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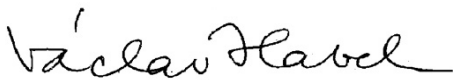
Foreword

In 2006, we commissioned the global law firm DLA Piper LLP and the Committee for Human Rights in North Korea to prepare an account of the humanitarian and human rights situation in North Korea. The resulting report issued on October 30, 2006, *Failure to Protect: A Call for the UN Security Council to Act in North Korea*, concluded that the Government of the Democratic People's Republic of North Korea had failed in its "responsibility to protect" its own citizens from the most severe violations of international law and urged a robust international response through the UN Security Council. The evidence and analysis contained in the report was highly disturbing: North Korea allowed as many as one million people, and possibly many more, to die during its famine in the 1990s. Furthermore, North Korea imprisoned as many as 200,000 people without due process of law on arbitrary reasons in political prison camps.

Two years later, the situation remains unchanged. Although there has been some halting progress in the Six-Party Talks over the nuclear issue, discussions about the human rights and humanitarian challenges within North Korea remain largely an issue of secondary concern. As a result, this new report is commissioned to both elevate the importance of this discussion and to propose an additional set of recommendations to enhance the prospects of achieving some meaningful incremental progress.

We believe the starting point for dialogue with the North should be its commitments under international law. North Korea has ratified numerous international human rights treaties such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. The accession to these instruments entails important commitments by North Korea. Meeting these existing commitments would go a long way towards restoring the rights of the North Korean people. Flagrant violations of and disregard for the international commitments assumed by North Korea will only serve to undermine its credibility, both among its people and within the international community.

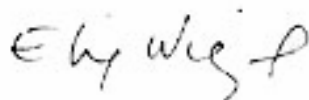
The international community has far too long neglected the human rights situation in North Korea because of the nuclear threat. It is the purpose of this report to emphasise that human rights should be part of all international involvement with the country. The people of North Korea deserve nothing less.



Václav Havel
Former President of the Czech Republic



Kjell Magne Bondevik
Former Prime Minister of Norway



Professor Elie Wiesel, Boston University
Nobel Peace Prize Laureate (1986)

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Executive Summary

The human rights and humanitarian situation in the Democratic People's Republic of Korea (North Korea) is still, as the UN Secretary-General has stated, "unacceptable."

Although the country has opened up to some international food assistance, because of the food policy and the inequities of its political caste system, large segments of the North Korean population never receive any of the food provided by international relief agencies and other countries. There is no indication that the food situation is about to change. One illustration of the seriousness of the food crisis and of North Korea's treatment of defectors is the execution of 15 people in public in the North-Eastern town of Onseong in February 2008 after they had attempted to flee North Korea to obtain economic aid from relatives in China.

Furthermore, North Korea's political prison camps continue to operate with the same level of brutality and massive disregard for basic human rights as initially detailed in the previous report *Failure to Protect*.

The North Korea crisis also has serious spill-over effects in the form of refugees to neighboring countries. North Korean refugees who do not have families to finance a relatively safe escape often end up as victims of exploitation, violence, or crime when they cross into other countries. Women are forced into sex trade or coerced marriages while children and men face higher mortality risk.

In the wake of North Korea's nuclear test in October 2006, the Six-Party Talks reached a deal for the normalization of relations between the parties and the denuclearization of North Korea. However, the discussions about the human rights and humanitarian challenges within North Korea remain largely an issue of secondary concern.

It is the intention of this report to fill this gap: to raise the human rights and humanitarian concerns and to promote the inclusion of those in these ongoing negotiations and through greater international involvement with North Korea.

For the purposes of further engagement between the North and the South, the Six Parties, and the broader international community, we present a series of recommendations at the end of this report which, in sum:

- Advocate greater international engagement with North Korea on human rights and humanitarian concerns;
- Urge the inclusion of human rights and humanitarian concerns into all the Working Groups of the Six-Party Talks, with the exception of the Working Group on the Denuclearization of the Korean Peninsula;
- Suggest the UN General Assembly strengthen its annual resolution on North Korea by including reference to the "responsibility to protect" doctrine and recommending a group of

experts be appointed to investigate if the severe violations of human rights in North Korea constitute a violation of this doctrine; and

- Advise the Government of South Korea to take a number of steps to both provide famine relief to the North Korean people and increase its emphasis on human rights and humanitarian concerns related to North Korea.

I. The Ongoing Crisis

A. Major Human Rights Concerns

1. Food Policy and Famine

a. Overview of 2006

As described in great detail in *Failure to Protect*, the policies of the North Korean government have subjected the people of North Korea to more than a decade of famine and a perpetual food crisis.¹ Although in recent years the food situation has not reached the truly catastrophic levels of the mid-1990s, decisions by the North Korean government in 2006 to halt its acceptance of food aid by the World Food Programme (WFP) in favor of mid and long-term “developmental assistance”² and to conduct further missile tests and detonate a nuclear weapon have had serious consequences. Specifically, these actions prompted leading international food donors to cancel food shipments in protest³ and reaffirmed the government’s prioritization of its weapons programs over the feeding of its own people.

