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Human Rights in North Korea and U.S. Policy

Sun Song Park (Dongguk University)

Chapter 1. Human Rights in North Korea: Situation and Changes

Section 1. Assessment and Measurement

Section 2. Nature and Causes

Section 3. Recent Changes

Chapter 2. How to Improve the Situation

Section 1. Theories and Experiences Policy Implications

Section 2. Critical Assessment of U.S. Policy

Section 3. Policy Alternative: Principles and Measures

1. There exist different views and proposals concerning the problem of human rights in North Korea. We can raise two questions that may help to distinguish several positions espoused by different policy makers or advisers, academics or journalists, and human rights groups or activists. First, what is the exact situation of human rights in North Korea? This question is about how we can estimate North Korean's human rights conditions. Second, if there exist human rights problems and abuses, how are they to be resolved? This question relates directly to what policy toward North Korea is feasible and effective.

2. This paper is composed of two parts. In Chapter 1, we assess the human rights situation in North Korea. We focus on the nature and causes of deteriorated human rights conditions and on recent changes in the North Korean situation. In Chapter 2, we examine theories and experiences relating to human rights compliance/violations, evaluate U.S. foreign policy toward North Korea, and propose policy alternatives in the issue of human rights.

Chapter 1. Human Rights in North Korea: Situation and Changes

3. The problem of human rights abuses in North Korea The most repeatedly mentioned abuses are prisoners' camps, public executions, discrimination by family origin, constant surveillance over private lives, restriction to freedom of residence and travel, etc. Cf. The Institute for South-North Korea Studies, 1992 & 1993; Korea Institute for National Unification, 1996. had been a key criticism of the North Korean socialist regime by the South Korean Government, long before the U.S. Government picked up this subtle issue as part of its diplomatic agenda a few years ago. In the past, especially in the 1970s and 1980s, the attitude of the South Korean Government was not focused entirely on human rights issues, but more on political and ideological issues on North Korea. In those periods, it was, in fact, the human rights violations in South Korea rather than North Korea that were exposed more to the international society. In the U.S., the Congress had intermittently held hearings about the South Korean human rights situation since the mid-1970s. The then-U.S. Administration had more concerns about security issues in South Korea than its human rights situation. "In his testimony last week before the Senate Subcommittee on Foreign Operations of the Appropriations Committee Secretary Kissinger stated that 'the stability and security of South Korea were crucial to the security of the East Asian area,' and that these factors have 'led us to continue economic aid and military assistance when we would not have recommended many of the actions that were taken by the Government of South Korea.'" U.S. Government, 1974, p.1. It is only after the democratization of South Korea and the revolutions in Central and Eastern Europe in the late 1980s that the human rights situation in North Korea began to receive attention from international human rights practitioners and organizations. The revelation of North Korea's severe food shortage in the mid-1990s began to heighten the level of attention on the country. On top of that, a combination of nuclear and humanitarian issues further complicated outsiders' views concerning the human rights situation in North Korea and the ways in improving the situation. An attempt to assess the reality and to propose policy alternatives in the issue of North Korea's human rights situation once again became not only a moral and value-oriented action but also a political and ideological action.

Section 1. Assessment and Measurement

4. In April 2004, the U.N. Commission on Human Rights (U.N.C.H.R.) adopted resolution 2004/13, which expressed "*its deep concern* about continuing reports of systemic, widespread and grave violations of human rights in the Democratic People's Republic of Korea," and made a request for the appointment of 'the Special Rapporteur.' The U.N. Commission on Human Rights resolution 2004/13 was adopted by a recorded vote of 29 votes to 8, with 16 abstentions. The U.N.C.H.R. also passed a similar but less concrete resolution 2003/10 by a recorded vote of 28 votes to 10, with 14 abstentions. The human rights violations in North Korea had been attracting international attention since the end of 1980s. A first detailed report concerning the human rights violations in North Korea, titled as *Human Rights in the Democratic People's Republic of Korea (North Korea)*, was published by the Minnesota Lawyers International Human Rights Committee and Human Rights Watch/Asia in December 1988. Amnesty International has published annual and special reports about the human rights situation in North Korea since 1983, and began to intensify its activities vis-à-vis North Korea since the beginning of 1990s. The U.N.C.H.R. has also given attention to the North Korean situation from the mid-1990s and the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted two resolutions 1997/3 and 1998/2. but the international community, including the U.N., could not find efficient instruments for pulling North Korea into the process of compliance with the international human rights system. In this context, the international community's attempts to improve the situation resulted in U.N.C.H.R. resolutions 2003/10 and 2004/13. As Vitit Muntarbhorn, the Special Rapporteur, pointed it out adequately, the U.N. initiative may be utilized by North Korea "as a window of opportunity to engage with the world, particularly with the United Nations, to improve the human rights situation in the country (Muntarbhorn, 2005, pp.4-5)."

5. The U.N. Special Rapporteur summarized the human rights situation in North Korea in a concise and balanced way. "In sum, while there have been some constructive developments in the Democratic People's Republic in recent decades, there have been a variety of discrepancies and transgressions several of an egregious nature in the implementation of human rights in the country calling for immediate action to prevent abuses and provide redress." Muntarbhorn, 2005, p.2. His report, submitted on the 10th of January 2005, enumerates the critical and specific challenges of the human rights situation in North Korea into six categories (pp.9-19). Donnelly (1986, pp.607-8) once

proposed a useful and precise classification of human rights: personal rights, legal rights, civil liberties, subsistence rights, economic rights, social and cultural rights, and political rights.

- The right to food and the right to life: catastrophic food shortages (famine) in the mid-1990s, subsequent food crisis since the late 1990s, and continuing need for food aid to help the population. The concept of 'right to life' is not proper. According to Donnelly, the concept of 'subsistence rights' is more adequate.
- The right to security of the person, humane treatment, non-discrimination and access to justice: alleged transgressions in this field (for example, prisons and detention centers below international standards, preventive/administrative detention without access to credible courts, torture and other inhumane punishment, public executions), restrictions on basic freedoms (thought, conscience, religion, opinion, expression, peaceful assembly and association, etc.), collective punishment, discrimination by family origin, abduction, etc.
- The right to freedom of movement and protection of persons linked with displacement: strict controls over the movement of a person, problems of refugees and 'refugees sur place,' smuggling and trafficking of refugees. This serious problem of 'refugees', i.e. internationally displaced persons, is also directly related to China. See Good Friends, 2004; Amnesty International, 2004.
- The right to the highest attainable standard of health and the right to education: dismantlement of basic social services, a rise in the incidence of diseases, malnutrition, increase in the maternal mortality, dropping attendance rate in schools, etc.
- The right to self-determination/political participation, access to information, and freedom of expression/belief/opinion, association and religion: restrictions and intolerance by the State of monopolistic power.
- The rights of specific persons/groups women and children: a rise in infant mortality, stunting and malnutrition, a rise in the number of abandoned or street children, smuggling and trafficking, severe and inhumane punishment upon return, etc. See UNICEF DPRK, 2003.

