

Beyond the Limits of Intervention? The Dilemma of the North Korean Human Rights Act

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INTRODUCTION

Since 2003, the U.S. Congress has made clear its intention to intervene in North Korean human rights issues. Legislation, specifically, the North Korean Freedom Act and North Korean Human Rights Act of 2004, has been presented to both Houses. While the North Korean Freedom Act is still pending, the North Korean Human Rights Act was unanimously passed by the House of Representatives on July 21, 2004, and is awaiting Senate approval. Both Acts are intended to protect the human rights of North Koreans and of defectors fleeing from this reclusive country. On the other hand, such legislation opens up the possibility of misuse, such as unfair intervention in Pyongyang's internal affairs or political maneuverings in the name of human rights protection. Great caution is thus required in reviewing and implementing the Acts, while focusing on the limitations of intervention for the sake of human rights and democracy.

This paper intends to critically review the Human Rights Act,

section by section. In doing so, it will first consider whether the Act upholds the universality of human rights based on international reciprocity. Second, it will consider whether the Act is too concerned with the goal of intervention, thus running counter to the very principles of such intervention. Third, it considers whether there is mutual trust between the parties concerned as a procedural prerequisite for intervention.

HUMAN RIGHTS AND DEMOCRACY IN THE INTERNATIONAL COMMUNITY: TOLERATION

Even though differences in concepts of human rights should be considered with great caution in the international community, the wording of the North Korean Human Rights Act demonstrates no such effort. Unilateralism on the part of the United States is apparent even in the sub-headings of the Act. Title I related to freedom of press and democracy “Promoting the Human Rights of North Koreans” while Title II is “Assisting North Koreans in Need.” This reflects the U.S. position that the North has refused to become a party to one of the two basic human rights treaties, the International Covenant on Economic, Social and Cultural Rights (Covenant A)—it ratified only the Covenant on Civil and Political Rights (Covenant B).

According to the liberalistic nature of the U.S. Constitution, with religious and conscientious freedom of individuals serving as the basic principle, the absolute protection of this principle is the duty and objective of the government. In contrast, the North Koreans perceive human rights as “human rights in our own style,” characterized by socialism and communitarianism. From this perspective, freedom of religion and conscience of individuals and political freedom can be sacrificed to some degree for the sake of the greater good of the majority.¹⁾ Washington and Pyongyang also differ

1) Distinguishable characteristics of the North Korean system are collectivism,

in their concepts of democracy. The United States has a long history of democracy based on individualism. Multiple parties are allowed, and political expression and choices of individuals are completely respected. Restrictions are only for the protection of the political freedom of others.

On the other hand, North Korea follows the principle of “democratic concentration,” a classic socialist political theory (North Korean Constitution, Article V), emphasizing unity rather than diversity. This has evolved further to become the governing principle of the great leader (or *suryung*) in accordance with the self-reliance (or *juche*) ideology, with a hint of Confucian socialism. The ideology governing the foundation of the North ascribes to the idea of “Believe in people as in heaven” of the late Kim Il-sung, which is outlined in the preface of its Constitution. This philosophy leads its own interpretation of democracy: competing multiple parties are banned, and preventing individuals from excessive indulgence is more important than protecting their freedoms. In other words, its principle is “By the party and *suryung*, for the people, and government of the community.”

In the context of human history, some naturally place one concept of human rights and democracy ahead of another; however, for a country to make unilateral judgments and impose its perspective on other countries is not desirable. Being forced to embrace the particular view of human rights and democracy of one country, fundamentally betrays the shared global idea of human rights and democracy.

We should be careful not to misunderstand this as disapproving of the universality of human rights and democracy. The point is that we need to delve deeply into the international characteristics of this universality. In the diversified international arena, one particular

paternalistic socialism, theocracy among others. On North Korean political philosophy and system, see Han S. Park, *North Korea: The Politics of Unconventional Wisdom* (Boulder and London: Lynne Rienner Publishers, 2002).

world view or religion cannot claim that its understanding of human rights and democracy is the only choice. Rather, human rights and democracy should be conceptualized according to “tolerance”²⁾ based on reciprocity. Consequently, it must have some degree of flexibility, and as Rawls mentions, “decent hierarchical peoples”³⁾ can also be recognized as legitimate member of the international community.