The floods that struck North Korea’s “rice bowl” region during the summer of 2006 further exacerbated the food emergency. Although estimates differ greatly, aid groups reported over 50,000 people dead or missing with close to 1.5 million rendered homeless.⁴ In addition to the devastating human toll, the floods also laid waste to a substantial portion of North Korea’s agricultural lands, destroying an estimated 90,000 tons of rice and corn.⁵

The UN Special Rapporteur on the Right to Food noted in October 2006 that “12 per cent of the population in the Democratic People’s Republic of Korea suffered from severe hunger.”⁶ One quarter of the North Korean population is chronically malnourished and the average seven-year-old boy in North Korea weighs 20 pounds less and is 8 inches shorter than his South Korean counterpart.⁷ Even before the floods of 2006, North Korea lacked 20 percent of the minimum amount of food necessary to feed its 23 million hungry people.⁸

¹ See FAILURE TO PROTECT: A CALL FOR THE UN SECURITY COUNCIL TO ACT IN NORTH KOREA, DLA Piper US LLP and U.S. Committee for Human Rights in North Korea (Washington, 2006), 12-30, (hereinafter cited as FAILURE TO PROTECT).

² *North Korea: Human Rights Concern*, Amnesty Int’l, Nov. 28, 2007, available at http://news.amnesty.org/au/news/comments/north_korea_human_rights_concerns/

³ *Id.*

⁴ *North Korea Agrees To Flood Aid from South*, INT’L HERALD TRIBUNE, Aug. 18, 2006. As noted in this article, these estimates are difficult to confirm due to the tight controls placed on media and other sources of information by the North Korean government. Official North Korean government reports place the numbers significantly lower.

⁵ Amnesty Int’l, *supra* note 2.

⁶ *Id.*

⁷ Craig Simons, *North Korea’s Famine Believed to be Escalating*, AUSTIN AMERICAN-STATESMAN, May 18, 2007.

⁸ Amnesty Int’l, *supra* note 2.

b. Worsening Conditions in 2007

North Korea set the tone for food policy during 2007 when it rang in the New Year by deciding not to distribute the traditional extra food rations that it had promised to deliver on the holiday. According to a South Korean aid group, only elite citizens of Pyongyang received an additional three days of special rations, while even more was provided to government officials in the capital.⁹ Despite the continuation of a well-documented policy of favoritism based on formal classification of its citizens as loyal, wavering, or hostile to the government, North Korea's decision not to extend the promised rations to the entire population raised fears of a worsening food emergency. These concerns were compounded as the price of rice, corn and other cereals increased in the lead-up to the spring harvest.¹⁰

In what appears to be becoming a vicious annual cycle,¹¹ North Korea experienced heavy rains and severe flooding in August 2007, inflicting mass human casualties, damaging transportation infrastructure and industrial facilities, and again destroying a significant portion of the nation's crops.¹² With reports of 600 dead or missing and 200,000 to 300,000 dislocated and homeless,¹³ the initial human toll appeared to be less than in 2006; however, contagious disease, diarrhea, and respiratory illnesses spread in the aftermath, fueled by pre-existing conditions such as a lack of clean water and adequate food and insufficient access to quality health care – factors exacerbated by the flood conditions.¹⁴ The implications for the food supply were similarly dire, with at least 11 percent of North Korea's corn and rice crops reportedly lost.¹⁵

Unlike in previous years, North Korea was uncharacteristically open regarding the extent of the 2007 flood damage and its need for international assistance to resolve the resulting

⁹ *Report: North Korea Skips Food Ration*, WASH. POST, Jan. 17, 2007.

¹⁰ Press Release, *WFP Report Shows Serious Hunger Threat for Flood Victims in North Korea*, World Food Programme, Sept. 7, 2007 [hereinafter WFP Press Release]. The UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of North Korea, reported that the price of imported rice has increased by 26% since October 2006. SPECIAL RAPPOREUR FOR THE COMM'N ON HUMAN RIGHTS, *Situation of Human Rights in the Democratic People's Republic of Korea*, U.N. Doc. A/62/264 (Aug. 15, 2007).

¹¹ As described in *Failure to Protect*, "the agricultural form of *juche* [the North Korean ideological 'spirit of self-reliance' imposed by Kim Il Sung] often drove the government to adopt shortsighted, ill-advised policies in futile attempts to reach self-reliance. For example, over the years North Korea attempted to create more arable land, but these attempts instead led to a self-defeating cycle: deforestation led to soil erosion and run-off, which in turn caused silting in rivers and eventually flooding, which then destroyed harvests and further reduced available farmland. Also, failure to rotate crops, intensive re-cropping of land, and too heavy a reliance on fertilizers depleted the soil, leading to even more reduction in available fertile land and a steadily declining agricultural output." FAILURE TO PROTECT, *supra* note 1, at 17.

