

Tying Human Rights to U.S.-DPRK-ROK Negotiations

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Abstract

For over three decades, the United States and the international community has been attempting to engage North Korea diplomatically, aiming for the complete, verifiable, irreversible denuclearization of North Korea. The Kim family regime has been committing crimes against humanity, but human rights concerns have been discounted by U.S. and other negotiators, fearing they would be an obstacle to a negotiated solution to the grave military and security challenges Pyongyang poses. North Korea has breached each and every one of the international obligations it has assumed, from membership in the Treaty of Non-Proliferation of Nuclear Weapons to the 1994 Geneva Agreed Framework to the Six Party Talks to the 2012 Leap Day Agreement. While its negotiating counterparts have neglected human rights concerns in multilateral and bilateral talks, North Korea has continued to develop and test its nuclear and ballistic missile programs. It is time for a new paradigm, that brings human rights into the conversation, in a bilateral or multilateral setting.

Keywords: Human rights; Kim regime; North Korean human rights violations; UN Universal Declaration of Human Rights; UN COI; ICCPR; ICESCR; CRC; CEDAW; CRPD; North Korea at the UN; North Korea sanctions; BATNA; ZOPA; refusenik; Jackson-Vanik Amendment; Moon Jae-in; CVID; FFVD; Ten Principles of Monolithic Ideology; TPMI; North Korea human rights denial; U.S. Special Envoy; North Korea negotiation; North Korea appeasement; North Korean security and human rights; nuclear weapons and human rights; nukes and human rights; missiles and human rights.

North Korea, an Unreliable Negotiating Counterpart

Collective security, human rights, justice, and respect for obligations assumed under international treaties have been the fundamental ingredients of the international system established after World War II. After all, “we the peoples of the United Nations determined to save succeeding generations from the scourge of war [...], to reaffirm faith in

fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom.”¹

Yet, for nearly 30 years, difficult political, security, and military issues, in particular nuclear weapons and missiles, have outcompeted crimes against humanity and other egregious human rights violations in negotiations with North Korea. The results of those negotiations have been underwhelming, to say the least. The North Korean regime has breached each and every international agreement it has entered, from the Geneva Agreed Framework of 1994 to the Six Party Talks and the February 2012 Leap Day Agreement. North Korea joined the Nuclear Non-Proliferation Treaty (NPT) in 1985, only to develop a clandestine nuclear program, declare itself a nuclear state and withdraw from the NPT.² Only by including human rights violations in the mix does one understand the gravity of a potential North Korean precedent. If a “peace declaration,” a “peace treaty” or any other form of unconditional surrender to the Kim regime grants North Korea *de facto* or even *de jure* status as a nuclear weapons state, this would create a dangerous, potentially catastrophic precedent for the world order or rather disorder in the 21st century. The signal sent to despots all around the world would be: Treat your people like dirt, trample on their human rights. You will get away with anything for as long as you successfully develop nuclear weapons and other weapons of mass destruction (WMDs). The United States will eventually lose patience and blink. All you have to do is to obstinately develop and hold on to your nukes, missiles and other WMDs.

Arguably, under the Biden administration, there is hope. The administration has signaled that shared values, including respect for human rights, will constitute a pillar of U.S. foreign policy. The administration has also identified multilateralism as the other pillar of its foreign policy. On the other hand, the Biden administration, just like the Trump administration before, has not appointed a U.S. Special Envoy on North Korean human rights issues. Against this background, can human rights be incorporated in bilateral or multilateral diplomacy with North Korea?

