

## Activities of the UN Human Rights Council and Their Impact on the Human Rights Issues in North Korea

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### Introduction

The 31<sup>st</sup> Regular Session of the UN Human Rights Council is scheduled to be held from February 29 to March 24, 2016 in Geneva. The Council, composed of 47 elected UN member states, is the most active body within the UN human rights system, promoting and protecting human rights around the world. The most important function of the Council is to discuss and make major decisions on human rights situations around the world in its 10 week regular session. This year marks the 10th anniversary of the Council, which replaced the UN Commission on Human Rights under the Economic and Social Council in 2006.

The purpose of this brief is to introduce important aspects of the Council's activities, with a particular focus on peace and security in the East Asian region. Human rights issues in the region so far have been understood as an important but secondary issue when considering international relations in East Asia. However, human rights issues are becoming more and more important and thus this briefing will focus on two issues that are highly relevant to us who are living on the Korean peninsula: (1) the human rights situation in the Democratic People's Republic of Korea (DPRK) and (2) tensions between China and Western countries over human rights.

Over the last ten years, the Council has initiated new mechanisms to further implement international standards of human rights effectively. Two mecha-

nisms are important in order to understand the current activities of the Council – the Universal Periodic Review (UPR) process and the Commissions of Inquiry (CoIs). Since 2006, the Council's political process is centered on two new mechanisms and the political dynamics and fault line between countries will also be created around these mechanisms at the upcoming 31<sup>st</sup> Session.

First, since 2006 the Council has followed the UPR process where all the UN member states are obliged to go through the review process of their human rights records. The Council previously had several mechanisms to monitor and promote human rights such as the Special Procedures and self-reports made by the member states and sent to the Treaty Monitoring Bodies. However, these procedures had the critical limitations of being selective because either the Council selectively chose target countries to

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monitor or special obligations to self-report were selectively applied only to the State Parties to specific international human rights conventions. The UPR process is the first human rights mechanism that ensures every UN member state should be equally represented and scrutinized over its human rights situation every four years. The first cycle of the UPR started in 2008 and ended in 2015 and the second cycle started in 2012 and is scheduled to end in 2016.

Second, the CoIs are another mechanisms that have been actively used by the Council in order to conduct international and impartial inquiries on alleged human rights violations. So far nine such commissions were created to investigate serious human rights violations in Darfur (2004), East Timor (2006), Gaza (2009), Libya (2011), Syria (2013), North Korea (2013), Eritrea (2014), and Sri Lanka (2014), and again in Gaza in 2014. The CoIs are an enhanced investigation process when compared to a similar process, the Special Procedure, which is a mechanism designed to address either a specific country's human rights situation or thematic issues such as freedom of religion or human trafficking. The Council currently has 14 country mandates and 41 thematic mandates under the Special Procedure where investigations are conducted by individual experts called Special Rapporteurs, or a group of experts called a Working Group. Compared to these measures, the CoIs usually have more personnel and budget, and thus more commitment from the Council members.

### **Human Rights Situation in the Democratic People's Republic of Korea**

In February 2014, the CoI on Human Rights in the DPRK released its 372-page final report after an investigation of about one year under the leadership of Commissioner Michael Kirby. The Commission was the first to be established by a consensus of the Council members in March 2013. The very fact that the

commission was created without a vote is a highly significant indicator of international consensus over the seriousness of the North Korean human rights issue. The Commission confirmed that systemic, widespread, and gross human rights violations have been and are being committed by North Korea and further found that the violations of human rights constitutes crimes against humanity.<sup>1</sup> The most controversial issue was the commission's recommendations which urged the international community to accept its responsibility to protect the people of North Korea and, more specifically, urged the U.N. to hold those responsible for crimes accountable using either a Security Council referral to the International Criminal Court (ICC) or the creation of an ad hoc tribunal like the International Criminal Tribunal for the former Yugoslavia (ICTY) or Rwanda (ICTR).

In April 2014, the Security Council, albeit with the absence of two veto powers – China and Russia, had an informal and confidential gathering, called an “Arria-Formula” meeting, to hear the Commission's findings and recommendations. This meeting eventually led to the official briefing of the issue at the Security Council in December 2014. The meeting was the first time the Security Council involved itself in the North Korean human rights issue. Up to that point the Security Council had only concentrated on North Korea's nuclear weapons program and missile activities asserting they are a threat to peace and security. It was the first step towards weaving human rights crimes committed by the North Korean government into peace and security issues. With this first step, human rights in North Korea, which have previously been addressed in the UN Human Rights Council and the General Assembly, are now firmly on the international agenda. Putting the North Korean human rights issue on the international agenda is in and of itself important, regardless of whether the Security Council can eventually refer North Korea to the ICC or create an ad hoc international court.

