, excessive military expenditure in North Korea, which are the results of economic inefficiency of socialism, and the rising threat perception since the collapse of the Cold War system, requires the creation of a safe external environment and open policies towards and of North Korea. Nevertheless, the concerns over regime security made North Korea take a prudent approach toward its open policies. During the Cold War era, there was a balance of power between the United States and the Soviet Union. Also, thirty-five countries in the East and the West agreed on respect for national sovereignty and non-intervention in internal affairs. At the same time, the two sides agreed to respect human rights as well. Nonetheless, such conditions disappeared. In other words, the balance of power to meet international political conditions that benefits all has collapsed. In this regard, a security guarantee or a non-aggression agreement with North Korea should be a required condition to vitalize international engagement in human rights improvement and facilitate open policies. In short, the strategy of connecting the

¹²⁰- Arie Bloed (eds.), *The Conference on Security and Co-operation in Europe: Analysis and Basic Documents, 1972~1993* (London: Kluwer Academic Publishers, 1993); Philo Kim, *North Korean Human Rights issue and International Cooperation* (Seoul: Korea Institute for National Unification, 1997).

appropriateness of improving North Korean human rights based on the universality of human rights with the acceptability of North Korea is primary subject. This is why we need a structural acknowledgement and comprehensive approach to North Korean human rights.

If trust-building and enhancement of the external environment are necessary for the promotion of Korea human rights, the Inter-Korean Human Rights Cooperation plan would also be carried out step by step considering the two conditions. For instance, some possible ways to promote the trust building process are the following: 1) a North and South Korean forum for human rights cooperation; 2) a dialogue with the OHCHR, suggesting technical cooperation and advisory services; 3) designing technical cooperation advisory service with NHRCK; and 4) attempting to contact the North.

On the other hand, discussion of human rights or other measures could be carried out after confidence building between the South and North has built up and the external environment of North Korea has improved. Otherwise, North Korea may consider those measures as political pressure and would not produce any expected result. Here, the level of North Korea's open policy and that of the inter-Korean relationship are the main variables of the international community's part in improving North Korean human rights. When the levels are low, the international monitoring network must emphasize its role in ceasing violations of human rights within North Korea. When North Korea's open policy and the inter-Korean relations improve, South Korea must lead and focus on developing human rights enhance-

ment capacity. Thus, Inter-Korean Human Rights Cooperation will be determined according to the two variables. Based on the discussion so far, a road map for improving North Korean human rights should be made. Below are the items for making a road map for North Korean human rights improvement.

11. Roadmap for Improving North Korean Human Rights

Methods and channels for improving human rights in North Korea can vary according to the involved actors' perspectives, conditions and abilities. Also, the future prospect of North Korea will have a great influence on the process of developing a road map.¹²¹ In this article, we will present a roadmap in four stages, as summarized in the Table below, and based on the following premises: comprehensive perception of human rights, interrelationships between human rights and other issues, the role division of actors and continued existence of North Korea.¹²²

¹²¹- Various futures of the North Korea regime may be projected. However, stages of change can be established as an ideal type based on the expectations for peaceful transition.

¹²²- For details, see The Institute for Far Eastern Studies, Kyungnam University, "Mid- and Long-term Policies and Roadmap for Improvement of Human Rights in North Korea: Emphasis on Institutional Foundation and Action Plan," A Service Report to NHRCK (Seoul, December 2010); Bo-hyuk Suh, "Human Rights Trend Assessment and Roadmap for Improvement of Human Rights in North Korea," KINU Policy Research Series 2006-06 (Seoul: Korea Institute for National Unification, 2006).

Basic Framework

A road map of human rights improvement assumes the following factors. First, a hierarchy of issues is revealed both within North Korea's stance and within the North Korea policies of major countries concerned. North Korea places its basic priority on obtaining a guarantee of its security, while emphasizing its efforts to solving its food shortage and reconstructing its economy. Other participants of Six-Party Talks including South Korea, the United States, and China share the common goal of denuclearizing the Korean peninsula, while holding the North Korean human rights issue as a lesser priority, with diverging stances. To these countries, it is essential to bear in mind the interrelationships between international human rights standards and factors such as democracy, peace, human security, disarmament and sustainable development.¹²³ Second, from the standpoint of the totality of human rights, the human rights issue in North Korea is composed of complex and diverse elements. Nonetheless, it is imperative that protection of the basic rights is the first concern. In this article, basic rights are defined as the right to survival and the right to security.¹²⁴ Third, considering

¹²³- Vitit Muntrabhorn, "Report on the Situation of Human Rights in the Democratic People's Republic of Korea Submitted by the Special Rapporteur of the Commission on Human Rights." A/60/306. 29/08/2005.

¹²⁴- While defining basic rights as such, H. Shue sees the right to survival as an even more basic right, given that survival is needed before security can be had. Henry Shue, *Basic Rights: Subsistence, Affluence, and the U.S. Foreign Policy* (Princeton: Princeton University Press, 1996), p. 25.

that the improving human rights is a common task given to all countries, any country's engagement in another state's human rights problems should be accompanied by a process of self-reflection as well. Therefore, if South Korea wants to create a peace commonwealth or unification with North Korea and lead the human rights improvement in Asia, it needs to take a "all-Korean human rights" perspective, rather than solely targeting North Korean human rights.

Because this road map offers some stages for human right development on the assumption of a stable course of change for the North Korean regime, it comes very near to an ideal type. Hence, the time span of a stage may turn out differently in the actual improvement process, and any two stages may overlap. However, because Stages II through IV reflect the experiences of authoritarian and communist countries and Stage I describes the current situation of the Korean peninsula, this road map is not devoid of realism.

This road map aims for the improvement of human rights in North Korea through a gradual and comprehensive approach. Due to the overall severe nature of the North Korean human rights situation and its deep interrelatedness with other issues, a gradual, stage by stage approach is made necessary. Similarly, the broadness of scope of human rights in North Korea and the many actors that are involved necessitate an approach that is comprehensive. The plan for improving human rights in North Korea begins with the current situation in Stage I, moves to the establishment of conditions in Stage II, then goes into a transition period in Stage III, and finally advances to a completion

phase in Stage IV. Each stage contains main goals, variables, and roles of different actors.

Proceeding Principles

Observance of International Human Rights Principles

Based on the fact that North Korea is the member of the United Nations, and a signatory country of four international human rights treaties, the human rights issue in North Korea should be dealt with within the universal standards of human rights. However, we should consider several factors when applying the universal human rights principles to a specific case such as North Korea. First, universality should be distinguished from the absoluteness of human rights. Second, particular human rights should neither be selectively stressed nor ignored, in accordance with the totality and interdependence of human rights. Third, because human rights are as much a standard to abide by in the actual process and choice of means as they are an end goal and value, it is necessary to avoid the use of force or coercion in the name of human rights improvement.

Harmony of Human Rights and Peace

When considering the basic spirit of the Universal Declaration on Human Rights as well as the past Korean War and continuing military tension on the Korean peninsula, it is clear that improvement of human rights in North Korea must be harmonized with the issue of a peace building on the Korean peninsula. Factors that increase military tension such as the state of ceasefire on the

Korean peninsula, US sanctions against North Korea and North Korea's nuclear weapons program pose a challenge to global peace, and may also impede the constructive and cooperative improvement of North Korean human rights as well. Without the improvement of human rights in North Korea, peace on the Korean Peninsula loses its meaning; human rights improvement in North Korea that neglects the peace issue is likewise invalid. Thus, peace on the Korean peninsula and North Korean human rights improvement are tasks to be carried out simultaneously, and not a matter of choosing one and not the other.