“Getting to Yes” versus the North Korean Zero-Sum Game

Negotiating with North Korea has been “mission impossible” because the Kim regime’s fundamental strategic objective continues to be survival. The Kim regime regards its nuclear arsenal as essential in executing that objective. While the 1994 Geneva Agreed Framework may have temporarily given the impression of getting closer to “yes,” the Kim regime had no intention to abide by its obligations and proceeded with developing a clandestine uranium enrichment program in blatant violation of the spirit and letter of the agreement. The United States, like-minded UN member states, the international community, and relevant UN agencies have been keen on accomplishing complete, verifiable, irreversible denuclearization (CVID) or full, final, verifiable denuclearization (FFVD) of North Korea. The Kim regime has demanded the denuclearization of the entire Korean peninsula. Of course, U.S. tactical nuclear weapons, which once “peaked at about 680 in the 1970s,” were withdrawn from South Korea in 1991-1992.³ Just to restate the obvious, what the Kim regime implies through “denuclearization of the entire Korean peninsula” is withdrawal of USFK, the dismantling of the U.S.-ROK alliance, and the removal of South Korea from the protection of the U.S. nuclear umbrella. This would be a critical step toward achieving its ultimate strategic goal, reunification of the two Koreas on North Korean terms. As preposterous as that may sound, the Kim regime has not given up on that fundamental strategic goal. Keen on its own survival, the Kim regime has ensured there is no domestic political competition. However, a competitor continues to exist. And that competitor is free, democratic, prosperous, economic powerhouse South Korea. For as long as South Korea continues to exist as such, it will pose an existential challenge to the Kim regime. What is the fundamental negotiating objective of the Kim regime? What can be offered in exchange for its nuclear program and arsenal? The likely answer is: South Korea, the Kim regime’s sole competitor.

In dealing with North Korea, U.S. and other negotiators may be keen on moving from “positional negotiation” to “principled negotiation” by identifying the zone of possible agreement (ZOPA) or the best alternative to a negotiated deal (BATNA).⁴ The North Korean approach has been a zero-sum game focused on extracting maximum gains from merely sitting at the negotiating table. “The North Koreans pursue every tactic in the book and they are especially adept at brinkmanship. They have a reputation for being hard nosed, unyielding, and uncompromising. By

simply refusing to come to terms, they force tensions to a breaking point, leaving their cliff-hanging opponents biting their nails.”⁵ Unlike its opponents, North Korea does not engage in negotiations to reach an agreement, but to extract maximum concessions.⁶ Despite bringing very little to the negotiating table, North Korea “has consistently won benefits that strengthen the regime’s control and improve its military capabilities.”⁷

The International Community’s Response to Human Rights Abuses in North Korea

Aware of the danger of seeing human rights relegated to the status of second tier issue, “human rights supporters worry that any accommodation with Pyongyang would condemn most North Koreans to continued suffering under a totalitarian dictatorship.”⁸ Although human rights have often been sacrificed on the altar of talks on North Korean nukes and missiles, this doesn’t take away from the gravity of the human rights violations the Kim regime has been committing for 74 years. Human rights violations are not a byproduct of the Kim regime’s *modus operandi*. Rather, such violations are at the very core of the regime’s survival toolkit, together with nukes and missiles. In order to preserve itself, the Kim regime oppresses and exploits its people at home and abroad. “The Kim regime’s poor treatment of its people is a key element of its governing style. [...] Just as a democracy cannot exist without free elections, a dictatorship cannot exist without political oppression.”⁹

North Korean human rights violations have been condemned by UN agencies, governments, and civil society worldwide. The role of civil society organizations (CSOs) has been particularly important. In the case of North Korean human rights, CSOs such as the Washington, D.C.-based Committee for Human Rights in North Korea and the Seoul-based Citizens Alliance for North Korean Human Rights as well as international CSO networks such as the Seoul-headquartered International Coalition to Stop Crimes against Humanity in North Korea (ICNK) have played a critical role in exposing North Korean human rights violations as well as supporting the creation and investigation of the UN Commission of Inquiry (UN COI). CSOs continue to put pressure on governments and UN agencies to advance relevant action on North Korean human rights. National and transnational advocacy networks “strategically wield resources and influence to transcend their material disadvantage vis-à-vis states” and promote their agenda and mission.¹⁰

A February 2014 report by the UN Commission of Inquiry (UN COI) found that crimes against humanity are being committed in North Korea, pursuant to policies established at the highest level of the state.¹¹ The UN General Assembly has passed strong annual resolutions on North Korean human rights from 2014 to 2021. North Korean human rights were placed on the agenda of the UN Security Council three times in December 2015, 2016, and 2017. These efforts to come up with relevant measures on North Korean human rights at the UN were driven primarily by a coalition of the like-minded, including the United States, the European Union, South Korea, Japan, Australia, New Zealand and other UN member states.