During the 30<sup>th</sup> Session of the Council, under the



agenda item 4 (Human rights situations that require the Council's attention), the issue of human rights issues in North Korea was discussed. This was a continuance of the CoI investigation and the subsequent resolutions such as Resolution 25/25 for consideration of the recommendation of the COI and Resolution 69/188 submitting the report of the CoI to the Security Council. During the 30<sup>th</sup> Session the focus and objectives of the panel discussion were to raise further awareness and understanding of the human rights situation in North Korea and propose strategies for action, including action on international abductions, disappearances, and other related matters.<sup>2</sup> In response to this panel discussion, the permanent representative of the DPRK to the UN Office at Geneva addressed the President of the Council arguing that the panel discussion is "the attempt of the U.S. and other forces hostile to the DPRK to kick off again an anti-DPRK racket on the UN human rights arena over its non-existent human rights issue."<sup>3</sup>

Furthermore, they regarded the COI report as fabricated and asserted that the testimonies taken from defectors were false and that these defectors were "human scum who deserted after being involved in such crimes as theft, rape of girls under age, abduction of children and flesh traffic."<sup>4</sup> Furthermore, North Korea regarded this panelist discussion as a "move to bring down the most advantageous socialist system of the DPRK, the life of its people and the cradle of their happiness" and that North Korea will counter the moves of the United States and other hostile forces.<sup>5</sup> Previously, North Korea even launched a personal and disgraceful attack against Commissioner Michael Kirby. This response from North Korea is a regression from previous cooperative responses immediately before the institution of the CoI. For example, in 2009, North Korea submitted a report to the UPR and the Council issued a report with 167 recommendations, none of which North Korea accepted. However, in the second round of the Universal Periodic Review process in 2013, North Korea made the conciliatory ges-

ture of agreeing to consider 185 out of 268 recommendations forwarded by the Council. The UPR process, separated from the COI process, will be further pursued in the future and it will be interesting to see whether North Korea will maintain its two-track approach, separating their response toward the UPR and against the CoI follow-up process.

In 2016, the human rights situation in North Korea is likely to be a focus of the Council's discussion for three reasons. First, North Korea became a center of international media focus immediately after its nuclear test, which was alleged to be hydrogen bomb test, in January and long-range missile launch, alleged to be a satellite launch, in February 2016. The United States, Japan, and South Korea are pushing for a stronger Security Council resolution authorizing stronger sanctions against North Korea and it is highly likely that these countries will try to link human rights concerns with security issues. It is expected that a stricter resolution drafted by the United States is about to be passed in the Security Council, with a support of China. International advocacy against North Korea has already gained significant momentum through symbolic events such as the release of the CoI report and the official meeting of the Security Council. It is probable that the current security situation will bring more focus on human rights in North Korea. Importantly, Ambassador Kyong-lim Choi, who has been serving as the Permanent Representative of the Republic of Korea to the UN Office at Geneva was elected as president of the Council for 2016 and this also will enhance the visibility of North Korean issues in the Council. Certainly, there is a complexity in the relationship between North and South mainly because North Korea human rights in South Korea also causes deep division between the conservative and progressive political groups. However, this division, at least in the Council, is not going to be a critical concern since the current Park government is currently determined to pressure North Korea at the UN, even officially questioning the UN membership of North Korea this month.



Second, since the release of the report of the CoI in 2013, there have been ongoing efforts to ratchet up pressure on North Korea and this tendency will continue in 2016. Already two reports on North Korea are on the table for the 31<sup>st</sup> Session of the Council: (1) Report of the Office of the High Commissioner for Human Rights on its role and achievements, including a report on the field-based structure established to strengthen the monitoring and documentation of the situation of human rights in the Democratic People's Republic of Korea and (2) Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea. In the second report, Special Rapporteur Marzuki Darusman called on the Council to "arrange to have an official communication addressed to the Supreme Leader of the Democratic People's Republic of Korea to advise him and other senior leaders that they may be investigated and, if found to be responsible, held accountable for crimes against humanity committed under their leadership."<sup>6</sup> Special Rapporteur in February 2016 had a press conference and already released his findings so that the issue can be discussed in the 31<sup>st</sup> Session and can lead to a stronger Council resolution.

Third, new claims of human rights violations were recently raised against North Korea. For decades, workers have been sent abroad to earn foreign currency and live under strict government surveillance. Both male and female workers have been sent to Russia, Myanmar, Cambodia, Fiji, and countries in the Middle East and Africa and most of their wages have been confiscated by the government. Detailed testimony from workers, NGO reports, and news reports have been released in 2015 and private groups and activists have been making claims to the Council on this issue. In October 2015, Special Rapporteur Darusman also expressed deep concern about the issue and made an official announcement on these new types of human rights violations committed by North Korea. Certainly whether the pressure on North Korea with regard to the new types of human rights violation

will continue is another question. It is mainly because the current Special Rapporteur Darusman's tenure will end and the new Special Rapporteur is expected to be appointed by the Council. However, new types of human rights violations are consistently reported and documented by NGOs and the South Korean government, thus it is highly likely that the discussion on human rights situations in North Korea will continue in 2016.