As a matter of course, there are doubts as to whether the North Korean’s “our own style” socialism, or Kimilsungism meet the definition of decency under the international common criteria. The U.S. neo-conservatives, especially, regard North Korea as one of the outlaw regimes and rogue states,⁴⁾ and in their eyes, such regimes deserve destruction—not improvement. Despite the gloomy human rights situation in North Korea, however, the situation is not necessarily the result of an intentional, systemized, continued abuse of human rights on the governmental level. More appropriately, poverty and famine, or desertion and defection could be regarded as “system or government failure.”

Moreover, the people of North Korea still support the regime and the regime is trying to improve and develop. Under these circumstances, calling North Korea an outlaw regime and attempting to overthrow it is hasty and even dangerous. It is important to deplore the human rights abuses in North Korea, while still

2) John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 2001), pp. 59-62.

3) *Ibid.*, pp. 62.

4) Neocons reckon North Korea as one of rogue states as evidenced by President George W. Bush’s “axis of evil” designation at the State of the Union Address of 2002. For example, David Frum and Richard Perle, *An End to Evil* (New York: Random House, 2003); and William C. Triplett II, *Rogue State: How a Nuclear North Korea Threatens America* (Washington, D.C.: Regnery, 2004). However, Cumings is critical on their view, see Bruce Cumings, “Decoupled from History: North Korea in the ‘Axis of Evil’” in Bruce Cumings, Ervand Abrahamian, and Moshe Ma’oz, *Inventing the Axis of Evil: The Truth about North Korea, Iran and Syria* (New York and London: The New Press, 2004).

recognizing the nation's historic heritage and its prospects for the future. In other words, a desirable approach to improve North Korean human rights and democracy would not force U.S. values on North Korea or vilify its regime, rather, it would lead them to recognize that they would be better off adopting the basic principles of democracy and human rights to further develop their historical heritage.

**LIMITS OF INTERVENTION:
PRINCIPLES COME BEFORE PURPOSES**

Intervention can only be successful when the affected country feels the need for that intervention. And even if the intervening country feels it is capable of such intervention, it should not impose its will. There is a tendency for an intervening nation to become obsessed with reaching the goals of the intervention, all the more so when that nation is a powerful one. While it is partly because of arrogance, it is also because the powerful nation is tempted to use intervention as a useful tool in domestic politics and to display power in the international arena. Such intervention easily exceeds its proper limitations, seeking to promote the interests of the intervening nation rather than the intervened one. Just like other policies, the intervention policy should put principles for intervention ahead of goals. Clear principles can limit excessive pursuit of purposes.

Forced democracy is rather dangerous. Intervention by other nations should serve only as a means to help those whose human rights have been abused, to prevent or abate human rights issues as part of preventive diplomacy. It is to prevent, or cure, the worst situation and not to create the best situation.

In rare cases, destabilizing or overthrowing a regime is the only way to prevent the worst situation. In such cases, humanitarian intervention may take the form of war or at least covert subversive

activities. Some in Washington and Seoul say that such an intervention is required for North Korea, and that the Freedom Act and Human Rights Act a step in the right direction. If this is true, the Human Rights Act is a very risky choice. At present, overthrowing the North Korean regime is not emergency rescue but rather aggression that may not bring freedom and liberation, but chaos and war.

If a powerful nation intervenes, sufficient caution must be taken to avoid abuse and misuse of power, and in the case of North Korea, the Human Rights Act should be reviewed in this regard. Specific principles should be considered: Whether the intervention is really necessary (the principle of necessity); whether there is an alternative to intervention (the principle of subsidiarity); whether the method of intervention is appropriate (the principle of purposiveness); whether intervention would cause a worse result than non-intervention (the principle of proportionality); and finally, whether intervention would harm diplomatic relations with other countries (the principle of relativity).

Since there is widespread agreement that the human rights situation in North Korea is serious and intervention is needed, intervention by international organizations such as the United Nations and friendly intervention by advanced countries can be considered positively in view of good neighborly and friendly relations in the world. Thus, there can be agreement on the "necessity." It is doubtful, however, whether or not the political means the Human Rights Act proposes are proper and the most appropriate. If there is a less provocative means, it should be attempted first.