Actual Improvement of Human Rights

All discussion about human rights in North Korea should be focused on the actual improvement of human rights. It must be kept in mind that North Korea is a socialist country, exposed to security threat from the United States, and is underdeveloped. These facts are deeply relevant to the matter of enhancing North Korea's ability to improve its human rights situation. However, this does not mean that actual improvement of human rights is necessarily limited to achieving the right to survival and assisting economic development. Considering the indication that "non-democratic nature of the power base in the Democratic People's Republic of Korea impedes the enjoyment of human rights substantially,"¹²⁵ actual improvement of human rights in North

¹²⁵- Vitit Muntrabhorn, "Report on the situation of human rights in the Democratic People's Republic of Korea submitted by the Special Rapporteur of the Commission on Human Rights." A/60/306. 29/08/

Korea cannot ignore the political tasks involved, including the establishment of a human rights-friendly political system and the rule of law.

North Korea's Own Improvement of Human Rights

If the various methods for the actual improvement of human rights are to work, and if the actual improvement is to last in a stable way, North Korea's own level of will and capacity must be high. Therefore, the international community's human rights policy should play an assisting role that entails watching and facilitating North Korea's process of improving its own human rights situation. Recent international disputes have demonstrated that excessive intervention of the international community that is grounded in superiority or prejudice against North Korea may, despite its apparent claim to be for the improvement of human rights, actually results in a non-human rights improvement (or even an anti-human rights predicament). The various ways for the improvement ought to be a means for supporting North Korea's own efforts to improve its human rights, not a political weapon for the international community to use to press the North Korean regime.

Role Division within the International Community

The international community's methods for improving human rights vary according to each actor's position, capacity and

2005, p. 6.

preferences, yet these factors should be combined together in a way that creates an appropriate division of roles, thereby following the principles discussed above.

South Korea

South Korea finds itself in a special position in matters of human rights policy towards North Korea, and this fact may be accepted by the international community. Hence, for a certain period of time, the South Korean administration should focus on humanitarian aid, dialogue with North Korea and social and cultural exchanges. In addition, it should address such issues as the right to survival, externally displaced North Koreans, and solving humanitarian problems existing between North and South Korea. Certainly, the South Korean administration can also support the activities of the international community including human rights organizations as they monitor North Korea's civil and political rights (CPR) situation and criticize violations of these rights. Furthermore, when the international community enters the stage of discussing a peace settlement on the Korean peninsula and North Korea expands its cooperation with the international community and adopts an open-door policy, South Korea would then be enabled to raise in full measure concern of the human rights issues, particularly the CPR in North Korea.

The United States and Japan

The United States and Japan might have played a role as 'bad cops' because of their antagonistic relations with North Korea and criticism of the human rights situation in North Korea. Their

role reflects the deep concern held by the international community about North Korean human rights. Yet, if humanitarian assistance accompanies the 'bad cop' role and the United States and Japan make efforts to improve relations with North Korea, their genuine intention may be recognized and actual improvement in human rights may be achieved. In reality, while both countries have expressed their grave concern about North Korea's CPR violations, they particularly focus on specific issues, with the United States focusing on externally displaced North Koreans and Japan emphasizing the issue of Japanese kidnapped to North Korea. The United States and Japan play a crucial role in creating an environment conducive to the improvement of North Korean human rights in that it can help end the cease-fire on the Korean peninsula as well as normalize their diplomatic relations with North Korea.

China

Like North Korea, China possesses a relativist viewpoint on human rights and prioritizes national sovereignty over human rights. In fact, China, as one of the most popular receiving countries, is being urged to protect and resettle the externally displaced North Koreans in its territory. Regardless of whether they are deemed refugees or migrant workers, China should stop its forced repatriation of externally displaced North Koreans and protect, at least the minimal basic human rights during their stay in China. Furthermore, China, which has been at the forefront of improving the humanitarian situation of North Korea through energy and food aid, should continue providing humanitarian

assistance without linking this to other political issues.

European Union

EU has been providing humanitarian aid while at the same time presenting North Korean human rights resolutions to the United Nations. Also, EU may be able to urge the North Korean administration to improve its human rights situation through contacts with North Korea, and provide relevant human rights education programs. Therefore, though such efforts have been put on hold, EU needs to resume these activities and thus play the role of 'good cop'.

The UN Human Rights Agencies

So far, the OHCHR and North Korea have not been making actual contact with each other. The reason that North Korea puts forth for refusing contact with OHCHR is that North Korea views the UN HRC (and former CHR) and General Assembly's human rights resolutions, which call for dialogue between North Korea and OHCHR, as a political attack. In order for technical cooperation between OHCHR and North Korea to take place, either the UN must delete that item calling for dialogue in the resolution or North Korea will have to alter its attitude toward a more positive direction.

North Korea is not a party state of the International Convention on Refugees and does not view externally displaced North Koreans as refugees. Under these conditions, North Korea is not in contact with Office of the United Nations High

Commissioner for Refugees (OHCR). Nevertheless, OHCR has an obligation to continue to interview externally displaced North Koreans and present these interview results to the international community. Although a Special Rapporteur on the Situation of Human Rights in North Korea has been believed to be presenting objective and balanced reports to the UN, North Korea refuses to allow him to visit. The reason is that the appointment of the Special Rapporteur is based in the UN Commission on Human Rights resolution of 2004. Therefore, the Special Rapporteur should make it clear that his reports are not directly related to the UN human rights resolution. Should North Korea still refuse his visit, closed meetings can be held in a third country. In addition, UNICEF, WFP, and UNDP too can each play their own role for the improvement of North Korean human rights.

INGOs

International and domestic NGOs such as international human rights groups and humanitarian aid groups can also contribute to the monitoring of the human rights situation and the amelioration regarding the right to survival. Hereafter, all human rights groups should deal with human rights issues in North Korea in a comprehensive and interrelated manner, while keeping watch for the misuse of North Korean human rights for political purposes. Aid organizations must ensure that humanitarian assistance is accompanied by development assistance. By laying out an infrastructure for human rights, these two tasks must place emphasis on empowering North Korea to be able to improve its

human rights situation on its own.

Comprehensive and Gradual Strategy

To understand the road map of North Korean human rights improvement, two factors need to be mentioned first. The stages, which are distinguished by their purposes and variables, each proceeding strategy has an accumulative nature despite being the dominant strategy of its stage. For example, the proceeding strategy in the Stage I does not become unnecessary in Stage II but rather it continues serving as a useful strategy, with simply another new strategy being added on in Stage II. This prevents the possibility of regressing back to a previous stage (Table 2).