¹² The 2007 floods had the greatest impact on the lowlands of North and South Pyongan, and North Hwanghae and South Hwanghae provinces, which represent 76% of North Korea's arable land. WFP Press Release, *supra* note 10.

¹³ *North Korea Reports at Least 600 Dead or Missing in Floods*, ASIA PULSE, Aug. 27, 2007; *North Korea: Up to 300,000 Homeless from Floods*, CNN.com, Aug. 15, 2007; *North Korea Lets in Aid After Flood Disaster*, FINANCIAL TIMES, Aug. 23, 2007.

¹⁴ *North Korean Red Cross Expects Food Shortage to Worsen Due to Floods*, BBC, Sept. 13, 2007; *WFP Launches Food Aid Programme in Flood-hit North Korea*, AGENCE FRANCE PRESSE, Aug. 21, 2007 [hereinafter WFP Launches Food Aid Programme]; *Flood-stricken N. Korea Likely to Suffer from Contagion of Infectious Diseases*, YONHAP NEWS AGENCY, Sept. 22, 2007.

¹⁵ *WFP Launches Food Aid Programme*, *supra* note 14; *North Korea Lets in Aid After Flood Disaster*, FINANCIAL TIMES, Aug. 23, 2007.

humanitarian crisis. Twelve nations and the World Food Programme responded with relief. However, WFP still had difficulties getting food into the country.¹⁶

In the aftermath of the devastating floods, rice prices in North Korea have continued to rise, compounding the strain on the already inadequate food supply.¹⁷ In addition, researchers estimated that North Korea would face a 1.4 million ton food shortage at least until the 2008 autumn harvest. Thus, barring a continued influx of international aid, some predicted a mass catastrophe similar to the famine experienced during the mid-1990s could be imminent.¹⁸

Meanwhile, North Korea showed no sign of altering its long-standing policy of disregard for the plight it has single-handedly imposed upon its people. Tourists continued to visit the International Friendship Exhibition at Mount Myohyang, stocked with 55,423 extravagant gifts to the Dear Leader and 221,411 to his father, who, even in death, continues to receive presents. Completed during the height of the 1990s famine, the museum sports four-ton bronze doors and polished marble floors since, as North Korean tour guides will explain, using the best materials was “the greatest desire of our people.”¹⁹

Often, the government goes beyond mere disregard, brutally punishing those that seek to take the alleviation of starvation into their own hands. For example, in August 2007, the president of a factory in South Pyongan province was publicly executed for selling factory equipment in order to buy food to distribute to the factory’s starving workers. The fact that the factory was incapable of operating due to a lack of carbide was not seen as a mitigating factor.²⁰

c. *Situation Increasingly Dire in 2008*

With respect to food policy, the official North Korean 2008 New Year’s statement was notable for two reasons. First, it acknowledged the food shortage problem and urged that “agricultural and working people should make great efforts to do farming by themselves with the attitude of being masters.”²¹ Unfortunately, the statement also strongly reaffirmed North Korea’s principle of *Songun*, the policy that prioritizes the welfare of the military over the rest of North Korean society, as reflected in the distribution of food.²²

Owing to North Korea’s food policy, the *Songun* policy, and the inequities of the North Korean political caste system, large segments of the North Korean population never receive any of the food provided by international relief agencies and other countries. As North Koreans interviewed by workers from groups such as Human Rights Watch have stated, “I heard there has

¹⁶ *Hunger’s Global Hotspots*, World Food Programme, Dec. 4, 2007; *N. Korean Flood Damage Appeal 79% Funded, Aid Stalled in China*, FINANCIAL TIMES, Oct. 17, 2007.

¹⁷ *Rice Prices Increase in North Korea Due to Flood Damage*, FINANCIAL TIMES, Oct. 20, 2007.

¹⁸ *North Korea May Face Famine Next Year: Expert*, AGENCE FRANCE PRESSE, Oct. 18, 2007.

¹⁹ Bradley Martin, *Flamboyance in a Time of Famine: North Korea People Can Feast their Eyes (But Not Bellies) at Exhibit of Gifts to Great Leader and Kim Jr.*, TORONTO STAR, May 20, 2007.

²⁰ *North Korea Today Newsletter*, Good Friends: Center for Peace, Human Rights and Refugees, Nov. 2007 at 1.