After the UN COI, North Korea organized so-called human rights briefings. Its foreign minister was dispatched twice—the first time in 15 years of not having spoken before the General Assembly. Therefore, this regime does care about its legitimacy. Every time its human rights record is brought up before the General Assembly or the Human Rights Council or by international civil society organizations (CSOs), this, in addition to addressing an extraordinary legal, political, moral, and ethical issue, also undermines the legitimacy of the Kim regime as a political entity. UN agency-driven, UN member state-driven, and CSO-driven efforts to address the North Korean human rights situation within a multilateral context are extraordinarily important and must continue. The Kim regime has reacted, and it will continue to do so.

In February 2016, the “North Korea Sanctions and Policy Enhancement Act of 2016” became U.S. law, including the first sanctions ever to address North Korean human rights. In order to enact effective policies to sanction individuals and organizations committing human rights violations, to halt economic activity and weapons development that both generate and rely on human rights violations, to conduct effective information campaigns, to end North Korea’s human rights violations, and to prepare for transitional justice and the protection of the most vulnerable victims in case of dramatic political change, U.S. policymakers must understand the main components and sub-components of the mechanism that generates, transmits, and transgresses North Korea’s policy of human rights denial. “Simply put, the Kim regime is built on the violation of human rights – and not only the right to individual liberties but also the right to food, work, and safety.”¹² If negotiations on nukes and ballistic missiles are to stand a chance, the United States and the Republic of Korea must endeavor to undermine and dismantle North Korea’s mechanism of human rights denial. By doing so, the USA and the ROK, fellow

democracies, friends, allies, and partners, would undermine the regime's very negotiating position. Furthermore, a negotiating approach factoring in human rights would "create value" for the most important stakeholders, i.e. the oppressed people of North Korea. The rhetoric of a negotiating approach cognizant of human rights would have to be carefully crafted. Based on the experience of former top U.S. negotiators with North Korea, overly aggressive U.S. rhetoric is counterproductive.¹³ The focus should be on international obligations North Korea has assumed by becoming a UN member state in 1991 and also by acceding to the International Covenant on Civil and Political Rights (ICCPR) in 1981, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1981, the Convention on the Rights of the Child (CRC) in 1990, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2001, and the Convention on the Rights of Persons with Disabilities (CRPD) in 2016. Through its own constitution and through such assumed international obligations, the DPRK regime is bound to observe internationally accepted human rights standards. However, "North Korea is a society of many laws rather than a society of law as liberal democracies define it."¹⁴ All the people of North Korea know, through their compulsory ideology training sessions and self-criticism *saenghwal-chonghwa*, is the *Ten Principles of Monolithic Ideology*. "Every North Korean, with no exception, is required to memorize the TPMI and comply with the demands of those principles, which focus on loyalty to the Supreme Leader."¹⁵

The Ten Principles, solely dedicated to maintaining the Kim regime in power, are:¹⁶

1. Struggle with all your life to paint the entire society with the one color of the Great Leader Kim Il-sung's revolutionary thought.
2. Respect and revere highly and with loyalty the Great Leader Kim Il-sung.
3. Make absolute the authority of the Great Leader Kim Il-sung.
4. Accept the Great Leader Kim Il-sung's revolutionary thought as your belief and take the Great Leader's instructions as your creed.