Table 2. Roadmap for Improving North Korean Human Rights

	Purposes	Role of actors		
	Variables	North Korea	International Community	South Korea
Stage I (Present)	<ul style="list-style-type: none"> -Recovery of right to survival 	<ul style="list-style-type: none"> -Increased production of food -Transparency of distribution -Establishment of human rights law 	<ul style="list-style-type: none"> -Humanitarian aid -Human rights situation Monitoring -Protection of externally displaced north Koreans 	<ul style="list-style-type: none"> -Humanitarian aid -Resolution of humanitarian issues between two Koreas -Protection of externally displaced North Koreans
	<ul style="list-style-type: none"> -Humanitarian circumstances -Military tension 			

	Purposes	Role of actors		
	Variables	North Korea	International Community	South Korea
Step II (Establishment period)	-Establishment of infrastructure	-Development of human rights friendly domestic laws - Additional joining of international human rights treaties	-Developmental assistance -Human rights dialogue -Technical cooperation	-Expansion of economic cooperation -Lead North and South disarmament
	-Establishment of peace regime	-Transferring military budget for civilian use		
Stage III (Transition period)	-Protection of CPR	-To cease violating CPR	-Civil support provision -Support of NHRC establishment	-Same as left
	-Actualization of open-door policy	-Human rights education		
Stage IV (Completion period)	Complete implementation of International human rights conventions	-Actual guarantee of CPR -Separation of the three branches	-Assistance to democratization	-Same as left -Preparing for human rights friendly reunification
	-Progress of Democratization	-Establishment of a national human rights organization		

Stage I Proceeding Strategy

Stage I aims at creating an environment conducive to the improvement of North Korea's human rights situation, which is currently widely deemed deteriorated. This conducive environment particularly strives to restore the right to survival and to secure a peace regime on the Korean peninsula. Shortage of food and military tension threaten the North Korean people's right to peaceful survival. Therefore, North Korea's humanitarian situation and the Korean peninsula's confrontational military status will both act as variables here. Even after North Koreans had undergone severe food shortages during the late 1990s, there is a yearly shortage of at maximum 1 million tons of food up till in the early of 2000s. Also, the international community is experiencing 'aid fatigue.' It is imperative, then, that North Korea have to both work to increase its food production and draw forth international assistance by guaranteeing transparency of aid distribution. Currently, the security atmosphere on the Korean peninsula has deteriorated because of North Korea's recent nuclear test claimed to have been a reaction to US-led combined military threat. Efforts toward a peaceful resolution are urgently called for in the form of diplomatic methods such as the reopening of Six-Party Talks - even it is for the improvement of North Korea's human rights situation. Only by resolving the North Korea nuclear issue can the path be cleared for the denuclearization and peace regime on the Korean peninsula, the improvement of relations for North Korea with Japan and the United States. When these are in turn achieved, the way will then be opened to the full improvement of human rights in

North Korea.

The international community, including South Korea, should provide humanitarian aid and develop relations of trust with North Korea. South Korea should work to solve those humanitarian issues between North and South, such as problems regarding dispersed families, kidnapped South Korean, and war prisoners. As for the international community, it should monitor the North Korean human rights situation and work harder to protect externally displaced North Koreans. This stage also requires North Korea to apply itself to expand its system of human rights law. However, when taking into consideration the goals and variables of Stage I, the main actors, namely North Korea and the United States, must cease to link the humanitarian improvements with the political-military issue and secure for the North Korean people their right to survival and right to peace by finding a peaceful way to solve the nuclear issue.

Stage II Proceeding Strategy

Stage II, which can be called the establishment period, focuses on the goal of building the infrastructure pertinent to human rights and is a prerequisite condition for the actual improvement of human rights in North Korea. At this point the likelihood of North Korea's cooperation is influenced by two main variables: the peace regime building on the Korean peninsula and normalization of relations between North Korea and the United States. When Stage II is entered, not only will it be difficult for North Korea to neglect the improvement of human rights out of security reasons, cooperation with the international community will be

imperative, at the least for its proper economic development and the enhancement of its international status. Undoubtedly, there will be many obstacles in the course of establishing peace regime on the Korean Peninsula; however, the matter of peace and the North Korean human rights issue must progress upon parallel tracks, rather than be linked to one another, and the international community should pull North Korea into this direction.

Granted, building a peace regime will require the cooperation among North and South as well as other countries, while the disarmament of the peninsula calls for the cooperation between North and South Korea. However, when seen from the perspective of improving North Korean human rights, Stage II onwards necessitates an increased role of North Korea. In this stage, North Korea will reformulate its domestic laws to help implement the international human rights treaties it has already signed, join additional international human rights treaties such as Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, and adopt optimal protocols of treaties already signed. At this point, South Korea and the international community will jointly support the sustainable development of North Koreans through economic cooperation, developmental assistance, etc. In particular, South Korea will take a leading role in the disarmament of the peninsula and thereby facilitate the establishment of a peace regime and help North Korea to secure the internal resources it needs to promote economic and social rights. At this spot, South Korea and international community jointly support North Korea by economic cooperation, development help, and so forth. The role of the international community

will be to reactivate the human rights dialogue that has been suspended and stimulate technical cooperation in the field of human rights, with the aim of strengthening North Korea's own ability to eventually take charge of its human rights improvement. To this end, it will be up to international agencies and human rights groups to monitor and cooperate in these efforts so that North Korea's development will be a sustainable development as well as a rights-based approach to development.

Stage III Proceeding Strategy

Stage III takes place with a goal that North Korea will improve its protection of hitherto most widely neglected CPR within circumstances where open-door policy is being actively pursued. In this stage, it is assumed that although North Korea will not formally relinquish its socialist line of policy, there will be a 'reform-oriented regime' during or post Kim Jong Un. Thus, North Korea will promise the international community that it will stop violating CPR, and will therefore be forced to cooperate with international monitors and acquiesce to calls for improvements. At this point it may be appropriate for the international community to use a strategy of linkage to human rights improvement in a flexible manner.

In Stage III, South Korea will openly raise concerns regarding North Korean human rights issues while supporting North Korea's formulation of a civil society which is in its incipient stage, all in coordination with the international community. However, South Korea's open expression of concern on North Korean human rights must not be done out of system competition

with North Korea; rather, this must be done out of support for North Korea's improvement of its international status. Further, there must be an attitude of self-reflection that pledges the achievement of co-existence and co-prosperity through a mutual improvement of human rights. Supporting programs of the civil society include exchange of information and people, human rights education, and supply of resources on human rights, etc. Since the purpose of such approaches is to empower North Korea's capabilities to improve its situation on its own, international community must maintain emphasis on developing human resources related to human rights. Furthermore, as this is the stage where North Korea, a longtime socialist nation, will begin to undertake improving its human rights, assistance and cooperation from the international community will most likely have to expand, in such forms as suggestions for how to protect CPR and Official Development Assistance (ODA), etc. In particular, the international human rights organizations not only should keep a close watch on North Korea's CPR situation, but they should also assist in building human rights consciousness among its people and help the North Korean administration to set up its human rights policies.

During this stage, South Korea can work with other Northeast Asian countries to establish a regional human rights organization, and through this organization approach North Korean human rights as a part of a regional human rights issue, thereby creating a larger effort of improving the human rights situations of both North Korea and the larger Northeast Asian region.

Stage IV Proceeding Strategy

Stage IV marks the period when North Korea works to evolve into a democratic nation, and so it sets as its goal the full implementation of international human rights norms. North Korea will have an obligation to actually guarantee CPR and will begin establishing rule of law, separation of the three branches of power, and the founding of an independent national human rights organization.