²¹ Simon Martin, *North Korea Calls for Stronger Military, Economy in 2008*, AGENCE FRANCE PRESSE, Jan. 2, 2008

²² *Id.*

been a lot of foreign aid in the past 10 years, but I haven't even seen its shadow" and "I never received any food aid, nor do I know anyone who has."²³

There is no indication that the food situation is about to change. One illustration of the seriousness of the food crisis is that North Korea executed 15 people in public in the northeastern town of Onseong in February 2008 after they had attempted to flee North Korea to obtain economic aid from relatives in China.²⁴

By March 2008, reports were already suggesting that an abnormally dry winter was hampering the growth of crops in North Korea.²⁵ That same month, as tensions rose between the North and South Korea's new President, Lee Myung-bak, North Korea chose not to make its typical request from South Korea for fertilizer for the spring planting and for rice to help overcome its chronic "spring hunger," and later declared that the North "will be able to live as well as it wishes without any help from the South."²⁶

In April 2008, Good Friends, a relief group in Seoul, reported that North Korea had suspended food rations in Pyongyang in an apparent attempt to stockpile food in the event of a protracted standoff with the United States and South Korea over the North's nuclear weapons program.²⁷ At the same time, the WFP warned that 6.5 million North Koreans were short of food, with country director Jean-Pierre de Margerie noting, "[i]t's a bit of a perfect storm."²⁸

The situation grew increasingly dire throughout the summer of 2008. During the month of June, the WFP and the UN's Food and Agriculture Organization conducted a "Rapid Food Security Assessment" (RFSa) in North Korea designed to "assess the food security situation and identify needs for external food assistance." The RFSa found that food availability, accessibility and consumption had deteriorated sharply since 2007,²⁹ with Jean-Pierre de Margerie warning that "the last time hunger was so deep and widespread in parts of the country was in the late 1990s."³⁰ Although a U.S. freighter containing 37,000 tons of wheat, the first installment of 500,000 tons of promised American assistance,³¹ arrived in North Korea in late June, this shipment could only provide a small dent in North Korea's estimated 1.5 million ton grain shortfall. Further evidence of the rapidly worsening food situation is a recent agreement by North Korea to allow 50 international aid experts and a consortium of U.S. relief agencies access to the country.³² In August 2008, food prospects took another turn for the worse as seasonal torrential rains hit North Korea. The state media reported "heavy losses to various sectors of the national economy including agriculture and to the people's living."³³

²³ Kay Seok, *Give North Koreans Food*, INT'L HERALD TRIBUNE, Sept. 27, 2007.

²⁴ *North Koreans Shot at Frontier*, BBC.COM, Mar. 5, 2008.

²⁵ *North Korea Winter Threatens Food Supply*, ASSOCIATED PRESS, Mar. 3, 2008.

²⁶ Choe Sang-Hun, *North Korea Food Shortages Make Tense Situation Worse*, INT'L HERALD TRIBUNE, Apr. 3, 2008.

²⁷ *Id.*

²⁸ Tania Branigan, *UN Fears Tragedy over North Korean Food Shortages*, THE GUARDIAN, Apr. 17, 2008.

²⁹ WFP/FAO Rapid Food Security Assessment – June/July 2008, *Quick Overview*, June/July 2008.

³⁰ Press Release, *DPRK Survey Confirms Deepening Hunger for Millions*, World Food Programme, July 30, 2008.

³¹ Choe Sang-Hun, *Ship Carrying Food Aid Arrives in North Korea*, INT'L HERALD TRIBUNE, June 30, 2008.

³² *Id.*

³³ *Heavy Rains Hit North Korea*, ASSOCIATED PRESS, Aug. 4, 2008.

2. Treatment of Political Dissenters

a. *Overview*

The gulags in North Korea are infamous, both for their brutal treatment of prisoners and for the relative infrequency with which prisoners are either released or manage to escape. Updates on the treatment of political dissenters in North Korea are challenging to acquire and authentic news regarding the camps can be rare and difficult to verify. For example, in February 2007, several news reports stated that 120 inmates had escaped from the Hwasong prison camp in North Hamgyong, yet little additional information is known.³⁴ Nevertheless, despite the dearth of readily available news, it is widely believed that North Korea's political prison camps continue to operate with the same level of brutality and massive disregard for basic human rights as initially detailed in *Failure to Protect*.³⁵ In addition, the U.S. Department of State's Country Report on Human Rights Practices for North Korea noted that "systematic and severe human rights abuses occurred throughout the prison and detention system. Detainees and prisoners consistently reported violence and torture. According to refugees, in some places of detention, prisoners received little or no food and were denied medical care."³⁶

b. *An Account from Political Prison Camp #14*

One story has emerged which might be viewed as emblematic of the sort of treatment generally endured by political prisoners in North Korea's prison camps. In 2005, then 22-year old Shin Dong Hyok managed to escape from North Korea's infamous Political Prison Camp No. 14 in Kaechon, where he was born into a life sentence under the Three Generation Rule. This rule holds that if an individual is found guilty of treason or another political crime, up to three generations of that person's family must also be punished as traitors. Two of Shin's paternal uncles had committed treason by fleeing North Korea well before Shin's birth; consequently, Shin's father, grandparents and remaining uncle were all imprisoned as traitors for life in Camp No. 14. There, Shin's parents met (he does not know why his mother was imprisoned) and he was born, entering the world a tiny, third-generation, traitorous criminal.³⁷