6. As almost all the reports about human rights in North Korea indicate, the

severe conditions and violations are known principally through the testimonies of witnesses who had defected or been displaced from North Korea. See Good Friends (2004), Amnesty International (1997, 2004), Hawk(2003), Korea Institute for National Unification (1996–2004), Institute for South–North Korea Studies (1993). These obtained testimonies are tested for their genuineness and credibility partly by their coherence between themselves, and partly by the professional discernment of interviewers based on personal experience or circumstantial evidence. "For some prison camps and detention facilities described in this report, more than one source of information was available. In such cases, one person's account could be checked against another's. In other cases, the description of a particular camp or facility rested on the testimony of one former prisoner. In those cases, I had to rely on the coherence and internal consistency of the testimony, and my professional experience." D. Hawk, 2003, p.15. Amnesty International (1997, p.1) emphasizes 'convergent pattern of testimonies'. We will discuss this problem again. Thus, the KINU (Korea Institute for National Unification) annual white paper writes "even the credibility of testimonies of North Korean defectors and other eyewitnesses, who visited North Korea, is often questioned (KINU, 2004, p.1)." This limit is inevitable in the sphere of testimonies concerning human rights abuses, especially in the case of atrocious abuses executed in an extremely closed country such as North Korea. It does not mean that we can completely deny the values of the testimonies as genuine evidence of human rights violations. However, at the same time, it is neither absurd nor flagrant for human rights practitioners to examine and scrutinize the given testimonies. Only the testimonies that are credible can appeal to the public and make a significant difference in the international community. We must carefully distinguish between system-specific abuses (for example, the wider existence of political prisoners' camps and their harsh regulation) and general-but-individual abuses (for example, [un-] imaginable violations of human dignity in particular camps). In the latter cases, we need to approach the testimonies more carefully. In some instances, though rare, the coherence of testimonies and the existence of information itself can be predetermined and fabricated by intelligence agencies. In South Korea competing directly with North Korea, people have experienced a lot of misinformation on North Korea. Still more, the South Korean experiences are neither peculiar nor rare in this world that experienced the Cold War and, again, is under a permanent

anti-terror war. I have just one curiosity about why the numbers of concentration camps (12 areas; about 1.2 percent of the North Korean territory) and inmates (200,000 inmates; about 1 percent of the North Korean population) estimated by western intelligence experts in 1993 (Institute for South-North Korea Studies, 1993, p.7; The ISNKS itself was reportedly a part of KCIA.) are almost same as those witnessed by Mr. An Myung-chol who defected to South Korea in October 1994 (KINU, 1996, p.162) and why these numbers remain the same after the harshest famine in the mid-1990s. In its 1997 report concerning public executions in North Korea, Amnesty International (1997, p.2) wrote as follows: "All information on public executions presented in Section Four of this report was gathered by Amnesty International in interview with witnesses to the executions. None of the research was done on South Korean soil and no use has been made of information from governmental or other non-impartial sources, other than from the North Korean Government."

7. It is by comparison with the other past examples of the 20th century's human rights abuses that the current situation in North Korea can be assessed and explained even though no evidence is conclusive of certain sorts of abuses. Human rights violations committed systematically by communist states, ruthless destruction of human dignity by Nazi Germany and Japan from the late 1930s to the early 1940s, and genocide in Cambodia and Rwanda, all still remain as typical and extreme cases of human rights abuses. It is true that many reports compare the human rights violations in North Korea with those in Soviet Russia, Nazi Germany, and Japan during World War II. KINU (2004, p.221) cited a nonsensical and dangerous comparison as follows: "Harry Woo said in the seminar [held in December 1999, Seoul] that Adolf Hitler in the Third Reich attempted to biologically transform human beings but China's and North Korea's concentration camps are more vicious and crafty because their purpose is to ideologically transform human beings." However, a comparison always has two effects. It makes things more comprehensible, but on the other hand it could lead to more confusion. Pierre Rigoulot (2004) grouped camps into three classes internment, concentration, and extermination camps and said, "it is then a mistake to compare Soviet or North Korean concentration camps with Auschwitz (p.5)." Inappropriate comparisons may bring about two undesirable results that have to be avoided. By the efficiency of comparison, certain types of human

rights abuses (for example, reported inhuman atrocities inside political prisoners' camps) might cover up other urgent and prevalent human rights problems (famine, i.e. violations of the right to subsistence; food crisis, i.e. violations of the right to food). See Amnesty International, 2004. The report (p.1) cites "the human right to adequate food is of crucial importance for the enjoyment of all rights (HRI/GEN/1/Rev.4, p.57, paragraph 1, General Comment no. 12)."By demonizing human rights violators through shock-effect comparisons, foreign policy makers or human rights practitioners might be misled to choose irrelevant and excessive policies or activities (sanctions or military engagement), which could aggravate rather than ameliorate the human rights situation in concerned countries.

8. In so far as it is problematic to identify the reality of human rights situation in North Korea, we need a certain method or framework for measuring human rights there. It will help us to better understand the reality and changes of human rights situation in North Korea and consequently to determine what policies or activities are suitable to the North Korean situation. "Human rights scholars, practitioners, and activists use a variety of measures and indicators to describe the advances and setbacks in the promotion and protection of human rights, to provide explanations for their overall global variation, and to find solutions to guarantee their improved protection in the future." Landman, 2004, pp.906-7. Here we use T. Landman's recent proposition concerning human rights measurement. According to Landman (2004, p.911), "human rights can be measured in principle (i.e. as they are laid out in national and international legal documents), in practice (i.e. as they are enjoyed by individuals and groups in nation states), and as outcomes of government policy that has a direct bearing on human rights protections." He lists general indicators of human rights measurement as follows: coded provisions for rights protection in national constitutions and coded country participation in regional and international human rights regimes for measuring rights in principle; events-based reporting of violations, standards-based evaluations of state practices, and survey-based data on perceptions for measuring rights in practice; aggregate statistics and government legislation on specific areas for measuring policy outcomes (p.927).
9. It is not possible to completely measure North Korean human rights in the

method of Landman, because of insufficient information and research. However, within certain limits, we can apply parts of Landman's method to North Korea.

Rights in principle

- North Korea does not have a genuine legal system for human rights protection despite recent human rights-oriented improvements within the Constitution and the Criminal Law (i.e. the Penal Code). See U.N. Human Rights Committee, 2000.
- North Korea is a party to four core international human rights treaties (ICCPR, ICESCR, CEDAW, and CRC), International Covenant on Civil and Political Rights (ICCPR, joining in September 1981), International Covenant on Economic, Social and Cultural Rights (ICESCR, joining in September 1981), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, joining in February 2001), Convention on the Rights of the Child (CRC, joining in September 1990). but not to three core treaties (ICERD, CAT, and ICRMW) and two key optional protocols (ICCPR-OP1 and ICCPR-OP2). International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1), Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (ICCPR-OP2).
 - There is a negative gap between rights in principle (*de jure* guarantees of human rights) and rights in practice (*de facto* implementation of human rights). The authorities in North Korea may reportedly deny rights that they proclaim are protected.

Rights in Practice

- There is a great deal of events-based reporting of human rights violations, especially in the areas of personal rights (public executions, forced abortion), legal rights (political prisoners' camps), and subsistence rights (famine and hunger). See Good Friends, Center for Peace, Human Rights and Refugees, 2004; Amnesty International, 1997 & 2004; International Federation for Human Rights, 2003; Korea Institute for National

Unification, 1996–2004.

- It is not easy to make a convincing standards-based evaluation of state practices concerning the North Korean situation. Freedom House evaluates the North Korean situation of political and civil rights as 'not free.' Freedom House uses a scale of 1 (the highest degree of freedom) to 7 (the lowest degree of freedom). The degrees of both political and civil rights in North Korea are all 7 since 1972. See Freedom House's website <http://www.freedomhouse.org>.
- It is not possible to produce survey-based data on perceptions for North Korea up to now. The Good Friends, a South Korean NGO, once tried to make survey-based data on North Korean social consciousness by interviewing North Korean displaced persons in China. However the result cannot be regarded as giving proper survey-based data.