However, because the course of regime change will be vulnerable to the risk of an authoritarian or pseudo-democratic regime which would worsen the human rights situation, the continued role of the international community is important. South Korea and the international community can look to the past experience of Organization for Security and Cooperation in Europe (OSCE) and its efforts to bring regime transition and promote human rights and democracy in East-Central European countries and the former Soviet Union. Applying the lessons of the OSCE experience, South Korea and the international community could support North Korea's transition to becoming a developed nation in human rights through election monitoring and democracy education programs.

The cooperation of the international community is also integral to the formation of a political system and culture that will allow the protection and promotion of human rights based in responsibility, participation, and transparency. When this happens, North Korean human rights will no longer be a special concern of the international community; rather, it will be just one part of a broader, regional and international human rights issue. Following this progression, the two Koreas can enter into

the road for a human rights friendly reunification.

Prospect for the International Human Rights Policy toward DPRK

The international community's human rights policy toward DPRK is a sequence of systemic action plans and its practice addresses one specific country in order to promote a universal value. In fact, South Korea's viewpoint on the human rights in North Korea has a 'special quality' that comes from the relationship of North-South Korea and the military tension on the Korean peninsula. The international community may accept the fact that South Korea's policy for North Korean human rights is approached within the whole frame of policies toward North Korea. It appears paradoxical that the controversy on North Korea is much more severe in South Korea than it is in other parts of the world. The South Korean administration, finding itself in the 'special relationship' with North Korea, either hasn't placed much policy weight on North Korean human rights or gave greater urgency to restoring the right to survival, and so both of these choices may be criticized for having led to a failure to improve overall human rights in the North. Therefore, South Korea's policy on the human rights in the North should be established based on the international standard of human rights, and should be in harmony with all its other policies toward North Korea, though the importance of the human rights issue should be somewhat elevated. When this is achieved, South Korea's human rights policy toward the North will be able to increase both international and domestic

support and decrease possible political conflicts.

The international community, including UN, the US, EU, and lots of INGOs, have expressed deep concerns on the human rights situation in North Korea and have made various approaches to improve it. Yet the result is far smaller than would be expected by their efforts. One reason can be the lukewarm responses of North Korea, but there are probably some other reasons. In particular, some factors that may account for this result include the perception of absolutism toward the universality of human rights, the narrow focus on selective human rights in North Korea, and one-sided approaches. Of course, South Korea and the international community can divide among themselves appropriate roles to help improve actually the human rights situation in North Korea. Nevertheless, they should cooperate to create a synergy effect by adjusting their roles and removing the inefficiency of separate approaches.

Serious conflict of positions surrounding the human rights issue in North Korea are less common between South Korea and the international community than within South Korean society. Two main factors at the source of intra-Korean conflict are of the treatment of the issue as an ideological subject and a lack of expert knowledge on the various problems the issue entails. Although the conflict between the Left and Right is very serious in South Korea's political and ideological setting, we can still look forward to positive, if small, results from the new, more pragmatic and nonpolitical approaches currently being ventured by some NGOs. Consequently, it is necessary to establish a consultation among NGOs as well as between administration

and NGOs. Through joint consultations for human rights improvement and role divisions between the administration and civilian sectors, such an opportunity will function as a useful forum that allows frequent productive discussions and good counterproposals to work out the problems of North Korean human rights.

The support from international community and civil society in South Korea is essential to the success of the policies to human rights in North Korea. For the improvement of human rights in North Korea, a road map that includes long-term plans, stage-by-stage goal setting, and appropriate role playing is needed. The process of making the road map itself should act as an opportunity for settling political conflicts and for gathering productive solutions. Therefore, its success depends first on the agreement on the proceeding principles for the improvement strategies, and second, on the appropriate role division under mutual respect among the various actors regardless of their political positions.

It is true that actual improvement of human rights in North Korea within the context of all the other policies toward North Korea may be the most feasible way for the South Korean administration. Still, there are several points to be adjusted in the process of decision making and policy implementation considering the domestic and international trends on North Korean human rights issues. In the decision making aspect, all the administrations involved including the US should strive to harmonize universality of human rights and the 'special quality' of the Korean peninsula. In the policy implementation aspect, diverse but balanced policies

are needed. Also, relevant NGOs need to complement the administration while doing their own roles. The reason is that human rights can only be protected and improved when all relevant actors carry out their own roles and cooperate with one another. This is why this discussion included all the actors concerned with the North Korean human rights issue.

Conclusion

- Significance of Korea Human Rights and Its Task

This book approaches North Korean human rights from a realistic point of view that no practical improvements has made despite the continuous concern and efforts of the international community to address the ongoing human violations in North Korea. Of course, the primary reason lies on the DPRK administration's passivity to the issue. Based on this assumption, this book has focused on the international community's role and probable shortcomings in its way of applying universal human rights norm to specific human rights issue. It is expected that international human rights advocates will play a constructive and useful role in finding ways to improve North Korean human rights by utilizing its experiences from working for the advancement of human rights within the international human rights regime. The international community has an interest in North Korea and criticizes the North Korean administration because it regards itself as an appropriate actor.

However, it is difficult to figure out a viable approach toward specific human rights issue based on the just universality of human rights, although the concept of human rights itself is universal. North Korean human rights policies both inside and outside of South Korea have confirmed it. Such a phenomenon has been clearly displayed in South Korea's discussion of North Korea's human rights. Here, too, complex inter-Korean relations are apparently at work. Nevertheless, South Korea along with

other actors in the international community can effectively lead the efforts to improve the North Korean human rights or even play a more active role than any other actors because North Korean human rights include not only human rights within North Korea, but also human rights issues relating to both Koreas. Moreover, it has been proven that North Korean human rights are relevant to the South's unification policy toward the North. That is why I have depicted the issues that have surfaced during the international community's attempts to approach North Korean human rights in this book and have suggested possible alternative approaches with an emphasis on the role of South Korea as a leading actor.

The concept of *Korea human rights* refers to the two Koreas' attempts to improve human rights through mutual respect and cooperation based on the international human rights standards. It is guided by contextual universalism, historical structuralism, and a comprehensive approach. Moreover, it proposes measures to build mutual trust between the two Koreas while improving North Korea's external environment. Korea human rights, above all, demands that South Korea play an active role. Specifically, we refer to constructive intervention, international cooperation, and South Korea's efforts to improve its own human rights situation. Particularly, an introspective response by South Korea to its human rights issues is significant in that it might lead to the simultaneous improvement of human rights in *both* Koreas. In this sense, it is necessary that every actor in South Korea should prepare for universal unification beyond nationalism and play a vigorous role. The South Korean administration

should create a macroscopic environment for improving North Korean human rights and focus on the preparation of universal unification. To achieve this, the South Korean administration should prioritize the growth of inter-Korean relations as well as peacekeeping on the Korean Peninsula. The progressives in South Korea should abandon a passive attitude and develop strategies on ways to improve North Korean human rights condition. The conservatives should look back on their one-sided and extreme attitude, and apply the interconnectivity of human rights to upgrade the North Korean human rights policy. The South Korean National Human Rights Commission should be the facilitator that connects the administration and civil societies while maintaining its independence from both sides. When the network between domestic actors with appropriate role allocations connects with international human rights network, it will have synergistic effects.