At age 14, Shin was tortured for seven months following a failed attempt by his mother and older brother to escape, and was then forced to watch the public execution of his mother by hanging and his brother by firing squad. The tip of Shin's middle finger was cut off as punishment for dropping a sewing machine table. Finally, while working in a garment factory, he befriended a man who taught him that a world existed outside the camp fence and, in 2005, they concocted an escape plan. His friend was electrocuted on the barbed wire fence and died immediately during the attempt, but Shin was able to escape by climbing over his dead friend's back. Shin eventually fled to China, then South Korea, where he has published a Korean language book on his life in Camp No. 14.³⁸

³⁴ *Some 120 North Koreans Escape Political Prison Camp*, ASSOCIATED PRESS, Feb. 7, 2007.

³⁵ FAILURE TO PROTECT, *supra* note 1, at 30-42.

³⁶ *Democratic People's Republic of Korea, Country Reports on Human Rights Practices – 2007*, U.S. Department of State, 2008, available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100524.htm>

³⁷ Shin Dong-Hyok, *Life in North Korea's Gulag*, WALL STREET JOURNAL, Nov. 30, 2007.

³⁸ *Id.*

c. *Additional Accounts and Analysis*

Failure to Protect outlined the political prison camps system in a legal context.³⁹ An appendix explained the category of international crimes considered as crimes against humanity, which is what, in the case of North Korea, connects the gross and severe violations of human rights to the regime's failure in its responsibility to protect.⁴⁰

Since the publishing of *Failure to Protect* in October 2006, two other major reports have further examined North Korea's violations in light of international criminal law. David Hawk, the author of the highly acclaimed *Hidden Gulag: Exposing North Korea's Political Prison Camps*, published in 2004 by the U.S. Committee for Human Rights in North Korea, researched and authored a follow-up report, *Concentrations of Inhumanity: An Analysis of the Phenomena of Repression Associated with North Korea's Kwan-li-so Political Penal Labor Camps According the Terms and Provisions of Article 7 of the Rome Statute of the International Criminal Court and the Parallel Provisions of Customary International Law on Crimes Against Humanity*, which was published by Freedom House in May 2007.

In a foreword to *Concentrations of Inhumanity*, Professor David Scheffer, former U.S. Ambassador at Large for War Crimes and former Head of the U.S. delegation to the UN Negotiations on the Rome Statute of the International Criminal Court, noted that the report:

[A]ccurately understood the requirements for the various categories of crimes against humanity, including extermination, enslavement, the forcible transfer of population, arbitrary imprisonment, torture, sexual violence, enforced disappearances, persecution, and other inhumane acts.⁴¹

Professor Scheffer concluded:

[G]iven the probable continuing character of the labor camps atrocities reaching far beyond mid-2002 when the ICC's temporal jurisdiction commenced, the United Nations Security Council should approve a UN Charter Chapter VII resolution referring the situation in North Korea to the ICC for investigation⁴²

In June 2007, the London-based NGOs Christian Solidarity Worldwide and Redress published *North Korea: A Case to Answer – A Call to Act*. The report, drawing on a wide variety of published sources and covering abductions and other detention facilities in North Korea in addition to the labor camps, also concludes, *prima facie*, that crimes under international law are being committed on a massive scale in North Korea. The report further calls for the creation of a UN Commission of Inquiry to investigate these violations of international criminal law.

³⁹ See FAILURE TO PROTECT, *supra* note 1, at 30-42.

⁴⁰ See *id.* at 119-133.

⁴¹ David Hawk, *Concentrations of Inhumanity*, FREEDOM HOUSE, at 3.

⁴² *Id.*

The UN Special Rapporteur for Human Rights in North Korea, in a 2007 statement to the General Assembly, noted reports from the non-governmental sector pertaining to the responsibility of North Korea, and urged Member States to “support processes which concretize the responsibility and accountability for human rights violations, and an end to impunity.”⁴³

3. Abductions

As discussed in *Failure to Protect*, the North Korean government has a long history of abducting foreign nationals, bringing them to North Korea and holding them against their will.⁴⁴ It is reported that between 1955 and 1987, North Korea abducted roughly 3,790 South Koreans, of which 480 have never returned to their native South Korea. Moreover, although the Japanese government now recognizes the case of 17 abductees, some estimate that as many as 80 Japanese have been abducted to North Korea.