Policy Outcomes

- North Korea has not published credible aggregate statistics on the provision of goods and services for several decades. However the food shortage since the mid-1990s lets us estimate the situation as very miserable.
- UNDP categorizes North Korea as a 'high priority country'. A country is defined as a 'high priority country,' if the level of human poverty is medium and the progress toward improvement is slow or reversing, or if the level of human poverty is extreme and the progress is moderate. UNDP, 2003, p.44 & pp.347–8. According to the UNDP (p.54), North Korea marked a reversal in hunger in the late 1990s. Concerning the situation of food shortages in North Korea, see the UN Office for the Coordination of Humanitarian Affairs, 2003.
 - According to an estimate of the Bank of Korea (www.bok.or.kr), North Korea has experienced an economic recession for nine consecutive years (1991–1999).

Section 2. Nature and Causes

10. The situation of human rights in North Korea has a system-specific characteristic. As an extreme case of the classical socialist system See Kornai, 1992. or as a hyper-Stalinist country, the North Korean

politico-economic regime is a typical example of a centrally controlled bureaucracy. All areas of the society and people's everyday life are entirely controlled and watched by the Party-State administration. The rule of law is incongruous with the regime. The authority of the Korean Workers' Party disregards general formal laws. The centrally planned and command economy consisting principally of state-owned production and public distribution systems regulates all of economic activities of people's everyday life. Juche ideology (meaning both self-reliance or autonomy and master of world or consciousness of sovereignty) dominates people's conscience and culture. In this 'Unitary Ruling Regime' (in a double sense, unitary leadership and ideology) of North Korea, the conception of human rights of individuals or groups is literally nonexistent or, at best, abnormal. See Muntarbhorn, 2005, paragraph 20.

11. Although the unitary ruling regime might be the explanation for the deplorable situation of human rights in North Korea, See Korea Institute for National Unification, 2004, Chapter 1. we must carefully examine some aspects concerning the North Korean situation in order to avoid both probable misunderstandings of reality and eventual misconceptions of policy. Three points are particularly important: the effects of the 'system of division' between South and North Korea, the continuity and change of the politico-economic system, and the effects of the economic crisis since the 1990s.

12. North Korea is part of the 'system of division' in the Korean Peninsula, and this fact directly affects the functions of the North Korean politics and economy. See Paik, 1993. The two Koreas entered into a total regime competition between themselves after the Korean War (1950-1953) had ended without a victor at hand. Such result called the 'system of division' brought a deep scar on all Koreans. In this permanent race for survival, the two Koreas competed with each other in all the areas of statecraft and state performance: economy, security, diplomacy, ideology, culture, sport, and etc. Among these, as long as the arms race and economic development were in line with their destinies, they did not hesitate to ignore and even violate human rights for maximum mobilization of their human and natural resources. Frequently national security threats, actually existing and sometimes fabricated, were 'good excuses' for human rights abuses.

"Historically, moreover, states have more often than not considered armed threats justifications for the use of repression. ... All states, that is, respond to national security threats by violating personal integrity to at least some degree, regardless of international or domestic human rights pressures."Cardenas, 2004, p.221. Do democratic states really free themselves from this inherent practice of sovereignty? Oftentimes, the economic success of the regime, with arms race focus, eventually resulted in gaining of the support and assurance from the people. Thus, the economy became the main field of competition between the two Koreas. In this respect, because of the interconnectedness and the system of division restraint, there was no difference between the two Koreas. Before its democratization, human rights were relegated to being seen as impractical rhetoric in South Korea. So, the Special Rapporteur stresses the importance of peace and disarmament from the rights-oriented point of view as follows:

No attempt to understand the human rights situation in the Democratic People's Republic of Korea can be totally separated from the challenge of peace and human security in the region. ♦ The fact that the Democratic People's Republic of Korea is heavily militarized raises a question concerning equitable allocation of resources—the need to reallocate those resources to promote and protect human rights. No attempt to understand the human rights situation in the Democratic People's Republic of Korea can be totally separated from the challenge of demilitarization and disarmament in the region. Muntarbhorn, 2005, p.8, paragraphs 23 & 24.

13. The North Korean 'unitary ruling regime' has its origins and developments. In the mid-1950s, Kim Il-song began to monopolize power in the face of political rivals' defiance relating to an economic development strategy, even under the pressure of Russia and China. It was the beginning stage of fabricating and altering Juche ideology. From the late 1950s to the early 1970s, there were purges of Kim's political opponents (1956, 1967, 1969) as well as administrative programs classifying population according to their family background and political disposition. The unitary ruling regime was consolidated, but the situation of human rights in North Korea was degraded. However the regime was not immutable. The North Korean economy already began to stagnate in the mid-1960s, and North Korea was confronted with repeating and aggravating economic depressions ever since. North Korea

tried to carry out open door policies on several occasions in the early 1970s, the mid-1980s and the early 1990s, but was met with unsuccessful results. Meanwhile, a long and never-seen crisis was approaching. Even though Kim Jong-il was nominated as the successor to the 'Great Leader', Kim Il-song in February 1974, the North Korean leadership was beginning to lose its control over its regime little by little since the late 1980s. Illegal economic activities surged outside the legal economic system, and deviant behaviors of the middle and lower ranks of the administration increased.

14. The unitary ruling regime was seriously weakened with the economic crisis, which actually began in the early 1990s we dare to say it began in the late 1980s and was made worse by a series of natural disasters in the mid-1990s. First of all, as the economic crisis destroyed the circulation of national economy based primarily on state-owned production and public distribution, the North Korean people had to find their own ways to live without relying on the state. This new type of 'principle of self-reliance' on the level of individuals and families meant changes in both societal economic structure and economic behavior of individuals. The principle of self-reliance diffused even to state-owned enterprises and cooperative farms. This phenomenon became the base of economic reforms in 2002. Throughout the 1990s, the annual production decreased by almost 30 percent. The food shortage mounted to 25-35 percent since 1995. In order to look for food and other necessities, the people of the disaster areas began to travel inside and outside of the country without official travel passes. Black markets quickly spread across the country as well. Threatened with hunger, even the middle and lower layers of those in the administration and military have resorted to illegal activities and corruption. The North Korean Government reacted to these phenomena in a very inconsistent way. On the one hand, in big cities, it severely repressed those who violated the laws, Amnesty International (2004) reported public executions had increased in the late 1990s. but on the other hand, it was compelled to overlook illegal activities and markets in areas where the authorities could hardly reach out. Thus, we can safely conclude that the economic crisis, especially the food shortages, provoked the humanitarian disasters (i.e. negation of subsistence rights) The subsistence rights are the rights to food and a standard of living adequate for the health and well-being of oneself and one's family. Donnelly, 1986, p.607. See the

Universal Declaration of Human Rights, Article 25. and brought weakening of governmental control to a certain limit (i.e. tacit toleration of certain human rights, as freedom of movement and travel, right to certain economic activities, circulation of information, etc.) in North Korea.