Reflecting on the limitations of the previous North Korean human rights policies from the framework of Korea human rights, the South Korean administration should assume an active role cooperating with international and domestic actors. Korea human rights will guarantee a constructive role for South Korea in the North Korean human rights dialogue and strengthen the possibility of parallel development in inter-Korean relations. In this way, both Koreas can proceed with the “Domestic Implementation of the International Human Rights Convention” on the Korean Peninsula. Korea human rights can show us a path to peace on the Korean Peninsula, a path to peaceful reunification, and to the improvement of human

rights in Asia. If such expectations are fulfilled, Korea human rights will contribute to improving international human rights because Korea human rights: 1) avoid errors of fundamentalism, selectivism, relativism, and instrumentalism; 2) give shape to the understanding of universal human rights on the Korean peninsula; and 3) realize the inter-complimentary relations of human rights and other universal values. As a result, Korea human rights will prove the dual interdependency of human rights, and will contribute to the development of a global human rights regime.

Of course, there are limitations to the conception of Korea human rights. Above all, there are numerous necessary conditions to meet until Korea human rights can be actualized into real substantial results. A definition of human rights should expand to include rights to peace as well as rights to development and should pursue harmony with other universal values. In order to achieve these goals, it is necessary to convince the international human rights community while both Koreas should develop their own perspective on human rights. We should acknowledge that the current human rights violations in North Korea may not be properly addressed while we prepare for the framework of Korea human rights. The process to improve human right conditions involves breaking down walls of human rights violations and realizing a life of human dignity. But we should not stop our efforts to address the human rights violations while we plan Korea human rights, conceived from a long-term, macro perspective in relative term, should definitely be compensated with a micro, short-term perspective. Korea human rights has

concentrated on a macro, structural approach because the international community has taken a micro and short-term approach so far when dealing with North Korean human rights.

The concept of Korea human rights provides opportunities to reflect on previous human rights discourses and policies and suggests ways toward the more practical improvement of North Korean human rights, as opposed to previous approaches, which were fraught with criticism and oppression of North Korea. Korea human rights will show that human rights issues of North and South Korea are inseparable, but are instead woven together like two sides of a coin. Emphasis should also be made that inter-Korean relations and North Korean human rights is not matters of choice but a universal mission that should be pursued simultaneously. The main actors to solve the issues of the Korean peninsula are North and South Korea. The international community, particularly the United States, China, Japan, and Russia, has the responsibility to acknowledge their responsibilities for the division of a nation and aid in the reconciliation and reunification of the two Koreas. The direction to solve issues surrounding the Korean peninsula is to realize the universal values of humanity. It is my firm belief that the success of instituting a Korea human rights policy will shape the path toward human rights friendly reunification on the Korean peninsula.

Reference

1. Books

- Alston, Philip and Mary Robinson, eds. 2005. *Human Rights and Development: Towards Mutual Reinforcement*. London: Oxford University Press.
- Amnesty International. 2010. *The Crumbling State of Health Care in North Korea*. London: Amnesty International Publications.
- Bloed, Arie, eds. 1993. *The Conference on Security and Co-operation in Europe: Analysis and Basic Documents, 1972~1993*. London: Kluwer Academic Publishers.
- Brems, Eva. 2001. *Human Rights: Universality and Diversity*. Hague: Martinus Nijhoff, 2001.
- Chun, Jae-Ho. 2010. *Reactionary Modernist, Park Chung-hee*. Seoul: Bookworld. Korean Version.
- Do, Kyung-Ok, Kim Soo-Am, Lee Keum-Soon, Han Dong-ho, and Hong Min. 2015. *White Paper on Human Rights in North Korea 2015*. Seoul: The Korea Institute for National Unification. Korean Version.
- Donnelly, Jack. 1993. *International Human Rights*. Keswick, South Australia: Westview Press.
- Douzinas, Costas. 2007. *Human Rights and Empire*. New York: Routledge.
- Fields, A. Belden. 2003. *Rethinking Human Rights for the New Millennium*. New York: Palgrave MacMillan.
- Flinterman, Cees, and Marcel Zwamborn. 2003. *From Development of Human Rights to Managing Human Rights Development*. Utrecht: Netherlands Institute of Human Rights.
- Freeman, Michael. 2002. *Human Rights: An Interdisciplinary Approach*. Cambridge: Polity Press.
- Han, Dong-ho, Kim Soo-Am, Lee Kyu-Chang, Lee Keum-Soon, and Cho Jeong-Ah. 2014. *White Paper on Human Rights in North Korea 2014*. Seoul: Korea Institute National Unification. Korean Version.

- Hawk, David. 2012. *The Hidden Gulag*. 2nd ed. Washington, DC: Committee for Human Rights in North Korea.
- Humphrey, John P. 1984. *Human Rights and the United Nations: A Great Adventure*. New York: Transnational Publishers.
- Hunt, Lynn. 2008. *Inventing Human Rights: A History*. New York: W. W. Norton & Company.
- Ignatieff, Michael, eds. 2005. *American Exceptionalism and Human Rights*. Princeton: Princeton University Press.
- Ishay, Micheline R. 2008. *The History of Human Rights: From Ancient Times to the Globalization Era*. Los Angeles: University of California Press.
- Kim, Ki-hwan. 2009. *Relativism and North Korean human rights*. Seoul: Tree of Peace. Korean Version.
- Kim, Philo. 1997. *North Korean human rights Issue and International Cooperation*. Seoul: Korea Institute for National Unification. Korean Version.
- Korea Workers' Party. 1992. *Imperialistic Exaggeration of 'Support for Human Rights'*. Pyongyang: Korea Workers' Party Publishers. Korean Version.
- Lauren, Paul Gordon. 2003. *The Evolution of International Human Rights*. Philadelphia: University of Pennsylvania Press.
- Lee, Keum-Soon. 2003. *Study on the Influence of Humanitarian Assistance to North Korea*. Seoul: The Korea Institute for National Unification. Korean Version.
- Lee, Kyeong-Ju. 2014. *Understanding of the Right to Peace*. Seoul: Sapyoung Academy. Korean Version.
- Lee, Nami, 2001. *Origin of Korean Liberalism*. Seoul: Bookworld. Korean Version.
- Paik, Nak-chung. 2011. *The Division System in Crisis*. Los Angeles: University of California Press.
- Park, Kyung-seo and Nami Lee. 2010. *Korea's Perception of Democracy in the 1970s through WWC*. Seoul: Jisik Sanup Publications Co., LTD. Korean Version.

- Risse, Thomas, Stephen C. Ropp and Kathryn Sikkink, eds. 1999. *The Power of Human Rights: International Norms and Domestic Change*. Cambridge: Cambridge University Press.
- Said, Edward. 1979. *Orientalism*. New York: Vintage Book.
- Sellars, Kirsten. 2002. *The Rise and Rise of Human Rights: Human Rights and Modern War*. Stroud: Sutton Publishing.
- Shue, Henry. 1996. *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*. 2nd ed. Princeton, NJ: Princeton University Press.
- Social Science Publishers. 1991. *Juche's Theory of Socialist Constitution*. Pyongyang: Social Science Publishers. Korean Version.
- Song, Byoung Hon, Nami Lee and Myeon Hoei Kim. 2004. *Development and Character of Korean Liberal Democracy*. Seoul: Korea Democracy Foundation. Korean Version.
- Sung, Jaeho. 2003. *International Organization and International Law*. Paju: Hanul Publishing Group. Korean Version.
- The Ministry of Unification. 2014. *White Paper on Korean Unification 2014*. Seoul: The Ministry of Unification. Korean Version.
- Uvin, Peter. 2004. *Human Rights and Development*. Bloomfield, CT: Kumarian Press.