5. Observe absolutely the principle of unconditional execution in carrying out the instructions of the Great Leader Kim Il-sung.
6. Rally the unity of ideological intellect and revolutionary solidarity around the Great Leader Kim Il-sung.
7. Learn from the Great Leader Kim Il-sung and master communist dignity, the methods of revolutionary projects, and the people's work styles.
8. Preserve dearly the political life the Great Leader Kim Il-sung has bestowed upon you, and repay loyally for the Great Leader's boundless political trust and considerations with high political awareness and skill.
9. Establish a strong organizational discipline so that the entire Party, the entire people, and the entire military will operate uniformly under the sole leadership of the Great Leader Kim Il-sung.
10. The great revolutionary accomplishments pioneered by the Great Leader Kim Il-sung must be succeeded and perfected by hereditary successions until the end.

The Status of North Korean Human Rights in South Korea

The “coalition of the like-minded” mentioned above needs all of its members in order to stay effective and relevant. Regrettably, under the current government of President Moon Jae-in, South Korea has given up the high ground it once held on North Korean human rights at the UN. For the sake of appeasing the Kim regime, or to avoid “provoking” it, South Korea has generally stayed away from bringing up human rights issues in a bilateral ROK-DPRK context. In U.S.-ROK bilateral interactions, the U.S. may consider encouraging South Korea to return to the “coalition,” especially since there are grave unresolved human rights issues involving South Korean citizens, such as the ROK POW issue and the South Korean hostages still being held in North Korea, most of them Christian missionaries. Naturally, the resuscitation of the “coalition of the like minded” will also take U.S. leadership on the North Korean human rights issue, hopefully reflected in the appointment and confirmation of a U.S. special envoy for North Korean human rights issue, a position that hasn't been filled since January 2017.

There is only one true competitor to the Kim regime in North Korea, and that is the free, prosperous, and democratic Republic of Korea. In 2014, a UN human rights office was established in Seoul in order to document the abuses committed by the North Korean regime. Although South Korea's North Korean Human Rights Act took longer to jump over the hurdles in the National Assembly, it was finally passed on March 3, 2016 and the North Korean Human Rights Foundation was established to support human rights organizations focused on the human rights abuses perpetrated by the Kim regime.

However, the situation changed drastically with the new President Moon Jae-in's government, which came to power on May 10, 2017. Under the current administration with its prioritization of the policy of engagement, South Korea no longer co-sponsors UN resolutions on North Korean human rights. Human rights groups in South Korea have been under tremendous pressure. Ninety percent of South Korean government funding of North Korean human rights groups has been cut. This is a catastrophic cut in essential funds. Under past administrations keen on engagement with North Korea, funding was never cut to this extent. Faced with drastic financial pressures, most organizations had to either close their doors or reach out to the United States for assistance. In the end, even the North Korean Human Rights Foundation was closed in 2018, actually before even having had a chance to fulfil any part of its mission.

Even South Korean state-supported media agencies no longer feature North Korean escapee voices on human rights. As a result, prominent escapee voices have been muffled and many are struggling to make ends meet. The balloon launches and bottles cast up the West Coast carrying information from South Korea to North Korea have nearly all stopped because of police raids reportedly initiated by pressure from the Moon government. North Korean escapees have feared the loss of their ROK government-provided security to prevent assassination attempts. New escapees who did not want to be publicly acknowledged have faced harassment by reporters and lawyers as soon as they land in South Korea. The list of concerns continues.

On April 9, 2018, a coalition of 40 international NGOs co-signed a letter to ROK President Moon Jae-in. The letter addressed five concerns: 1) acting on UN human rights recommendations; 2) including human rights in inter-Korean engagement; 3) expanding upon the scope of the urge for meetings reuniting involuntarily separated families and

abductions; and 4) including international or domestic humanitarian aid that complies with proper international monitoring standards.

Then, in November 2019, for the first time since the armistice that ended the Korean War in 1953, South Korea deported two North Koreans back to North Korea. The two men were captured on November 2, 2019 and forcibly repatriated to North Korea on November 7, 2019. The Moon administration claimed that the men were murderers. However, they were not given the opportunity of a fair judicial process and deported less than a week later. On December 16, 2019, a coalition of 67 international NGOs addressed another letter to President Moon. The letter pointed to the lack of action on any human rights resolutions at the UN as well as the deportation of the two fishermen. However, the Moon administration has yet to provide a response.