15. The preceding discussions (Paragraphs 10-14) helped us to better understand the situation of human rights in North Korea. The human rights abuses in North Korea that had its origin principally in the rise and consolidation of the unitary ruling regime could not be separated from the division of the Korean Peninsula and the consistency of the regional cold war. South Korea had and, up to now, has the same problem. Because of this situation, the social movement of democratization (and human rights) and that of unification went and go together. See the current social movement aiming to abolish the National Security Law, which is accused of seriously violating human rights. U.S. Department of State (2005) criticizes the anti-human rights characteristic of the National Security Law. In North and South Korea, the military tensions and security crises were always used as a pretext for repression. The improvement of relations between the two Koreas and détente in the Korean Peninsula may be an important factor, which is necessary to make better the human rights situation in North Korea. The current mutation in the North Korean system, particularly after the economic crisis in the 1990s, contributes to the changes in the characteristics of human rights abuses in North Korea. While the human rights abuses before the 1990s were brought out by a 'strong, intolerant, and oppressive state' incarnated in the unitary ruling regime, the human rights disasters since the economic crisis resulted from state failure in the socio-economic domain rather than state oppression in the political domain. M. Ignatieff (2002, pp.115-8) distinguishes between human rights abuses caused by strong tyrannical states in the cold war and those caused by weak collapsing states lacking "effective sovereignty defined as a monopoly over the means of violence and as the capacity to deliver basic needs to a population" in the post-cold war. We should say the following: As the political and civil rights and the economic and social rights are indivisible and interdependent, 'state failure' in socio-economic domain and 'state oppression' in political domain in underdeveloped and developing countries often have a close connection with each other. In North Korea, political oppression and economic inequality are closely connected. As Amnesty

International (2004, pp.13-21) pointed it out, this correlation aggravated human rights disasters during economic crises. In the next part, we will also talk about the possibility of tension between civil and political rights and economic and social rights. It means neither that there were no human rights abuses caused by an intolerant state, nor that the unitary ruling regime was completely weakened by economic crisis. G. Flake (2003, p.15) points out "throughout the worst periods of the food shortage in North Korea, the DPRK government remained in full control at least of the foreign community in North Korea, if not its own distribution system." Concerning the political and social system, he seems to say, "relative control [was] maintained by the DPRK government (p.21)." We wish only to emphasize that the nature and causes of human rights situation in North Korea is very complicated and that more cautious policies are in need to improve the situation.

Section 3. Recent Changes

16. North Korea has hinted at changes in policy and attitude relating to human rights since the 1990s. They were often ignored by outside observers on account of both the humanitarian problem caused by the food shortage and the sharp increase in testimonies of severe human rights violations in the late 1990s given by various witnesses. Even legislative revisions and economic reforms by the state were assessed as of little consequence, partly because of the continuing disparity between legal system and actual practice, and partly because of the insufficiency or negative effects of economic reforms. We cannot completely reject their views. But theories and experiences often show that the process of improving human rights situation in rights-violating countries should be understood as a long, phased and complex process of system-and-norm change. Th. Risse and K. Sikkink (1999, pp.3-5) call this process the socialization of human rights norms, which ultimately consists of institutionalization (political system change) and habitualization (norm implementation or behavior change). In the same vein, S. Cardenas (2004, p.224) refers to both regime change and human rights compliance. According to this line of thinking, we must pay attention to even the smallest changes in North Korea, for they may rise to important signs of the norm compliance and system change later on. We are going to point out three such changes in North Korea.

17. North Korea has continued to keep in contact with international society on the subject of human rights for the last decade. These contacts are not sufficient, but nonetheless recognizable as an important change. The outcome of these contacts is not of significance yet, but North Korea does seem to comprehend the importance of complying with international human rights norms.

- North Korea ratified the CEDAW in February 2001, long after it had become a party to the ESCR and the CPR in September 1981 and to the CRC in September 1990. North Korea submitted its periodic reports concerning the implementation of the CPR (2nd, December 1999), the ESCR (2nd, April 2002) and the CRC (1st, February 1994; 2nd, May 2003).
- Amnesty International was permitted to visit North Korea in April and May 1995. Members of the CRC and the Special Rapporteur on violence against women were invited to visit in 2004. Numerous members of international organizations and NGOs have visited and worked inside North Korea after the appeal of the North Korean Government to the international community for humanitarian assistance in September 1995. Although the number of those who entered the country was limited and their activities were controlled and not always successful, these occasions were real opportunities for both the international community and North Korea to come a step closer. We can refer to critical and balanced reviews of G. Flake and M. Schloms about the NGO experience in North Korea. Flake (2003, p.45) says: "An unprecedented number of aid workers and officials have visited North Korea and engaged its citizens. One might be excused for thinking that North Korea is now more open for the interaction. While we clearly know much more today than we did a decade ago, what is more striking is how little we still know." Naturally, it takes time for an isolated country, such as North Korea, to know, and be known to, the international community. Schloms (2003, p.67) regards "NGO as a window on North Korea's internal situation". Do not forget that North Korea also looks to the outside world by this same window. Schloms (p.48) himself says: "through their presence and their work, NGOs provide a counter-example to the world view still propagated in North Korea."

- North Korea normalized diplomatic relations with the European Union (May 2001) and its member states, except France, since the early 2000s. North Korea consented to start exploratory talks on human rights with the E.U. in May 2001 and the first round of talks on human rights issues took place in June 2001 (Hanses, 2004, p.1). North Korea and Germany agreed to enter into a dialogue on human rights issues at the same time with the establishment of diplomatic relations in March 2001.

18. Since the early 1990s, the North Korean Government has continually established, amended, and supplemented its laws with human rights-oriented elements.

- The 1998 Constitution expanded the range of individual ownership (Art. 24) and the enterprise autonomy (Art. 33). It inserted an article protecting freedom of residence and travel (Art. 75) and deleted a phrase concerning betrayal of the country and people (Art. 86).
- The Criminal Law was amended three times since the early 1990s (1995, 1999, 2004). The last amendment in 2004 was an overall revision, which can be evaluated by and large as an improvement from a human rights-oriented point of view. See R.O.K. Ministry of Unification, 2004. Worth noting is that the principle of legality (*nullum crimen sine lege*) is clearly stated (Art. 6). In addition, the Criminal Procedures Act, promulgated in January 1992, states that "The State thoroughly secures human rights in treating and dealing with criminal cases (Art. 4; unofficial translation)."
- North Korea adopted the Law on Complaints and Petitions (1998), the Education Law (1999), and the Law on the Protection of Disabilities (2003). Also, it amended the Citizenship Law (1999), the Law on Compensation for Damages (2001), and the Inheritance Law (2002). U.N. Committee on the Rights of the Child, 2004, pp.1-2. Cf. UN Committee on the Rights of the Child, 2003.

We cannot say that these changes have actually improved the human rights situation in North Korea, as there generally exists a disparity between formal establishment and practical implementation of the laws. However, it is worth noting that North Korea has been paying persistent attention to international human rights norms.

19. In 2002, North Korea introduced a series of economic reforms (July 2002) called 'Economic Management Improvement Measures' and open door policies designating Shinuiju (the Northwest of North Korea, September 2002), Mount Kumkang (the Southeast, October 2002), and Gaesong (the Southwest, November 2002) as special economic zones. Key economic changes produced since then are as follows: price and wage adjustment (including the reduction of public distribution and removal of subsidies), creation and expansion of marketing channels (especially consumers' markets), allowing foreign direct investment in SEZs, supply-side adjustments (mainly extension of enterprise autonomy and overseas management training programs). U.N.D.P./U.N.P.F., Executive Board, 2004, pp.2-3. See also Park, 2004. The North Korean Government also adjusted its legal system to these economic changes. The 2004 Criminal Law reinforced the concept of ownership, subdivided economic crimes, and extended control over eventual anti-socialist activities (cf. chapters 5, 6, 8 and 9 of the 2004 Criminal Law). See R.O.K. Ministry of Unification, 2004. The newly implemented economic reforms and open door policies have not brought about enough positive outcomes to merit their success yet. There are still more negative effects (inflation, regional disparity, increase of economic inequality, etc.) rather than the positives (increase of production, improvement of productivity, etc.) up until now. The Special Rapporteur, V. Muntarbhorn (p.7) noticed as follows: "In reality, the economic plight of the urban population is still serious, since they face continued difficulties in accessing the 'market' system and in responding to rising prices, including of food and agricultural products." However, with future improvement in foreign relations and increase in foreign direct investment (FDI), these changes will gradually improve the general economic conditions and consequently provide for the foundation of improving the situation of human rights in North Korea.