For example, the expansion of radio broadcasts directed at North Korea (Title I, Sec. 103) approaches arrogance, and the proposed distribution of radio receivers in North Korea is a very dangerous idea (Title I, Sec. 104). The Human Rights Act enacts strong measures prematurely, violating the principle of subsidiarity. On the other hand, if we act less directly, by expanding exchanges and

cooperation with North Korea, allowing North Koreans make more contact with the outside world, and encouraging more joint projects between North Korea and other nations operating in North Korea, it will naturally open avenues to greater access to international culture and information. The recent opening of the German Culture Institute in Pyongyang, despite limited access, can help serve this purpose.

Intervention should also meet the principle of purposiveness. As stated above, the grim human rights situation is more a result of government and system malfunction than intentional human rights abuse. Therefore, intervention for the sake of human rights and democracy should not negate the North Korean regime, but accept it at least in part, and seek cooperation. In other words, it is necessary to restore the collapsed social and agricultural system by providing cooperation and support while addressing human rights and democracy at the same time.

For cooperation and support in the area of restoring social and economic rights, dealing with the food crisis can be a very important method of improving the human rights situation. Yet, the Human Rights Act links provision of humanitarian and economic assistance to human rights and democracy, which is unwise (Title II, Sec. 202 (b), (c)). On the other hand, it is a good idea to provide economic assistance first, and then link its increase or withdrawal to improved human rights and democracy.

This kind of cooperative intervention can also be considered from the point of view of right to freedom. It is noteworthy that the North Korean government is not systematically promoting human rights abuses. Rather, the situation was brought on by the collapse of discipline and lack of control by the central government.⁵⁾ North Korea is making its own efforts to realize reform and opening-up. In

5) That is human rights abuse at low-level. See, Andrew Hurrell, "Power, Principles and Prudence: Protecting Human Rights in a Deeply Divided World," in Tim Dunne and Nicholas J. Wheeler, ed., *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), p. 287.

particular, the reform and opening efforts aimed at society and economy, exemplified by the July 1 economic management improvement measures of 2002, is indeed remarkable. Against this backdrop, the Human Rights Act can only be acceptable when it is pursued in a cooperative manner.

In terms of the principle of proportionality, the Human Rights Act could worsen the situation. One of the major goals of the act is to protect human rights of North Koreans who defect from their country (Title III). The U.S. has declared in the Human Rights Act that it would provide humanitarian assistance to North Koreans who have fled North Korea, and pursue an international agreement to adopt an effective "first asylum" policy. The United States has reminded China of its obligations under the 1951 Status of Refugees Convention and encouraged the active role of the UN High Commissioner for Refugees. The U.S. action to receive defectors, however, could lead to further worsening of the human rights situation.

If the United States has an ulterior motive to nurture such defectors as a political force powerful enough to replace the Kim Jong-il regime, it would reverse North Korea's current soft policy toward defectors, harming the human rights of would-be defectors further. In addition, entry into the U.S. does not guarantee the protection of human rights of defectors especially when the green card and work permit included in the draft of the Human Rights Act have already been deleted in the final draft that passed the House of Representatives.

Defections has been risen due to economic woes and famine. Therefore, support to revive the North Korean economy and agriculture could be more important than other political actions.⁶⁾

In terms of the principle of relativity, intervention can damage

6) This is the so-called preventative refugee policy. See, Gil Loescher, "Refugees: a Global Human Rights and Security Crisis," in Dunne and Wheeler, ed., *ibid.*, p. 239.

relations with other nations and international organizations. The major parties concerned with defectors are China and South Korea. Yet, the Human Rights Act pays little attention to the need for cooperation with these two countries. The Act makes it clear that defectors are not viewed as South Koreans (Sec. 302 (b)). Although it may be a necessary procedure, it needs prior consultation with South Korea.

Another unilateral approach is related with nongovernmental and international organizations: The Act stipulates that transparency and monitoring should be improved before the humanitarian support is increased (Sec. 202 (a)). Various private organizations are providing humanitarian assistance to North Korea under different conditions; some unconditional and others on conditions of transparency and even political democracy. As a matter of course, monitoring is essential to ensure that the most in need receive the aid. However, imposing conditions and politicizing of the assistance could worsen currently insufficient assistance by those organizations.