With this extent of pressure on North Korean human rights groups and the complete deterioration of North Korean human rights priorities in South Korea, the onus is on North Korean escapees who are able to subjugate the pressure to stay silent as well as CSOs based in the United States and other like-minded states to continue to pressure the North Korean regime to comply with universal human rights standards and norms. Despite the struggle to keep human rights as part of the conversation in South Korea, two North Korean escapees have overcome adversity to become National Assemblymen, Ji Seong-ho and Tae Yong-ho. Despite their efforts, under the Moon government, South Korea no longer acts as a member of the “coalition of like-minded states” that have been so instrumental in promoting relevant action on North Korean human rights at the UN.

The Human Rights-Security Nexus and the Applicable Precedent

In January 2015, a group of scholars and senior officials representing the Brookings Institution, the National Endowment for Democracy, Stanford University, the Open Society Foundation, the Mansfield Foundation, the Korea Society and the Council on Foreign Relations addressed a memorandum to the director of the U.S. State Department’s policy planning department. The co-signers noted South Korea’s proposal to establish a Northeast Asia Peace and Cooperation Initiative (NAPCI), an initiative that had incorporated several lessons from the European experience during the Cold War. The memorandum pointed out that “the most important of those lessons is the necessity to pursue collective defense by preserving security alliances *in tandem with* creating and

institutionalizing a cooperative security mechanism on functional issues.” The co-signers emphasized that this was the approach that the United States adopted through simultaneous support of both NATO and the Conference on Security and Cooperation in Europe (CSCE). Noting the post-UN COI increased willingness to condemn North Korea’s human rights record, as reflected in UN General Assembly votes, the co-signers also recommended the establishment of a multilateral dialogue on human rights and humanitarian issues in Northeast Asia by adapting the model provided by the Helsinki Final Act and the CSCE. While the NAPCI initiative was linked to South Korea’s previous president and is now defunct, similar initiatives could encompass multilateral dialogue on human rights and humanitarian issues in Northeast Asia, including North Korea, based on the model of the Helsinki Final Act and the CSCE.

Quite often “...Leaders may put human rights as a lower priority, for pragmatic reasons. Raising concerns about human rights can complicate negotiations and jeopardize the prospects of a nuclear deal. This approach means leaders sideline human rights to be discussed at a later stage, or as a separate issue.”¹⁷

While North Korean human rights have been often outcompeted by nukes and missiles, there are numerous examples of statements by U.S. officials, highlighting the human rights-security nexus. For example, in a speech at a Human Rights First Summit in 2013, Susan Rice, former U.S. National Security Advisor, said, “[R]espect for human rights is central to our foreign policy. It’s what our history and our values demand, but it’s also profoundly in our interests.” Glyn Davies, former Special Representative for North Korea Policy, stated before the Senate in 2013 that “U.S.-DPRK relations cannot fundamentally improve without sustained improvement in inter-Korean relations and human rights.” And upon the release of the State Department’s 2014 annual country reports on human rights, former Secretary of State John Kerry highlighted that North Korea’s status as one of the highest national security concerns was undoubtedly linked to North Korea’s “wholesale torture and crimes against humanity” of its people. In August 2013, Secretary Kerry voiced strong condemnation of “the utter, grotesque cruelty of North Korea’s system of labor camps and executions,” and said these “gulags should be shut down—not tomorrow, not next week, but now.”¹⁸

“Which is more important: Peace or human rights? Must we choose, or can each of these values strengthen the

other? Decades of negotiations between the USSR and Western democracies showed that greater security and deeper respect for human rights could produce a positive synergy.”¹⁹

Neglecting human rights concerns as a “reward” for North Korea’s returning to the negotiating table has not worked for decades, and should no longer be an option. Discussions over strategic and nuclear issues with other governments have not precluded paying attention to human rights concerns, as evidenced by the Helsinki Process involving the former Soviet Union. Building on such precedents, U.S.-ROK-DPRK interaction and other diplomatic efforts could include a human rights component.²⁰ After all, despite refusing to acknowledge its abysmal human rights record, North Korea recognizes that it can reap gains by agreeing to some human rights demands. The release of American prisoners and previous negotiations on the POW/MIA remains issue constitute such examples.²¹ Keeping the moral, ethical, and international legal high ground is essential for maintaining U.S. international legitimacy as a superpower and for safeguarding U.S. national interests.