20. It might be legitimate to say, "the changes noted above would seem to be part of the [North Korean] authorities' survival strategy, influenced by both internal and external factors/pressures (Muntarbhorn, 2005, p.7)." Nevertheless, we want to add three qualifications in order to more correctly assess the meaning of these changes.

- First, almost all the improvements of human rights situations in

underdeveloped and developing countries since the 1970s have been connected with, and set out by external/internal pressures. So, the changes in North Korea are positive signs, which let us expect that the situation of human rights in North Korea is changing in a progressive direction and that the North Korean Government reacts to internal/external pressures. Of course, not all of the internal/external pressures have the potential to succeed. We will further examine the processes and conditions of success below (Chapter 2. Section 1).

- Second, economic reforms in almost every communist state were initiated as the regime survival strategy in the face of internal pressures, especially in the case of economic crises. The result is often a system transition (East European countries) or transformation (China). Accordingly, the North Korean authorities have reacted in the same way.
- Third, at the outset, almost all changes are trivial and unsuccessful; but it was because of their characteristics of insufficiency and inefficiency that they finally provoked or brought about more radical changes. We can expect the same process to occur in the case of North Korean reforms and open door policies.

Chapter 2. How to Improve the Situation

21. In the controversy over foreign policies toward North Korea, two points are always disputed. Firstly, is the character of the North Korean regime universal or peculiar? If the authorities in North Korea behave within the general maxims of political regime and international relations theory, we can easily apply the knowledge of political theories to North Korea. Secondly, has North Korea been changing or not? As long as North Korea continues to tackle and bring on changes in its regime, and when these changes are in the direction of reforms, the international society should exert continuous effort in accelerating the changes in North Korea toward a peaceful transformation. Our argument in Chapter 1, Sections 2-3 was an attempt to show the universal characteristic of North Korean regime and its disposition to accept and make changes. This viewpoint is a point of departure, from which we develop the discussion of Chapter 2.

Section 1. Theories and Experiences Policy Implications

22. From her survey of literature on the dynamics of international human rights compliance/violations, Sonia Cardenas (2004) finds three types of explanations regarding 'how international human rights pressure can shape state behavior.' Cardenas, 2004, p.213. She describes these as follows:

Two proceed from rationalist premises but differ insofar as one emphasizes the role of power and the other of self-interest. The third adopts ideational concerns and sociological assumptions, often categorizing itself as "constructivist". This debate mirrors a longstanding one in the study of compliance: what is the relative role of external pressure versus internal commitment. Within each category, moreover, scholars have paid attention to international politics, domestic factors, and domestic-international interactions. Cardenas, 2004, p.214.

These three types of explanations differ from each other in what elements they emphasize more and how they construct cause-and-effect chains or influence mechanisms (See Table 1).

Table 1. Existing Approaches for Explaining the Influence of International Human Rights Pressure on State Behavior Cardenas, 2004, p.215.

E x p l a n a t o r y Factors	Power	Self-Interest	Norms
International/ Regional	Hegemonic States; Coercive Sanctions; T a r g e t Vulnerability	Institutions (Reputation, T r a n s p a r e n c y , Monitoring); Legalization; Trade	Socialization; Argumentation; Persuasion & Learning
Domestic	G o v e r n i n g Coalition; B u r e a u c r a t i c Politics	Regime Type (Interest Groups, Uncertainty Reduction); Rule of Law	Civil Society; "Cultural Match"
Domestic-Internati onal Interaction	T w o - L e v e l Bargaining	I n s t i t u t i o n a l Embeddedness	Transnational Networks

23. Now, there is 'a move toward theoretical synthesis' (Cardenas, 2004,

p.219). Cardenas presents an example from Susan Burgerman's (2001) work, in which list five conditions relating to the degree of human rights compliance: "the existence of relevant international norms, the material interests of a major power, transnational network activism, and domestic allies in target states as well as domestic political elites who either view themselves as being vulnerable internationally or care about their international reputations (Cardenas, 2004, p.219)".

24. However, these three types of explanations and their synthesis cannot give account of states' human rights violations. Even though, according to compliance theories, "compliance and violation are often considered two sides of the same coin (Cardenas, 2004, p.219)," the logic of violation is different from that of compliance. Cardenas emphasizes that there are 'historical and structural reasons' why modern states violate international human rights norms. These are "three closely related conditions": national security threats, pro-violation constituencies (for example, members of the coercive apparatus and domestic economic elites), and rules of exception (i.e. certain legal and belief systems, or even 'myth', which define what threatens pro-violation constituencies in the first place and justify such a definition). In order to better understand the influences and limits of international human rights pressure, what must be taken into consideration are not only the role of power, self-interest, and norms in the compliance mechanism important, but also these three factors of the violation mechanism. The discussion of this paragraph is based on Cardenas, 2004, pp.219-224. To understand the concept of 'rules of exception' the quotation is necessary: "State violators tend to justify their actions in terms of a greater national good. Consider the aphorism that personal liberty must be sacrificed for national security. Similar aphorisms are evident outside the human rights domain. For instance, pollution is necessary for development nuclear proliferation is the price of national survive; trade protection is integral to the well-being of local labor; monetary intervention assures the health of the national economy (p.222)." From this discussion, there can be three derived implications concerning how North Korea can be led to comply with international human rights norms.

25. Firstly, while North Korea has already been under permanent security threats structural and/or self-provoked for several decades, international

threats or coercive sanctions may cause more negative consequences. After the war in the Korean Peninsula, the authorities in North Korea utilized security threats as a pretext of human rights restrictions. The circumstances became worse since the power balance between the two Koreas became unfavorable toward North Korea in the late 1980s, especially when the North Korean economy entered into crises. In the N.K-U.S. conflict, caused by the North Korean nuclear weapons program, the North Korean Government declared that even any type of economic sanctions would be judged as an act of war. In this context, 'naming and shaming', a traditional method commonly used by human rights NGOs may be a unique way the international society pressures North Korea to comply with international human rights norms. Even in case of economic, social, and cultural rights, 'naming and shaming' can be effective. See Robinson, 2004. The best way would be to remove security threats or ease tensions in the Korean Peninsula, i.e. to increase dialogue and cooperation between the two Koreas and pursue the possibility of détente between North Korea and the U.S.

26. Secondly, as long as the economic crisis in North Korea directly affects and aggravates the human rights situation, economic development is the *sine qua non* in alleviating the human rights situation. We emphasize economic development in the same way that the U.N.D.P. defines human development and economic growth. "Human development and economic growth are closely connected. People contribute to growth, and growth contributes to human well-being. ... The first *Human Development Report*, in 1990, defined human development as the process of enlarging people to have wider choices. Income is one of those choices, but it is not the sum total of human life. Health, education, a good physical environment and freedom of action and expression are just as important." U.N.D.P., 1992, pp.12-3. It is only through economic development that humanitarian disasters (i.e. extreme violations of the right to subsistence) can be overcome. Also, economic development is one of the most important material foundations for human rights improvement. The recent economic reforms in North Korea eventually mean that the basic system of its economy can be transformed and that the policy-making power will be redistributed. In the past, under the unitary ruling regime, the North Korean economic development strategy was used as a 'rule of exception' to violate human rights, which in turn resulted in

forming 'pro-violation constituencies'. However, recent changes suggest that the change of development strategy and economic system shows the failure of legitimacy of the regime and proves the incompetence of the pro-violation authorities. If the conditions for violations weaken, then it will lead to increase in exertion of domestic pressure on the regime. In order to heighten this tendency, there must be continued economic aid, policy advice from the international community, and the creation of a favorable diplomatic environment.