### **Tension between China and Western Countries over Human Rights**

However, the discussion and implementation of human rights in North Korea also depends on the political situation between major players in world politics. Among many fault lines between Council member states, the most visible divide is between China and western countries over the implementation of human rights. This struggle is often placed in the middle of the UPR process and it was observable through expressed recommendations in the process. For example, in light of the periodic review of the United States in the 30<sup>th</sup> Session last year, China "highlighted the deep-rooted human rights problems of the United States."<sup>7</sup> China had several recommendations for United States to carry out. China recommended that United States ratify the International Economic, Social and Cultural Rights, the Convention on the Elimination of All forms of Discrimination against Women, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities."<sup>8</sup>

Furthermore, China recommended that United States "correctly address the root causes of racial discrimination and eliminate the frequently occurred excessive use of force by law enforcement against of African Americans and other ethnic minorities"; "fully disclose the abuse of torture by its Intelligence Agency, ensure the accountability of the persons responsible, and agree to unrestricted visit by the Special Rapporteur."



teur on torture and other cruel, inhuman or degrading treatment or punishment to Guantanamo facilities”; “stop massive surveillance activities both inside and outside its territory to avoid violating the right to privacy of its citizens and those of other countries” and “respect indigenous peoples and ethnic minorities rights and interests; fully consult with them on their land, autonomy, environment, language and other issues; correct the historical injustice and offer compensation.”<sup>9</sup>

Some human rights scholars such as Hopgood assert that in the realm of human rights, “great power politics” will return. The current contestation around cultural relativism and the generations of rights can be simultaneously demonstrated by the case of the Chinese government’s recent counterattack to U.S. human rights reports whereby the Chinese issued their version of a human rights report on the U.S. The Chinese government has released annual Human Rights Record of the United States reports since 2005 in response to criticism from the U.S. The Chinese reports state that the U.S. State Department reports are “full of distortions and accusations of the human rights situation in more than 190 countries and regions including China. However, the United States turned a blind eye to its own terrible human rights situation and seldom mentioned it. The Human Rights Record of the United States in 2010 is prepared to urge the United States to face up to its own human rights issues.”<sup>10</sup> In this debate, the fault line is not only between the civil and political rights emphasized by the United States and the economic rights by the Chinese government, but also between how the standards for human rights should be implemented in countries with different cultural traditions.

Since the United States’ membership to the Council expired in 2015, there will be no direct clash between China and the United States in the 31<sup>st</sup> Session. However, similar tensions will reappear between China and European Union countries over the UPR process and the discussion of the human rights situa-

tion in North Korea. China has already objected to the activity of the CoI arguing that any country-specific investigation is simply another form of criticism and suggested that issues concerning North Korean human rights should be solved “through dialogue on an equal footing.” But the Chinese government will have to go beyond the simple assertion that, “submitting this report to the ICC will not help resolve the human rights situation.” Whether China will come up with a better and more viable alternative is another important issue in the 31<sup>st</sup> Session of the Council. However, based on how China reacted so far to the North Korean nuclear test and a missile launch, the prospect is not so bright.

## Conclusion

International human rights as an ideal that humanity has pursued since the Universal Declaration of Human Rights was drafted is now at the crossroad with the 10<sup>th</sup> anniversary of the Council in 2016. Since the creation of the Council, new effective measures – although limited in some ways – have been used for decades. Whether this new mechanisms will be effective against North Korea is an important issue for the 31<sup>st</sup> Session of the Council. The issue itself is located within highly sensitive international relations between North and South Korea, between North Korea and the U.S., and between North Korea and Japan. Recently, two layers of complexity have been overlaid such as the revived power politics between China and the West and the intensive relations between South Korea and China over the deployment of the U.S. missile defense system. Whether the North Korean human rights issue will be heavily influenced by these power dynamics or the issue will be have its own dynamic and further impact over power politics in return is going to be an important issue in the 31<sup>st</sup> Session of the Council. ■



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## Notes

<sup>1</sup> United Nations Human Rights Council. 2014. Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea UN Doc A/HRC/25/CRP.1.

<sup>2</sup> Panel Discussion on the on the situation of human rights in the Democratic People's Republic of Korea, including the issue of international abductions, enforced disappearances and related matters note of DPRK, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/30RegularSession.aspx> (Accessed on 16 February 2016.)

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> United Nations Human Rights Council. 2016. Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea. A/HRC/31/70.

<sup>7</sup> United Nations Human Rights Council. 2015. Report of the Working Group on the Universal Periodic Review – United States of America. A/HRC/30/12.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ningzhu Zhu, 'China Hits Back with Report on U.S. Human Rights Record'. *Xinhua*, April 21, 2013.