In 1977, the CIA Directorate of Intelligence studied the impact of the U.S. stand on human rights under the Carter Administration.²² The memorandum determined that human rights improvements have occurred with regimes that are:

1. Anxious to preserve cooperative relations with the U.S.
2. Not publicly challenged or specifically prodded by Washington
3. Relatively confident about its internal security situation

The Kim regime will never regard human rights favorably and will likely continue to implement its deliberate policy of human rights denial. North Korea’s overwhelming apparatus of coercion, control, surveillance and punishment has ensured that dissidence has been dismal or inexistent. For the past two years, under the pretext of COVID prevention, the Kim regime has been cracking down hard on information from the outside world, border crossing and the informal markets that have provided a survival mechanism to North Koreans since the great famine of the 1990s. These restrictions have degraded the already precarious status of human security in North Korea. The Kim regime focuses all available resources

on its survival. That said, if the increasing economic insecurity begins to affect its prospects for survival, it may provide the regime with an incentive an incentive for diplomatic engagement. Under such circumstances, humanitarian aid should be linked to human rights. Humanitarian assistance should reach the most vulnerable, including women, children, and people in detention. Any negotiating overtures should rely on a “human rights up front approach,” factoring in both humanitarian and human rights concerns and focusing on the need for transparency and access inside the country.

The Kim regime needs hard currency in order to produce its nuclear weapons and ballistic missiles and to keep its key elites happy, tasks which it regards as critical to preserving its grip on power. The regime extracts that currency through a variety of means, especially through oppressing and exploiting its own people at home and abroad. Typically, it supplements foreign aid (mainly from China) with money earned by and through its people who operate as forced laborers. This means, then, that the United States is in a superior negotiating position and North Korea should not be able to completely and effectively push human rights off the negotiating table if the U.S. integrates human rights into the security agenda.

Two examples of human rights integration within U.S. security concerns may provide a good precedent.

Helsinki Process (Basket III)

The Helsinki Accords, or Helsinki Final Act, was the final document resulting from the Conference for Security and Co-operation in Europe (CSCE). The main purpose of the Accords was to reduce tensions between the Western and Soviet blocs, mostly by seeking mutual acceptance of the post-World War II world order. The agreement, signed by the United States, Canada, and 35 European nations, recognized new national borders in Europe and adopted ten major points, including agreement to respect and safeguard human rights.

Critics of the Helsinki Accords noted that the agreement legitimized the Soviet Union’s annexation of the Baltic States while allowing it to ignore the human rights provisions stipulated in the agreement. However, all signatory countries published the Accords. Ultimately, they were seen as a catalyst for the sweeping political changes, dissident movements, and calls for increased human rights that took place in Eastern Europe ten years

later. And, of course, the Baltic States obtained their independence and joined NATO after the collapse of the Soviet Union in 1991.

Naturally, given the historic record, North Korea will regard a multilateral approach modeled on the Helsinki Accords as a covert strategy for regime change. That said, the magnitude of the North Korea issue today is different from that of the threat posed by the Soviet Union in the 1970s. The Soviet threat was the main U.S. foreign policy concern then. Currently, while the North Korean nuclear threat is a serious threat to U.S. national security, it is just one of several foreign policy issues that the United States faces today, with Ukraine and Taiwan looming large.

Moreover, in the 1970s, monitoring groups were established across the Eastern Bloc, in order to ensure compliance with human rights obligations and improvements the USSR had pledged. In sharp contrast, North Korea has shown no willingness to provide transparency, or to allow monitoring and evaluation on par with internationally accepted standards.