27. Lastly, in a society where there are severe inequalities of both political power and economic wealth, there exists a very high potentiality of domestic pressure for change, and it is through the development of civil society that potentiality turns into actuality. "Who can *force* a government to respect human rights? The only plausible candidates are the people whose rights are at stake." Donnelly, 1986, p.617. Civil society, i.e. domestic opposition, has a double role in the socialization processes of human rights norms. Our argumentation relies principally on the idea of Risse and Sikkink, 1999. See particularly the figure of the 'spiral model' of human rights change in p.20. On the one hand, the processes of human rights compliance cannot launch into a real socialization phase without domestic opposition. It is critical to the accomplishment of human rights change that domestic and transnational social movements and networks unite to bring pressure both 'from below' and 'from above' concurrently (Risse & Sikkink, 1999, p.18). Cardenas (2004, p.215 & p.216) explains it as follows: "At the domestic level of analysis, ideational approaches emphasize the degree to which international norms resonate and are considered legitimate locally. One variant of this argument focuses on the role of civil society including human rights organizations, religious groups, political parties, and student organizations as it engages in symbolic protest and thereby mediates the impact of international pressure. ... Compliance is as much the result of pressures from "below" as from "above". ...A "boomerang effect" can be evident, as domestic groups bypass an abusive state to forge transnational alliances; these alliances, in turn, augment international pressure on the state and empower domestic groups." On the other hand, the consolidation of human rights change "habitualization" of rule-consistent behavior in Risse and Sikkink's terms is assured only by civil society at maturity. The creation of rights-oriented culture and leadership by civil society is the ultimate

condition for consolidation of human rights change. In North Korea, such civil society has not yet appeared. A first step for North Korea is to create material and moral conditions necessary for the rise of civil society. From this point of view, the role of international governmental and non-governmental organizations is crucial. By assisting the population of North Korea to overcome food shortages and pursue economic development, they become not only a source of material aid but also a window of a new world view for North Koreans. See Schloms, 2003. The North Korean problem is economic, social, and psychological. After an indoctrination of about half a century, who can dream of another world? We have to point out here that the economic reform and open door policy give the North Korean population a chance to think and behave differently. Here, we argue that the reform and open door policy of North Korea since July 2002 would be a point of departure for shaping civil society in the country.

28. The main idea of these policy implications is that the policy of "pushing violations" is more urgent and effective than that of "pulling compliance" in the case of North Korea. "The extent to which international human rights norms and pressures are influential may depend on the "pull" of compliance as much as the "push" of norm violations. Greater attention to these colliding forces could, in turn, strengthen explanations of when and to what degree international human rights pressure has an influence on what states do." Cardenas, 2004, pp.213-4. The experience of South Korea and China seems to support our view. In South Korea, the civil movement strengthened itself with the weakening of security threats and the economic development based on export-oriented policies. In the 1980s, the civil society grew rapidly with the promotion of democracy. In the 1990s, democratization consolidated and is further consolidating the rights-oriented institutionalization and rule-consistent behavior. China is not yet at the phase of accomplishment of norms compliance. But economic reforms and open door policies have been pushing the Chinese society into improving its human rights situation through economic development and amicable foreign policy. To speak roughly, in these two cases, "pushing violations" was an active factor, and "pulling compliance" a passive factor.

Section 2. Critical Assessment of U.S. Policy

29. The U.S. Government began to integrate the issue of North Korean human rights into the agenda of U.S. foreign policy toward North Korea with the advent of the Bush Administration in 2001. The promotion of respect for human rights has been always declared being one of the main goals of U.S. foreign policy. "The protection of fundamental human rights was a foundation stone in the establishment of the United States over 200 years ago. Since then, a central goal of U.S. foreign policy has been the promotion of respect for human rights." U.S. Department of State, [http://www.state.gov/g/drl/hr/\(11/30/2004\)](http://www.state.gov/g/drl/hr/(11/30/2004)). About the inconsistency of U.S. foreign policy from the rights-oriented point of view, see Forsythe, 1989, Chapters 5 & 6; Steinmetz, 1994. Steinmetz analyzed cases "where the cause of democracy abroad was more likely to be sacrificed to ostensibly more critical U.S. national interests (p.2)." A critical reading of J. Nye's article (1999) "Redefining the National Interest" curiously lets us to find that this situation has not changed. Be that as it may, the primary issue of U.S. foreign policy toward the Korean Peninsula was and still is in the security concerns of South Korea and its region. Therefore, the issue of the North Korean nuclear weapons program emerged as a pressing security agenda for the U.S. since the early 1990s. After the problem of famine in North Korea in the mid-1990s, the U.S. kept delivering humanitarian aid to North Koreans without directly raising the issue of human rights at the U.S.-N.K. negotiation tables. This pragmatic separation strategy was completely abandoned by the Bush Administration, when President Bush called North Korea a constituent of an "axis of evil" in his *2002 State of the Unions Address* (January 29, 2002). After the expression "axis of evil" which had been used originally in World War II, the U.S. Government did not hesitate to use other negative expressions such as "rogue state/nation," "outlaw regime/state," and "outpost of tyranny".

30. The change in U.S. attitudes regarding the human rights situation in North Korea can be summarized in three points:

- The U.S. raised the tone of criticism toward North Korea and cooperated with other nations to augment pressure on North Korea. The annual reports on human rights practices in North Korea since 2002 pointed out torture, forced abortions, and infanticide in prisons. The 2004 report (released in March 2005) stated, "the [North

Korean] Government's human rights record remained extremely poor." "The Government's human rights record remained extremely poor, and it continued to commit numerous serious abuses. Citizens did not have the right to change their government. There continued to be reports of extrajudicial killings, disappearances, and arbitrary detention, including of many persons held as political prisoners. Prison conditions were harsh and life-threatening, and torture reportedly was common. Pregnant female prisoners reportedly underwent forced abortions, and in other cases babies reportedly were killed upon birth in prisons. The constitutional provisions for an independent judiciary and fair trials were not implemented in practice. The regime subjected citizens to rigid controls over many aspects of their lives." U.S. Department of State, 2005, "Country Reports on Human Rights Practices 1999-2004: Democratic People's Republic of Korea," <http://www.state.gov/g/drl/rls/hrrpt>. Concerning the critical review of the U.S. State Department's reports on human rights, see Drinan, 2001, Chapter 10. The U.S. worked with other concerned nations to achieve passage of two resolutions on the North Korean human rights situation in the U.N.C.H.R. in 2003 and 2004. See U.S. Department of State, 2004, p.96.

- The U.S. clearly connected the issue of North Korean human rights situation with other issues for example, a settlement of the nuclear conflict and an improvement in bilateral diplomatic relations. "During multilateral talks with the North Korean Government in April 2003, Assistant Secretary of State for East Asian and Pacific Affairs James Kelly made clear that an improvement in relations with the United States depends on progress by North Korea in a number of areas, including respecting human rights." U.S. Department of State, 2004, p.94.
- The U.S. established a law called the 'North Korean Human Rights Act of 2004' (P.L. 108-333) claiming to "promote human rights and freedom in the Democratic People's Republic of Korea" in October 18, 2004. Before this Act, were introduced several bills such as the "North Korean Democracy Act of 2003 (S 145 IS, January 12, 2003)", the "North Korean Freedom Act of 2003 (S 1903 IS, a.k.a. Brownback Bill, November 20, 2003, and HR 3573 IH, November 21, 2003)". See the criticism of Brownback Bill by Hazel Smith (2004). The P.L. 108-333 consists of three main titles: promoting the

human rights of North Koreans, assisting North Koreans in need, and protecting North Korean refugees. The measures proposed in the Act are as follows: providing grants to programs that promote human rights and democracy in North Korea (Section 102); increasing the availability of sources such as radios capable of receiving broadcasting from outside North Korea of information for North Koreans (Section 104); appointing a special envoy for human rights in North Korea within the Department of State (Section 107); reinforcing transparency, monitoring, and access to vulnerable populations regarding humanitarian assistance (Section 202); facilitating submission of applications for admission as a refugee by North Korean (Section 303).