PROCEDURAL CONDITIONS FOR INTERVENTION: TRUST AND DIALOGUE

So far the paper has considered the justification of intervention for the sake of human rights and democracy. Moving on, a discussion of procedural fairness asks whether a nation has the right and authority to intervene in other nations' affairs and if so, how can that right be justified?

Fairness is an indispensable element in intervention for democracy and human rights. Therefore, in principle, third party organizations such as the United Nations and NGOs should play a major role. While it is not illegal for one nation to intervene in the affairs of other countries for the sake of human rights and democracy, that nation must be able to justify such intervention. It

should demonstrate that it is not using human rights to promote its own political ideology and interests, but rather, that its intervention is serving universal international interests, while benefiting the intervened country. The UN could serve as a good arbiter. However, obtaining UN approval for each and every intervention might be difficult and unnecessary. After all, whether intervention of a nation is fair or not would be decided by how it is perceived by the intervened nation.

Trust is a prerequisite for intervention in the interests of human rights and democracy. Without it, intervention will be considered a hostile conspiracy, rather than well intentioned. This offers a lesson to both the United States and North Korea. Even though Washington is committed to its intervention for human rights and democracy under the Human Rights Act, North Korea cannot agree. After all, the two nations have experienced all-out war and are still in an armistice treaty. It is natural that North Korea would be suspicious of U.S. intentions, given that the military threat still lingers between the two countries. In order to justify the intervention under the Human Rights Act, the United States needs to make an effort to defuse the hostility and distrust with North Korea through bilateral dialogue.

The North Korean Human Rights resolution issued by the UN Human Rights Commission led by Europe carries significance because Europe has embarked on cooperative intervention with North Korea. For reference, China and Europe have long experience in dialogue in human rights issues that started officially since 1995.

Misunderstanding aggravates hostility and distrust. Hence, the process of dialogue aims to understand one's counterpart while making oneself understood. Yet, only a few Americans who are seriously interested in human rights have the necessary insight into the history and current situation of North Korea. Indeed, few of those involved in North Korea policy legislation and coordination have even visited North Korea.

It is meaningful to recall the trip to North Korea by former U.S. President Jimmy Carter. We all know that his courageous visit to

North Korea in 1994, when a crisis was mounting, helped to prevent a war. At a briefing prior to leaving for Pyongyang, he expressed doubts about desk theories of U.S. intelligence, and asked whether the agent had ever visited North Korea, and if not, how he could be sure of what he was saying.⁷⁾

It was Carter who opened a new chapter in the U.S. diplomacy on human rights, which underlines the fact that understanding and respect of a counterpart nation is the root of human rights diplomacy. Without a full understanding of the history, culture, and sentiment of the counterpart nation, an intervening nation is simply not qualified to act. In this sense, it is encouraging that the final draft that passed the House contains a program to promote human rights and democracy in North Korea, including educational and cultural exchanges with North Koreans (Title I, Sec. 102 (z)). What is troubling, however, is that this is the only such measure in the Act.

CONCLUSION

It is clear that the current U.S. policy to intervene in North Korean human rights issues is far removed from the spirit of the Carter Administration's human rights diplomacy. On the one hand, it is too self-righteous and unilateral, saying that North Koreans' human rights should be protected—yet, it hardly considers their pride and dignity. It states that North Korea's democracy is vital, but barely recognizes the principle of reciprocity and democratic order in international relations.

For the Human Rights Act to function as human rights diplomacy, it is necessary to return to the spirit of the Carter Administration, from which the so-called human rights diplomacy originated. A speech by Cyrus Vance, Secretary of State in 1977

7) Leon V. Sigal, *Disarming Stranger: Nuclear Diplomacy with North Korea* (Princeton: Princeton University Press, 1998), p. 152.

teaches a cogent lesson. He states that the U.S. human rights diplomacy welcomes mutually constructive criticism and gives economic support for promotion of human rights, and expresses the belief that all nations can honor human dignity in the context of their tradition. His hopes are voiced in the following: "In pursuing human rights policy, we must always keep in mind the limits of our wisdom. Our sure formula for defeat of our goals would be a rigid, hubristic attempt to impose our values on others. A doctrinaire plan of action would be as damaging as indifference."⁸⁾

8) Cyrus Vance, "Human Rights and Foreign Policy," U.S. Department of State Bulletin, May 23, 1977, pp. 505-508.