Prior to the Helsinki process, two Soviet dissidents and Nobel Prize winners adopted diametrically opposite approaches. Aleksandr I. Solzhenitsyn was against such process, as, he thought, a regime that oppressed its own people could not be trusted, in particular in contacts and exchanges with foreign nationals and entities.²³ In sharp contrast to Solzhenitsyn, Andrei D. Sakharov considered that the Soviet Union could be a “responsible and responsive partner in negotiations to control the arms race.”²⁴ Testifying before the CSCE, National Endowment for Democracies President Carl Gershman, advocated using the Helsinki Process as a model in crises in East Asia, stating, “[T]he ‘Sakharov doctrine’ regarding ‘the indivisibility of human rights and international security’ has universal relevance and should not be abandoned, even if it has to be adapted to the circumstances of the region.”²⁵ For example, the Sakharov Doctrine explains that North Korea’s collusion with other tyrants of the world, specifically its weapons (both chemical and conventional) support to Bashir Al-Assad in Syria, demands discussion.²⁶

There is certainly a downside of a Helsinki Process-type approach to North Korea. Such process might play right into the hands of the Kim Jong-un regime, allowing it to execute its fundamental strategic objectives. By insisting on the denuclearization of the “entire Korean peninsula,” the Kim regime indicates that, rather than CVID/FFVD, its interest is recognition as a nuclear power through SALT (Strategic Arms Limitation Talks) or START (Strategic Arms Reduction Talks)-type interaction. North Korea could exploit and abuse Helsinki process-type diplomatic

interaction to pay only lip service to its human rights obligations while gaining *de facto* and perhaps *de jure recognition* as a nuclear power. Naturally, under such circumstances, failure to comply with human rights obligations could provide a litmus test of North Korea's commitment to resolving its security conundrum.

The Reagan/Schultz approach to getting the Soviet Union to protect its Jewish citizens as a sign of good faith applicable to negotiating security issues

President Ronald Reagan began addressing the oppression suffered by Soviet Jews during his 1980 presidential campaign. Reagan pledged “a clear, unequivocal position so as to foster Soviet compliance with the Universal Declaration of Human Rights and the Helsinki Final Act, to which the Soviet Union is a signatory.” Reagan also endorsed the Jackson-Vanik Amendment of 1974, which supported the right to emigrate for more Soviet Jews. Through the Jackson-Vanik Amendment, Soviet Most Favored Nation (MFN) status would be predicated upon upholding one essential human right – the right to travel.²⁷ In his turn, Secretary of State George Schultz was a great supporter of the cause, who resolutely affirmed the commitment of the United States to the emigrants’ “freedom of choice” – and implicit support for unhindered exodus from the Soviet Union.²⁸ While meeting Gorbachev in Moscow ahead of the Reagan-Gorbachev Geneva summit, Shultz pressed Soviet Foreign Minister Eduard Shevardnadze to allow Soviet Jews to emigrate.²⁹

If diplomatic interaction with North Korea is resumed, the Reagan-Shultz approach to human rights in the Soviet Union and the refusenik issue in particular could provide a worthy precedent. By singling out one or several critical human rights issues, the current or future U.S. administrations could follow President Reagan's precedent. Focus on the right to information and decriminalizing leaving the country without regime approval could be a good starting point.

North Korean Human Rights: Is Negotiated Progress Possible?

“Human rights are only one facet of U.S. policy toward North Korea, and human rights should not be the tail wagging the diplomatic dog. But we undermine the overall relationship with the North if the United States abandons human rights in pursuit of security or economic goals.”³⁰ For nearly three decades, U.S., ROK and other international negotiators have endeavored to do away with North Korea's nuclear and missile programs,

while downgrading the importance of human rights to avoid spoiling the “mood” or “atmosphere” of interactions with North Korea, or simply to appease the Kim regime. Has that approach worked? Negative. Is it time to include human rights in the issues to be addressed in a bilateral and multilateral context? Absolutely. After all, the Kim regime cares about its legitimacy and its pocketbook, both critical to ensuring its survival. A U.S.-DPRK bilateral, U.S.-ROK-DPRK trilateral, or multilateral human rights-focused approach will undermine the regime’s legitimacy if it displays no intention to improve its abysmal human rights situation. Sanctions will continue to trouble the regime’s pocketbook if it continues to refuse to do away with the development of nukes and missiles.