31. The main idea of U.S. foreign policy in the issue of human rights under the Bush Administration is expressed by the Department of State as follows:

The United States is pursuing a broad strategy of promoting respect for human rights that is both appropriate in itself and beneficial for U.S. security. The United States is persuaded that regimes that violate the human rights of their own citizens are more likely to disrupt peace and security in their region and to create a reservoir of ill will that can accrue to the detriment of the United States. The best guarantor of security and prosperity at home and abroad is respect for individual liberty and protection of human rights through good governance and the rule of law. ... President Bush, Secretary of State Powell and other senior officials regularly communicate America's views and values regarding human rights in meetings and other direct communications with foreign leaders. Senior officials also engage in constant diplomatic efforts to remedy abuses, including in some extreme cases by using sanctions and other authorities in the law. U.S. Department of State, 2004, p.VII.

Two concepts are central in this policy orientation. One is the conjunction between human rights policy and security strategy; the other one is the possibility to "use sanctions and other authorities in the law", which does probably include military action and war. We can put these two ideas into a table, which helps us classify the types of human rights policy at hand.

Table 2. Types of human rights policy

	Conjunction	Disjunction
Sanction/Intervention	TYPE I	TYPE II
Aid/Dialogue	TYPE III	TYPE IV

According to Table 2, the Bush Administration's policy toward North Korea is easily classified as TYPE I. The so-called sunshine policy of South Korea and the engagement policy of the Clinton Administration is TYPE IV, which consists of humanitarian assistance, economic aid, and "silent diplomacy". The human rights engagement policy of the E.U. is TYPE III, which pursues both diplomatic relations and human rights dialogue. A policy of TYPE II, which may be called 'humanitarian intervention' (Fixdal & Smith, 1998) or 'military humanitarianism' (Chandler, 2001), is not yet applied to the human rights situation in North Korea. The Bush Administration has clearly declared the conjunction between human rights policy and security strategy (See Paragraph 30). The U.S. Government has also been encouraging the pressure for the regime change, has been excluding direct dialogue between the U.S. and North Korea, and has been utilizing the six party talks principally as a way to put pressure on North Korea. Such policy stance has not been changed greatly in the second term of the Bush Administration.

32. The human rights policy toward North Korea adopted by the Bush Administration has several weaknesses. Firstly, there is an inconsistency between various objectives of U.S. policies. In other words, the principal objective of U.S. policy toward North Korea is obscure or at best undetermined. What is the real policy objective? Is it to bring system transition or system transformation? Is it aimed at consolidating the U.S. security or at improving the human rights situation in North Korea? The U.S. Department of State stresses the importance of human rights policy in a doublesense, but no one is sure if security-based and human rights-oriented policies can really go together and adjust to each other in the case of foreign policy toward North Korea. We cannot help but to be concerned about the fact that the U.S. is taking advantage of the human rights situation in North Korea in order to justify a more hawkish foreign policy, motivated

more by security concerns. Our anxiety mainly comes from a perverse concept of "hawk engagement", which was invented to justify the Bush Administration's strategy toward North Korea. Victor D. Cha, Director for Asian Affairs at the National Security Council since December 2004, explained hawk engagement as follows:

Hawk engagement ... is based on the idea that engagement lays the groundwork for punitive action. ...[Hawk engagement] acknowledges that diplomacy can be helpful, but sees the real value of engagement as a way to expose the North's true, malevolent intentions. ...Hawk engagement would also let the United States turn today's carrots into effective sticks for tomorrow. ... Hawk engagement ... embraces humanitarian aid again for its own reasons rather than the standard ones. ... Hawks recognize that aid can act as investment in the will of the North Korean people to fight their regime. Cha, 2002, pp.82-4.

At this point, the priority of security strategy over human rights policy becomes obvious. The conception of J. S. Nye is not so far from that of V. D. Cha. "But foreign policy involves trying to accomplish varied objectives in a complex and recalcitrant world. This entails tradeoffs. A human rights policy is not itself a foreign policy; it is an important *part* of a foreign policy. During the Cold War, this balancing act often meant tolerating human rights abuses by regimes that were crucial to balancing Soviet power for example, in South Korea before its transition to democracy. Similar problems persist in the current period witness our policy toward Saudi Arabia, or our efforts to balance human rights in China with our long-term strategic objectives." Nye, 1999, p.31. Human rights policy, therefore it seems, serves as a mere means to an end for security strategy, i.e. a way to show both the legitimacy of U.S. hawkish policy and the negativity of the North Korean Government.

33. Secondly, the Bush Administration's human rights policy toward North Korea suffers from an inconsistency between its end and means. Perhaps the inconsistency between end and means may come from the inconsistency between various objectives. The inconsistent logic of hawk engagement shows that the political intention of its strategic end is destined to deny the inherent result of its humanitarian means. Therefore, in this case, the end contradicts the means. Sometimes, the means cannot properly serve the end. Even though it is admitted that the Bush Administration's policy reportedly aims at improving the human rights situation in North Korea, its

means does not seem to be proper to its human rights-oriented end. When the U.S. and North Korea do not establish diplomatic relations, nor give up all expressing hostile intentions to each other, pressures and sanctions by the U.S. Government would result in a negative consequence. For example, the 'North Korean Human Rights Act of 2004,' which intends to spread information and radios to North Koreans, to appoint a special envoy for human rights, and to facilitate North Koreans' acquisition of refugee status in the U.S., might make the North Korean situation worse, because the North Korean Government could interpret the U.S. measures as evidence of increasing security threats and strengthen the control over the people in the name of national security. In the same sense, Hazel Smith (2004, p.45) said: "Instead, Brownback's proposals further threaten the basic freedoms of North Koreans by providing conservatives in the country an opportunity to restrict the openings to the West that have occurred since the late 1990s." Besides, these measures have the problem of feasibility. The Bureau of Democracy, Human Rights and Labor in the U.S. State Department (February 2005) issued a report on the diplomatic and technical difficulties in implementing these measures introduced by the P.L. 108-333. Concerning sanctions, many studies already show their limits and ineffectiveness. S. Steinmetz (1994, pp.205-6) said: "Sanctions have had a less-than-successful record for effecting change. As such, an alternative study of the potential and effectiveness of inducements in encouraging reform might be useful." The quantitative study of C.-P. Li (1993) presented that the sanction linkage failed more when the linked issues are such as improvement of human rights, prevention of communism, realization of democracy, etc. (68.0 percent failure) and when the actors have dissimilar political ideologies and a non-penetrated structure (61.9 percent failure). K. A. Elliot (2003) presents a similar result. She adds (p. 3), "the probability of a successful outcome with US-imposed sanctions had declined sharply, from just over 50 percent in the early post-World War II period to less than 20 percent since the early 1970s." Especially, in the case of North Korea, economic sanctions will be neither effective nor feasible because of the complexity of the circumstances (the existence of South Korea, China, and Russia) Because of this fact, we pay no regard to the possibility of "humanitarian intervention" or "military humanitarianism". and the specific characteristics of the North Korean regime (the self-reliance economic system and the long continuation of economic sanctions). "As it did

previously, North Korea is threatening to treat the imposition of sanctions as an act of war. ...In addition, whatever the resolution of the situation in Iraq, it may be more difficult than before for the United States to credibly use the United Nations to provide multilateral cover for the imposition of economic sanctions. Thus the challenges to using this greater today than before." Elliot, 2003, p.5.