Since the 2006 report, the Japanese government has added to Japan’s official list of individuals kidnapped by North Korea the name of Ms. Kyoko Matsumoto. A local clothing factory worker, Ms. Matsumoto went missing after leaving her home on the coast of the Sea of Japan on October 21, 1977; she was 29-years-old. Japan added Ms. Matsumoto to the official list after police carried out new interviews, including one with a relative who had not come forward until late 2006.⁴⁵ Japan and North Korea remain at odds over the number of Japanese abducted to North Korea, as well as the status of many of them.

The Japanese government says that 12 of the 17 abductees are still unaccounted for, while five have been repatriated.⁴⁶ Of the 12 still unaccounted for, North Korea says they have either died since their abduction or were never kidnapped in the first place.⁴⁷ Regarding the fate of Ms. Matsumoto, North Korea maintains that “[she never] entered our territory.”⁴⁸

While they remain at odds over the abduction issue, a slight thaw between North Korea and Japan was displayed in June 2008 when North Korea said it would reopen an investigation into the abductions of Japanese citizens and in return, Japan announced that it would lift some sanctions imposed on North Korea for its nuclear program. Of the announcements, Japan’s chief cabinet secretary cautiously said, “With North Korea’s promise to reinvestigate, the process of resolving the abductions problem has resumed. It’s a certain amount of movement forward, but it’s not overall progress.”⁴⁹ Observers of the issue have stated that North Korea’s shift on the abductions issue likely results in part from its recent negotiations with the United States.

With respect to U.S. negotiations with North Korea, Japanese officials have recently expressed concern over the United States’ possible willingness to remove North Korea from the

⁴³ Professor Vitit Muntarbhorn, *Statement to the General Assembly Third Committee*, 62nd session, Item 70(c), Oct. 26, 2007.

⁴⁴ FAILURE TO PROTECT, *supra* note 1, at 42-48.

⁴⁵ *N. Korea Denies Abduction of Newly Recognized Japanese Victim*, JAPAN POLICY & POLITICS, Nov. 27, 2006 [hereinafter *N. Korea Denies Abduction*].

⁴⁶ *See id.*

⁴⁷ Norimitsu Onishi, *Japan Rightists Fan Fury Over North Korea Abductions*, N.Y. TIMES, Dec. 17, 2006.

⁴⁸ *N. Korea Denies Abduction*, *supra* note 45.

⁴⁹ Norimitsu Onishi, *N. Korea Yields Slightly on Abductions*, N.Y. TIMES, June 14, 2008.

state-sponsor of terrorism list without explicitly linking that removal to progress on the abduction issue.⁵⁰ Nevertheless, President Bush stated that he understands “how important the issue is to the Japanese people,”⁵¹ backed Japanese efforts to press North Korea on the fate of abductees during the six-party talks held in 2007,⁵² and as recently as July 2008, stated that the United States would not ignore Japan’s concerns about North Korean abductions as the U.S. moved to ease sanctions against North Korea.⁵³

In the United States, the visibility of the abductions issues seems to be fading. In July 2005, several members of Illinois’s Congressional delegation, including now Democratic presidential nominee Barack Obama, wrote to North Korea’s UN ambassador demanding answers about the whereabouts of Kim Dong-shik, a U.S. permanent resident and Christian missionary abducted in 2000 by North Korean agents in China. The letter warned that the signatories would oppose North Korea’s removal from the U.S. list of state sponsors of terror until a “full accounting” of Mr. Kim’s abduction was provided. However, aides to Senator Obama have recently stated that the Senator does not want to stand in the way of progress between North Korea and the U.S. by focusing on one individual, although the Senator “remains deeply concerned about North Korean abduction of foreign citizens.”⁵⁴

The State Department has also softened its demands and rhetoric on the abductions issue. During 2008, the State Department deemphasized the tie between North Korean abductions and terrorism, in an effort to ease North Korea’s removal from the state sponsor of terror list. Moreover, although in the past the State Department has highlighted the case of Mr. Kim, it has dropped all references to his case from its “Background Notes” publication (although State Department officials did mention his case in two other State Department reports).

Unlike the Japanese government, the South Korean government has been reluctant to challenge Pyongyang’s denials that it abducted any South Korean nationals. This is in part due to South Korea’s policy of engagement.⁵⁵ Nonetheless, while the government is unwilling to publicize the issue, the story of Choi Wook Il, a fisherman who was abducted by North Korean agents in 1975, received considerable media attention during 2007 and led to further calls for the issue of South Korean abductees to be included in the Inter-Korean summit that took place in late 2007.⁵⁶ Nevertheless, human rights and the South Korean abductee issues were not raised.⁵⁷ In contrast to his unwillingness to raise the South Korean abductee issue with the North, there are reports that President Roh raised the issue of Japanese abductees and that Kim Jong-il simply answered that the issue is over.⁵⁸

⁵⁰ Blaine Harden & Akiko Yamamoto, *30 Years After Abductions, Questions Haunt Japanese*, WASH. POST, Dec. 16, 2007.