2. Articles

- Alston, Philip. 2005. "Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals." *Human Rights Quarterly* 27(3).
- Baek, Buhm-Suk. 2012. "The Medium Foreseeing the Future: The Role of NHRIs in Creating RHRIs in the Asia-Pacific Region." *Socio-Legal Review* 8(1).
- Cho, Baek Ki. 2009. "A Human Rights Analysis about North Korean Human Rights Bill of the Grand National Party." *Korean Democratic Legal Studies* 39. Korean Version.

- Chung, Chinsung. 2000. "The Universality and Particularity of Human Rights." In *Human Rights in the 21st Century 1*, eds. Korea Human Rights foundation. Seoul: Hangilsa. Korean Version.
- Heinze, Eric A. 2004. "Humanitarian Intervention: Morality and International Law on Intolerable Violations of Human Rights." *International Journal of Human Rights* 8(4).
- Kim, Dae Jung. 1994. "Is Culture Destiny? The Myth of Asia's Anti-Democratic Values." *Foreign Affairs* 93(6).
- Kim, Jong-il. 1997. "Our Own People-Based Socialism is Ever-Victorious (5 May 1991)." In *Collection of Kim Jong Il*, Vol. 11. Pyongyang: The Korea Workers' Party Publishers. Korean Version.
- Koo, Kab-woo. 2003. "The Political Circuit of North Korean Perception – Critique of Orientalism in International Relations." *Korean Critique of Politics* 10. Korean Version.
- Lee, Dae-Hoon. 2008. "Non-Conflictual Engagement in North Korean Human Rights Issues." A Paper Presented to the Jeju Conference on Human Rights 2008 Hold by the Korea human rights foundation 2008. June 28. Korean Version.
- Lee, Dong-Yoon. 2009. "Present Status of Human Rights and Human Rights Policies in Southeast Asia: Focusing on Regional Cooperation." A paper at the Annual Academic Conference of the Korean Association of International Studies. Hanyang University, December 11. Korean Version.
- Morris-Suzuki, Tessa. 2009. "Refugees, Abductees, 'Returnees': Human Rights in Japan-North Korea Relations." *The Asia-Pacific Journal* 13(3).
- Neier, Aryeh. 2000. "Economic Sanctions and Human Rights." In *Realizing Human Rights: Moving from Inspiration to Impact*, eds. Samantha Power and Graham Allison. New York: St. Martin's Press.
- Parekh, Bhikhu. 1999. "Non-Ethnocentric Universalism." In *Human Rights in Global Politics*, eds. Tim Dunne and Nicholas J. Wheeler. Cambridge: Cambridge University Press.

- Park, Kyung-seo and Bo-hyuk Suh. 2010. "A Third Way of Improving Human Rights in the DPRK: Exploring a 'Dual Approach'." *Korea Observer* 41(2).
- Park, Sun Song. 1994. "The Division System and Revolutionary Movement: For Critical Understanding on the 'Division System Theory'." *Trends and Prospects* 24. Korean Version.
- SARANGBANG Group for Human Rights and Catholic Human Rights Committee. 2007. "Assistance to North Korea, the First Step toward a Human Rights Guarantee." *Hanbando-Ingwon Newsletter* 4. Korean Version.
- _____. 2007. "Concerns about of North Korea's View on the Homogeneous Nation-State." *Hanbando-Ingwon Newsletter* 5. Korean Version.
- _____. 2007. "How to Approach 'North Korean Abductions Issue'." *Hanbando-Ingwon Newsletter* 6. Korean Version.
- _____. 2008. "Prospects and Criticism of South Korea's North Korea Policy during Lee Myung-bak Government." *Hanbando-Ingwon Newsletter* 7. Korean Version.
- _____. 2008. "The Tragedy of 'North Korean Human Rights Law' under the Name of 'Human Rights'." *Hanbando-Ingwon Newsletter* 8. Korean Version.
- _____. 2008. "The Unbearable Lightness of 'the Universality of a Human Rights'." *Hanbando-Ingwon Newsletter* 10. Korean Version.
- _____. 2009. "Militarism, the Trap of the Military First Policy." *Hanbando-Ingwon Newsletter* 13. Korean Version.
- _____. 2009. "'North Korean Escapees' – The Birth of Border Riders from the Paradox of Division, the Situation that Has Risen First to South Korea?" *Hanbando-Ingwon Newsletter* 15. Korean Version.
- _____. 2009. "The Paradoxical Name of 'North Korean Human Rights Organizations'." *Hanbando-Ingwon Newsletter* 11. Korean Version.
- _____. 2009. "To Speak about Civil Rights on the Korean Peninsula." *Hanbando-Ingwon Newsletter* 16. Korean Version.

- _____. 2010. "The North Korean Human Rights Regarding 'Political Prison Camps' and 'Public Execution' ②." *Hanbando-Ingwon Newsletter* 18. Korean Version.
- Suh, Bo-hyuk. 2005. "The United States Human Rights Policy toward North Korea: Focused on the Players' Cooperation Involved." *North Korean Studies Review* 9(1). Korean Version.
- _____. 2009. "From North and South Korean Human Rights to Korea Human Rights." *Korean. Critical Review of History* 88. Korean Version.
- _____. 2014. "A Search for a Universal Discourse of Unification and Human Rights-Democracy Friendly Relations between the Two Koreas." *The Korean Journal of Area Studies* 32(1). Korean Version.
- Zakaria, Fareed. 1994. "A Conversation with Lee Kuan Yew." *Foreign Affairs* 73(2).

3. Reports, Statements and Others

- Amnesty International. 2014. "South Korea: Ban on Political Party Another Sign of Shrinking Space for Freedom of Expression." December 19.
- Amnesty International. 2015. "South Korea: National Security Law Continues to Restrict Freedom of Expression." January 20.
- Branigan, Tania. 2014. "CIA Torture Report: China and North Korea Quick to Settle Scores." *Guardian*. December 10.
- Cho, Hyo-Je. 2010. "When Would Normalization of Conservatives be Possible?" *Changbi Weekly Commentary*, July 28. <http://weekly.changbi.com/470> (Accessed November 20, 2010). Korean Version.
- Collins, Robert. 2012. "Marked for Life: Songbun, North Korea's Social Classification System." The Committee for Human Rights in North Korea. June 6.