34. The weaknesses of U.S. human rights policy toward North Korea result from misconceptions concerning the general circumstances specific to the North Korean situation, the process of human rights improvement and compliance, and the human rights themselves. The U.S. Government has a general idea on the relationship between the human rights issues and security problems, but does not sufficiently comprehend the North Korean human rights situation in the general circumstances of North Korea. "Underlying context" cannot be an excuse for human rights violations, but it helps to understand the nature and causes of violations and find out a way to improve the situation. See Chapter 1, Section 2 above; Muntarbhorn, 2005, pp.7-9. In reality, they think of the human rights problem as an issue separated or separable from the general conditions of the concerned country. This misconstruction of conjunction/disjunction is directly related to a lack of awareness of the process of human rights improvement and compliance. As stated above, in order to convert a rights-violating country into a rights-complying country, there need to be continuous and tuned activities of pressures and inducements from inside and outside actors persons, groups, NGOs, inter-governmental organizations, and states. These activities have to be suitable for the context in which the rights-violating country is placed. If so, they can gradually constitute conditions, which favor a change of target country's institutions and behavior. This long, phased and complex process of system-and-norm change requires consistency and patience. It is these characteristics that U.S. policy seems to be lacking. The strategy of hawk engagement openly advocates "a low tolerance" and "shorter timelines." "Once negotiations do begin, however, the Americans can be expected to push for shorter timelines. Hawk engagement is more impatient than standard models. ... Washington can also be expected to have a low tolerance for Pyongyang's brinkmanship." Cha, 2002, pp.89-90. For the Bush Administration, diplomacy is only a quick and nervous action to justify military intervention frankly, diplomacy is only an *ex ante* step to war. To use

Nye's terms (1999), the Bush Administration mixes a moral-based foreign policy and an interest-based foreign policy without well-ordered considerations. As a consequence, they confuse utilities of soft and hard power. Finally, the misunderstanding of rights compliance mechanism arises from the narrow comprehension of human rights. "A narrowly defined understanding of human rights overlooks important changes in China. The Chinese leadership recognizes that its legitimacy rests on continued economic prosperity, which is increasingly under pressure and reforms expose more economic ills. But Beijing has also begun to see the need to provide people with more than just economic goods. Pragmatic policy-makers understand the importance of strengthening legal institutions both to regulate business practices and to manage civilian complaints against the state." Gill, 1999, p.74. The Bush Administration narrows the meaning of human rights in a dual sense. They seem to prefer accepting only civil and political rights as universal human rights. The U.S. did not ratify four core treaties (ICESCR, CEDAW, CRC, ICRMW) and two key optional protocols (ICCPR-OP1, ICCPR-OP2). But, ICESCR, CEDAW, and CRC were signed, and defining rights compliance process only by regime change. The notions of economic, social and cultural rights and socio-economic development do not exist in their conception of human rights and rights compliance. All these misconceptions or mistaken beliefs, which are both the source of weaknesses and at the same time the weakness itself, drive the Bush Administration into the moral/ideological fundamentalism (absence of flexibility) and inefficient militarism (absence of pragmatism). They will lose not only in the short term but also in the long term.

Section 3. Policy Alternative: Principles and Measures

35. We are not going to present entire systematic policy alternatives. Instead, we are trying to suggest simple principles and measures from which the U.S. Government may construct a different human rights policy toward North Korea than the current one.
36. The key concept of policy principles we want to recommend is a comprehensive and practical approach:
- **Principle 1:** A policy alternative is to be constructed from the

structural and historical appreciation of the North Korean human rights situation. First of all, it is necessary to realize exactly what the impact of economic crisis and security threats is in North Korea. Human rights compliance constitutes core elements of development and security; however, only economic restoration and reconciliation can induce North Korea to enter into a long process of improvement and compliance in human rights.

- **Principle 2:** In so far as all human rights are indivisible and interdependent, equal attention should be given to different human rights categories, civil, political, economic, social, and cultural. "All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights." Declaration on the Right to Development (Adopted by General Assembly resolution 41/128 of 4 December 1986), Article 6, Section 2. Still, for reasons of emergency, more urgent consideration should be given to the subsistence rights, particularly to the right to food. An ordering of priorities is inevitable. "Whether one speaks of human rights or basic human needs, the right to food is the most basic of all. Unless that right is first fulfilled, the protection of other human rights becomes a mockery for those who must spend all their energy merely to maintain life itself. The correct moral and ethical position on hunger is beyond debate. The major world's religions and philosophical systems share two universal values: respect for human dignity and a sense of social justice. Hunger is the ultimate affront to both." Presidential Commission on World Hunger, 1980, p.3.
- **Principle 3:** A pragmatic approach, i.e. "a constructive step-by-step approach, working progressively to promote and protect human rights in the country" (Muntarbhorn, 2005, p.5), is to be contrived to bring about actual improvements in the human rights situation. The system-specific rigidity of the North Korean regime calls for a gradual and problem-solving strategy. Today's removal of small rights violations will produce a great change of rights compliance for tomorrow. "Moral perfectionism is always the enemy of the possible and the practical." Ignatieff, 2002, p.123.

37. There are many measures, which can be taken if principles are changed and end is re-defined. We present three among them:

- **Measure 1:** The U.S. Government has to begin real negotiations with North Korea and separate out security issues from human rights problems. If the U.S. established and were pursuing to intensify diplomatic relations with North Korea, the strategy of the E.U. would be very instructive. "The EU pursues a policy of engagement with North Korea in the field of human rights. We see no contradiction in having normal relations with the DPRK and speaking up our mind on Human rights. We seek to discuss Human rights issues with the DPRK in an open and constructive manner. This approach can in the long-term remain politically credible and sustainable only if it leads to a tangible improvement in the human rights situation on the ground." Hanes, 2004, p.2. By opening a real dialogue with North Korea, the U.S. will soften the tension between the U.S. and North Korea. Tension relief in the Korean Peninsula will bring about a reduction of domestic oppression and accelerate the economic reforms and open door policy in North Korea.
- **Measure 2:** The U.S. Government may increase humanitarian assistance and allow other countries and inter-governmental organizations to offer more economic aid to North Korea. These actions will be interpreted by the North Korean authorities as a signal of reconciliation. What is more, humanitarian assistance and economic aids are by themselves the beginning of human rights improvement. If they result in economic restoration and development, the U.S. Government can fulfill "the duty to co-operate with each other in ensuring development and eliminating obstacles to development (Declaration on the Right to Development, Article 3, Section 3). "
- **Measure 3:** The U.S. Government should accept the concept of 'division of roles' and permit international human rights actors to do their jobs. Humanitarian assistance, technical assistance and advise of U.N.C.H.R., naming and shaming by human rights groups, financial and technical support for economic development, and diverse public diplomacy tools will change the North Korean society bit by bit, until it will completely comply with international human rights norms.

38. If the U.S. Government is, first of all, preoccupied with resolving security

problems caused by North Korea and wants to leave aside human rights issues, they should read a criticism of H. Smith as follows:

By introducing policy initiatives based on ostensibly humanitarian principles but designed to be rejected by Pyongyang, combined with security demands that would in effect mean a voluntary dismantling of what North Korea considers is its only negotiating card, the U.S. administration is able to avoid negotiation while appearing to act in good faith. ... Unfortunately, the idea that the use of coercion instead of persuasion, and rhetoric rather than reality, will bring security to the Korean Peninsula is mistaken. Smith, 2004, p.45.

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Korea National Strategy Institute

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