Is it possible to improve the human rights of North Koreans through multilateral and bilateral efforts, including direct negotiations? Yes, as Ambassador Robert King’s account of the role of the U.S. Special envoys indicates. While negotiating humanitarian assistance and the release of U.S. hostages has been successful at times, multilateral efforts to press for significant measures on DPRK human rights improvement at the UN were successful, for as long as the “coalition of the like-minded” was cohesive and active. The United States will need a Special Envoy on North Korean human rights to tackle the seemingly intractable human rights issue. And so will South Korea. Should human rights be bundled together with political, security, and military issues? Perhaps. But then, which issue is going to be sacrificed for the sake of appeasing the Kim regime? Nukes or human rights? The answer is obvious. But what if a dual track were in place? If a human rights track were to be established separately from negotiations on nukes and missiles, would that automatically relegate human rights to second tier status? Along U.S.-DPRK-ROK interaction, human rights can no longer be discarded. After nearly three decades of dismissing human rights concerns in direct negotiations with no success on the nuke and missile front, is it time for a change?

Notes:

¹ *Charter of the United Nations*. New York: Department of Public Information, United Nations, 1997, p. 3.

² James Brooke, “North Korea Says It Has Nuclear Weapons and Rejects Talks,” *New York Times*, February 10, 2005. <https://www.nytimes.com/2005/02/10/international/asia/north-korea-says-it-has-nuclear-weapons-and-rejects-talks.html>. Accessed November 25, 2021.

³ Oberdorfer, Don, “U.S. Decides to Withdraw A-Weapons from S. Korea,” *The Washington Post*, October 19, 1991. <https://www.washingtonpost.com/archive/politics/1991/10/19/us-decides-to-withdraw-a-weapons-from-s-korea/3759ee3f-e9bf-4944-bfdf-2f9ea727b546/>. Accessed November 23, 2021.

⁴ See generally, Fisher, Roger, William L. Ury and Bruce Patton. *Getting to Yes: Negotiating Agreement without Giving In*. Penguin, 2011.

⁵ Chuck Downs, *Over the Line: North Korea’s Negotiating Strategy*. Foreword by James R. Lilley. Washington, D.C.: The American Enterprise Institute Press, 1999, IX.

⁶ *Ibid*, p. 10.

⁷ *Ibid*, p. 2.

⁸ Walter C. Clemens, *Getting to Yes in Korea*, (London: Paradigm Publishers, 2010), p. 217.

⁹ Ralph Hassig and Kongdan Oh, *The Hidden People of North Korea: Everyday Life in the Hermit Kingdom*, (London: Rowman and Littlefield, 2015, Second Edition, p. 139.

¹⁰ Andrew Yeo and Michelle Chub ed., *North Korean Human Rights: Activists and Networks*, (Cambridge: Cambridge University Press, 2018), p. 5.

¹¹ See generally, *Report of the detailed findings of the commission of inquiry on human rights in the Democratic People’s Republic of Korea* (Geneva: Human Rights Council, Twenty-fifth session, Agenda item 4, Human rights situations that require the Council’s attention, February 7, 2014).

¹² Hassig and Oh, p. 139.

¹³ Charles L. Pritchard, *Failed Diplomacy: The Tragic Story of How North Korea Got the Bomb*, (Washington: Brookings Institution Press, 2007), p. 9.

¹⁴ Ralph Hassig and Kongdan Oh. *The Hidden People of North Korea: Everyday Life in the Hermit Kingdom*. Lanham. Boulder. New York. London: Rowman and Littlefield, 2015, Second Edition, p. 139.

¹⁵ Robert Collins, *Denied from the Start: Human Rights at the Local Level in North Korea*, (Washington: Committee for Human Rights in North Korea, 2018), p. 23.

¹⁶ *Ibid*.

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²⁴ *Ibid.*

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