- Democratic People's Republic of Korea. 2015. "National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21." *A/HRC/WG.6/19/PRK/1*. January 30.
- Fluehr-Lobban, Carolyn. 1995. "Anthropologists, Cultural Relativism, and Universal Rights." *Past Chronicle Issues*. June 9. [http://home.sandiego.edu/~babergender/cultural relativism. html](http://home.sandiego.edu/~babergender/cultural%20relativism.html) (Accessed on January 27, 2015).
- Gil, Yoon-Hyeong. 2007. "The Japanese Shrine and the Birth of 'Satan,'" *The Hankyoreh* 21. January 12. Korean Version.
- Human Rights Watch. 2007. "North Korea: Harsher Policies against Border-Crossers." March 5.
- International Commission on Intervention and State Sovereignty. 2001. "The Responsibility to Protect: Report of the ICISS." Ottawa: International Development Research Center.
- Lawyers for a Democratic Society and People's Solidarity for Participatory Democracy et al. 2010. "A Written Opinion of Human Rights Groups on the North Korean Human Rights Bill." April 27.
- Muntrabhorn, Vitit. 2005. "Report on the Situation of Human Rights in the Democratic People's Republic of Korea Submitted by the Special Rapporteur of the Commission on Human Rights." *A/60/306*. August 29.
- National Human Rights Commission of Korea. 2010. "Recommendations Calling for Enactment of North Korean Human Rights Law." May 19. Korean Version.
- Office of the High Commissioner for Human Rights. 2008. "Compilation Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 15(B) of the Annex to Human Rights Council Resolution 5/1." *A/HRC/WG.6/2/KOR/2*. March 25.

- Office of the High Commissioner for Human Rights. 2014. "Summary Prepared by the Office of the United Nations High Commissioner for Human Rights in Accordance with Paragraph 15 (b) of the Annex to Human Rights Council Resolution 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21, Democratic People's Republic of Korea." A/HRC/WG.6/19/PRK/3. January 23.
- Panyarachun, Anand, and Robert Badinter et al. 2004. "A More Secure World: Our Shared Responsibility." Report of the Secretary-General's High-Level Panel on Threats, Challenges, and Change.
- People's Solidarity for Participatory Democracy. 2014. "The Government Employs Cruel Violence Instead of Persuasion and Communications in Miryang." June 12. Korean Version.
- "Promotion of the Right to Democracy." 1999. Commission on Human Rights Resolution 1999/57. E/CN.4/RES/1999/57. April 28.
- "Report of the Working Group on the Universal Periodic Review: Democratic People's Republic of Korea." 2014. A/HRC/27/10. July 2.
- Republic of Korea. 2012. "National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21." A/HRC/WG.6/14/KOR/1. August 13.
- Suh, Bo-hyuk. 2006. "Human Rights Trend Assessment and Roadmap for Improvement of Human Rights in North Korea." KINU Policy Research Series 2006-06. Seoul: Korea Institute for National Unification. Korean Version.
- The Catholic Committee of Human Rights, Peace Network, SARANG BANGBANG Group for Human Rights. 2009. "An NGO Submission on the Universal Periodic Review (UPR) of DPRK." April 20.
- The Institute for Far Eastern Studies of Kyungnam University. 2010. "Mid- and Long-term Policies and Roadmap for Improvement of Human Rights in North Korea: Emphasis on Institutional Foundation and Action Plan." A Service Report to NHRCK. Korean Version.

The Ministry of Unification. 2016. "Explanation of the North Korean Human Rights Act." March 3. <http://eng.unikorea.go.kr/content.do?cmsid=1834&cid=44821&mode=view> (Accessed on April 2, 2016).

The U.S. Senate Select Committee on Intelligence. 2014. "Committee Study of the Central Intelligence Agency's Detention and Interrogation Program, Finding and Conclusion: Executive Summary." Declassified. December 3.

"Written Statement Submitted by the People's Solidarity for Participatory Democracy, a Non-governmental Organization in Special Consultative Status." 2014. A/HRC/25/NGO/83. February 27.

Index

A

abductees 71, 188, 191, 245,
 advocacy 14, 37, 45, 49, 62, 107, 137
 Amnesty International 105, 151, 154,
 155, 156, 159, 163, 242, 247
 anti-communism 117, 118, 119
 anti-discrimination laws 147
 anti-North Korea campaigns 161
 Asian human rights regime 188, 203
 Asian values 186
 asylum-seekers 152
 authoritarian regimes 68, 112, 174

B

bad cops 224
 basic rights 32, 43, 46, 97, 142, 157,
 166, 216

C

Cheol Lee 165
 China 53, 73, 74, 82, 105, 121, 168,
 190, 222
 Chosun Human Rights Research
 Association 158
 Chosun Workers' Party 173, 174
 Christian Council of Korea (CCK) 117,
 118, 119
 CIA 82, 112, 247
 Citizens' Alliance for North Korean human
 rights 104, 105
 colonization 133

commission of inquiry (COI) 52, 61, 76,
 81, 89, 91, 168, 169, 201
 comprehensive approach 29, 30, 31, 34,
 43, 62, 94, 121, 122, 192, 201,
 205, 208, 214, 217, 238
 contextual universalism 88, 89, 123,
 204, 205, 206, 208, 238
 crimes against humanity 39, 52, 76, 78,
 81, 168, 169
 CSCE 79, 80

D

defector 70, 96, 190, 192
 democracy 13, 30, 45, 73, 99, 109, 114,
 132, 173, 175, 204, 232
 Democratic Party 57
 democratization 36, 62, 99, 109, 134,
 139, 140, 142, 153, 154, 172, 203
 denuclearization 120, 180, 189, 201,
 211, 227
 developmental assistance 43, 226, 229,
 dictatorship 40, 92, 119, 173, 198
 disarmament 216, 226, 229
 discrimination 15, 22, 46, 130, 146, 149,
 152, 165, 168
 double standard 51, 52, 53, 68, 77, 82,
 85, 86, 105, 111, 135, 156, 197

E

engagement 6, 55, 57, 74, 83, 118, 182,
 201, 210, 213, 217
 European Union (EU) 37, 38, 51, 53,

72, 73, 103, 104, 105, 126, 127,
133, 159, 160, 185, 211, 223, 234
externally displaced North Koreans 221,
222, 223, 224, 225, 228,
extra-judicial executions 163

F

financial crisis 147,
Foundation for Human Rights in North
Korea 59
Frank La Rue 146, 151
Freedom House 79, 105, 114
freedom of expression 15, 115, 146, 147,
151, 155, 156, 168, 185
fundamentalism 116, 117, 120, 121,
122, 123, 136, 240

G

George W. Bush 47, 69, 70, 119, 125,
126
Germany 17, 80, 103, 165, 212
Grand National Party (GNP) 56, 179,
180, 181, 194

H

Hanbando-Ingwon (Korea human rights)
Newsletter 193, 196, 199
harmony 65, 218, 233, 240
Helsinki Final Act 79, 212
Helsinki process 80, 212
human rights activists 87
Human Rights Committee (HRC) 28, 103,
193, 246
Human Rights Council (HRC) 27, 52,

145, 152, 160, 163, 248, 249
Human rights dialogue 37, 38, 52, 54,
73, 106, 159, 160, 226, 230, 239
human rights friendly unification 203, 241
Human Rights Watch (HRW) 105, 163
human rights-based approach (RBA) 31,
48~49, 63, 94
human security 187, 216
humanitarian aid 33, 43, 49, 50, 58,
63, 71, 78, 85, 97, 114, 120, 166,
183, 195, 200, 223, 228

I

imperialism 186
instrumentalism 123, 130, 136, 240
interdependency 206, 209, 240
inter-Korean relations 73, 101, 110, 125,
179, 188, 191, 208, 210, 214, 237,
239, 241
Inter-Korea Summit 154
Inter-Korean Basic Agreement 182
inter-Korean dialogue 168
International Criminal Court (ICC) 28,
61, 76, 80~82, 85, 120, 169
international human rights standards 14,
21, 34, 140, 178, 188, 202, 208,
216, 238
international humanitarian law 23~26
International Red Cross 167
Internet 150~152, 167