⁵¹ *Id.*

⁵² Shane McLeod, *US, Japan Press N. Korea Over Abductions*, ABC NEWS, Feb. 6, 2007.

⁵³ Jeremy Pelofsky, *Bush says backs Japan on North Korea abduction issue*, REUTERS, July 6, 2008.

⁵⁴ Onishi, *supra* note 49.

⁵⁵ See Choe Sang-Hun, *One South Korean’s Story of Abduction and Repatriation*, INT’L HERALD TRIBUNE, Sep. 4, 2007; Bert Herman, *POW Families Seek Voice at Koreas Summit*, ASSOCIATED PRESS, Aug. 10, 2007.

⁵⁶ See Choe, *supra* note 55.

⁵⁷ *Id.*

⁵⁸ *Japanese Abductee Issue is Over, Kim told Roh*, JAPAN TIMES, Oct. 9, 2007.

B. Spillover Effects of the North Korea Crisis

As the international community closely monitored progress toward a nuclear-free North Korea in 2007, the problem of refugee outflows received comparably little attention. While the outflow of refugees does not, in and of itself, constitute a violation of the failure to protect doctrine, the impetus for the refugees' flight is grounded in North Korea's failure to protect its own citizens from severe human rights violations. This report therefore examines the plight of the North Korean refugees in an attempt to illustrate the consequences of North Korea's systematic disregard for the well-being of its citizens.

Gleaning information about the most secretive country in the world is difficult. But information provided by refugees and defectors, as documented in our 2006 report, continues to portray a bleak picture of the situation. One recent defector, Mr. Kim, angrily told a human rights organization: "They don't give us rations, and they don't allow us freedom to make a living. How on earth can we survive? My country has become plain rotten."⁵⁹ As a result, like many before him, Mr. Kim decided to flee the country.

The decision to flee is not easy; the escape itself is harder still. As previously discussed, Shin Dong Hyuk's story received public attention last May with his terrible recounting of life in a political prison camp and his difficult escape. Had Shin or Kim not successfully escaped, they would have faced years in a North Korean prison, a result of the government's recent crack down on citizens fleeing across the border. In recent years, Pyongyang has reversed its previous policy of relative leniency against those seeking to cross the border into China.⁶⁰ Now, North Koreans who are caught are sure to be sentenced to many years in prison where they face beatings, forced labor as well as chronic and severe food shortages far worse than the population at large.⁶¹

Those that are successful and find life outside the North are in increasing numbers paying to get their families out of the country. Defectors are now able to tap into a sophisticated underground network of human smugglers operating inside North and South Korea, China and throughout Southeast Asia.⁶²

Today, state security is less of an obstacle to escape than access to cash. The cost of getting out of North Korea is significant. During the summer of 2006, Kim Myung-shim paid \$3,600, just above the average of \$3,000, to brokers to facilitate her son's escape (note, the annual wage of a typical North Korean is estimated to be \$1,320).⁶³ With the aid of smugglers, Lee Chun-hak, Mrs. Kim's son, traveled through China and Laos to Thailand, where he turned himself over to authorities. Thailand does not repatriate North Koreans, but generally sends them to South Korea or the United States after three to four months in an Immigration Detention Center.⁶⁴

⁵⁹ Sophie Richardson, *The Rights of North Korean Refugees*, JOONGANG DAILY, July 9, 2007.

⁶⁰ See Kay Seok, *North Korea's Cruelty*, WASH. POST, March 17, 2007.

⁶¹ See Richardson, *supra* note 59; *North Korea: Harsher Policies Against Border-Crossers*, HUMAN RIGHTS WATCH, March 2007.

⁶² *N. Korea Searches for Fugitive After Floods: Aid Group*, AGENCE FRANCE PRESSE, Aug. 29, 2007.

⁶³ Stephen Haggard & Marcus Noland, *Follow the Money: North Korea's External Resources and Constraints*, KOREA ECONOMIC INSTITUTE, at 10.

⁶⁴ Norimitsu Onishi, *With Cash, Defectors Find North Korea's Cracks*, N.Y. TIMES, Oct. 19, 2006.