J

Japan 56, 70~73, 101, 104, 127, 179,
194, 221, 227
Jeongeui-dang (Justice Party) 183

Junichiro Koizumi 71

K

kidnapped persons 66, 93, 125
 Kim Dae-jung 55, 57, 59, 73, 86, 118,
 123, 125, 126, 191, 211
 Kim Jong-il 71, 118, 197,
 Korea Central News Agency (KCNA) 53,
 82, 109, 169, 201
 Korean War 64, 93, 119, 168, 172, 188,
 190, 191, 200, 218

L

Lawyers for a Democratic Society
 (MINBYUN) 61, 248
 Lee Myung-bak 55~56, 66, 124~125,
 146, 148, 150, 191
 Liberal democracy 132, 173, 175, 176
 Liberal Solidarity 60
 Liberty in North Korea Week 61

M

Megumi Yakota 71
 migrant workers 22, 28, 78, 96, 97, 143,
 150, 197, 222
 militarism 198
 military bases 172
 Military-First Policy 127, 197, 198
 Millennium Development Goals (MDG)
 48, 49, 244,
 Ministry of Foreign Affairs 81, 181
 Ministry of Unification 60, 67, 181, 190,
 193, 244, 250
 Miryang 153, 154, 249

Mongolia 74
 monitoring 29, 35, 49, 78, 110, 141,
 152, 193, 214, 224
 Moon-soo Kim 197
 mutual respect 136, 210, 212, 235, 238

N

National Action Plans for the Promotion
 and Protection of Human Rights
 (NAP) 115, 144, 149
 National Assembly 59, 67, 155, 179, 181
 National Council of Churches in Korea
 (NCCCK) 118
 National Human Rights Commission of
 Korea (NHRCK) 65~66, 115, 141,
 148, 152, 181~182, 201, 214
 National Intelligence Service 146
 National Security Law (NSL) 147, 155,
 156, 247
 New Politics Alliance for Democracy 57
 non-governmental organizations (NGOs)
 35, 45, 68, 78, 148, 161, 163~164,
 190, 201, 224, 234~236
 non-humanitarian aid 195
 North Korean escapees 57, 66, 73~75,
 90, 94~96, 178, 188, 200, 207
 North Korean Freedom Act 69, 192
 North-South Basic Agreement in 211
 North-South relations 55, 57, 59, 62

O

Office of the United Nations High
 Commissioner for Human Rights
 (OHCHR) 14, 21, 29, 30, 31, 34,
 35, 36, 53, 66, 121, 144, 152, 159,

163, 164, 166, 169, 201, 209, 210,
214, 223
Office of the United Nations High
Commissioner for Refugees (OHCR)
31, 97, 203, 223, 224
official development assistance (ODA)
145, 231
Organization for Economic Cooperation
Development (OECD) 150

P

Park Geun-hye 55, 59, 126, 153, 154,
181
peace 23, 30, 34, 46, 65, 69, 101, 118,
124, 183, 201, 204, 208, 218~219,
227~229, 239
peace regime 226, 227, 228, 229
People's Solidarity for a Participatory
Democracy (PSPD) 61, 154, 164,
193
politicization 51, 52, 63, 82, 111, 128,
173, 184, 201
prisoners of war (POWs) 24, 66, 67,
93, 188, 189, 191
progressives 61, 62, 63, 92, 94, 196,
201, 239
Pyongyang 68, 71, 159, 174, 177

R

reconciliation 6, 9, 62, 63, 84, 85, 87,
123, 149, 169, 191, 211, 241
reform 30, 107, 167, 211, 212, 229, 230
refugees 30, 31, 71, 74, 80, 97, 98, 152,
163, 180, 193, 213, 222, 223, 224
regime change 62, 63, 64, 69, 83, 93,

98, 99, 100, 114, 116, 117, 119,
120, 131, 232
regime competition 102, 172, 208
regional human rights cooperation 184,
185, 186, 187
relativism 51, 86, 88, 108, 109, 110,
111, 123, 136, 174, 175, 206, 240
Responsibility to Protect (R2P) 39, 40,
121, 203
right to development 33, 42, 47, 48,
122, 152
right to food 57, 89, 162, 166, 168, 185
right to peace 42, 46~47, 122, 164, 228
right to security 216
right to self-determination 42, 112
right to survival 15, 23, 38, 42, 57~59,
63, 91, 116, 152, 162, 163, 172,
216, 219, 224, 227, 233
Rodong Sinmun 110
Roh Moo-hyun 55, 57, 59, 118, 124,
125, 126, 148, 180, 190, 191
role division 220~225
rule of law 33, 34, 35, 36, 44, 49, 73,
101, 152, 220, 232
Russia 77, 99, 121, 131, 241

S

Saenuri Party 55, 56, 57
Sarangbang Group for Human Rights 60,
193, 197, 246
security 25, 30, 50, 80, 82, 110, 142,
155, 163, 174, 177, 201, 211, 213,
219, 227
Security Council 27, 28, 39, 43, 54, 76,
77, 80, 82, 120, 121, 169, 201
selectivism 112, 116, 136, 240

separated families 56, 57, 66, 67, 93,
96, 125, 188, 189, 190, 191, 207

Shin Eun-mi 155

Six-Party Talks 79, 80, 124, 127, 216,
227

socialism 41, 177, 213

socialist market 161

South-South conflict 84

sovereignty 14, 38, 51, 73, 77, 86, 105,
109~110, 128, 156, 158, 177, 212,
222, 248

Special Rapporteur 27, 32, 52, 53, 76,
77, 89, 106, 115, 146, 151, 159,
166, 184, 185, 199, 216, 219, 224

structuralism 204, 206, 207, 238

Sunshine Policy 73, 86

surveillance 147, 150, 173

sustainable development 32, 73, 216,
229, 230

Suzanne Scholte 79, 120

T

technical cooperation 29, 34, 35, 36, 53,
166, 187, 201, 209, 210, 214, 223,
226, 230

Thailand 74

The Universal Declaration of Human
Rights (UDHR) 13, 21, 44, 46, 87,
108, 184

Transparency 45, 225, 227, 232

treaty body 75, 78

Trust building 210, 212, 214

two Koreas 56, 63, 94, 172, 174, 178,
187, 192, 194, 209

U

U.S. Department of State 68

UN General Assembly 21, 26, 32, 38,
47, 48, 75, 77, 106, 110, 121, 128,
141, 184

unification 50, 55, 60, 62, 67, 91, 95,
101, 118, 163, 181, 190, 193, 203,
204, 213, 215, 217, 238, 239, 241

United States 52, 70, 112~114, 126, 160,
194, 219, 211

Universal Periodic Review (UPR) 27, 52,
77, 110, 144, 145, 147, 152, 153,
158, 159, 161, 162, 163, 165, 166,
167, 197

universal unification 204, 238, 239

universalism 51, 86, 88, 89, 109, 111,
123, 174, 204, 205, 206, 208, 238

V

violence 26, 96, 153, 154, 159, 197

W

weapons of mass destruction 24, 120,
186

West Germany 80, 212

World Conference on Human
Rights 26, 32, 35, 47, 48