North Korean refugees who do not have families to finance a relatively safe escape often end up as victims of exploitation, violence, or crime when they cross into China. As illegal immigrants in China, refugees live in constant fear and at terrible risk.⁶⁵ Women are forced into the sex trade or coerced marriage while children and men face a higher mortality risk because their utility is less obvious.⁶⁶ Others are returned to North Korea.⁶⁷

Different challenges face refugees who end up in other Southeast Asian nations. Reports surfaced in April 2007 of three North Korean children who fell into the hands of local Laotian security forces who demanded payment for their release. This situation creates a real dilemma for refugee advocates who are torn between their wish to buy refugees their freedom and the fear of encouraging extortion. Additionally, in Thailand, 400 refugees went on a hunger strike in a detention center to protest poor sanitary conditions and delays in their resettlement to South Korea.⁶⁸

The status of refugees in South Korea also remains a problem. South Korean diplomats are often accused of neglecting the plight of North Koreans for fear that an aggressive intervention might threaten Seoul's policy of promoting reconciliation with the North. Moreover, refugees from the North struggle to build a new life in the South. New accounts confirm what was reported in 2006; refugees from the North are often treated as outsiders. Most struggle with financial difficulties, not least the debts incurred when refugees or their families borrowed to pay smugglers.⁶⁹ Additionally, the South Korean legal system does not grant divorces to refugees who were married in North Korea but have long since been separated from their North Korean spouse and are living with new partners. This policy effectively prohibits legal marriage by refugees.⁷⁰

II. The International Response

A. *Six-Party Talks: Breakdown or Breakthrough?*

Multilateral international negotiations, known as the Six-Party Talks, began in 2003 in an attempt to peacefully resolve security concerns arising from North Korea's developing nuclear arsenal and decision to withdraw from the Nuclear Non-Proliferation Treaty (NPT). The participants, which include the United States, North Korea, China, South Korea, Japan, and Russia, completed the first three rounds of discussions between August 2003 and June 2004, although little, if any, progress was made. The Fourth Round in 2005 was more productive, however, and led to the issuance of the Statement of Principles on September 19, 2005, in which North Korea committed itself to: (a) abandon its nuclear weapons and its existing nuclear

⁶⁵ See Nicholas Eberstadt & Christopher Griffin, *Saving North Korea's Refugees*, N.Y. TIMES, Feb. 19, 2007; Nicholas D. Kristof, *Escape From North Korea*, N.Y. TIMES, June 4, 2007.

⁶⁶ See Eberstadt & Griffin, *supra* note 65.

⁶⁷ See Kristof, *supra* note 65.

⁶⁸ Choe Sang-Hun, *400 Who Fled North Korea Stage Protest in Bangkok*, N.Y. TIMES, April 26, 2007.

⁶⁹ Norimitsu Onishi, *From a Lead Role in a Cage to Freedom and Anomie*, N.Y. TIMES, June 23, 2007.

⁷⁰ Choe Sang-Hun, *Divorce Laws Test the Divide between North and South Korea*, INT'L HERALD TRIBUNE, Jan. 4, 2007.

programs; (b) rejoin the NPT; and (c) accept IAEA safeguards at an early date.⁷¹ The Fifth and Six Rounds of discussions have made clear the Six-Party Talks are the most important ongoing multilateral initiative in relation to North Korea. Particularly important for the purpose of addressing human rights and humanitarian concerns, an agreement in the Fifth Round created five Working Groups to address various sub-issues in the Six-Party Talks. As described below and in the Appendix, the creation of these Working Groups make clear that the goal of the Six-Party Talks is much more than denuclearization, but rather that a host of other regional and international issues also need to be addressed with the intent of normalizing North Korea's relationships with countries around the world.

1. The Fifth Round

The Fifth Round of the Six-Party Talks began in November 2005, and initially did not result in any substantive agreements.⁷² On October 9, 2006, North Korea conducted a nuclear test after informing the international community of its intention to do so only days prior.⁷³ The nuclear test and the earlier missile tests were condemned by the international community and increased concern regarding North Korea's nuclear objectives.⁷⁴ Pressure from outside sources after the test, however, led North Korea to return to the Six-Party Talks in early 2007.⁷⁵

On February 13, 2007, the Six Parties reached a deal for the normalization of relations between parties and the denuclearization of North Korea.⁷⁶ The agreement called for North Korea to freeze its nuclear program within sixty days and discuss a list of all of its nuclear programs and material, and in return receive aid in the form of heavy fuel oil.⁷⁷ Further, under this agreement, North Korea would receive economic, energy, and humanitarian assistance up to the equivalent of one million tons of heavy fuel oil in return for a complete declaration of all its nuclear programs and disablement of all existing nuclear facilities.⁷⁸ The United States also agreed to the release of approximately \$25 million, which had been frozen in Macau's Banco Delta Asia as part of the financial sanctions regime against North Korea.⁷⁹ Lastly, the agreement established five Working Groups on the following topics: (1) Denuclearization of the Korean Peninsula; (2) Normalization of DPRK-U.S. relations; (3) Normalization of DPRK-Japan relations; (4) Economy and Energy Cooperation; and (5) Northeast Asia Peace and Security Mechanism.⁸⁰

⁷¹ FAILURE TO PROTECT, *supra* note 1, at 68-70. North Korea also agreed to negotiate a Korea peace accord outside the nuclear discussions and, under the terms of the Statement, would be allowed to pursue a peaceful nuclear energy program through the use of a light-water nuclear reactor.

⁷² See AFTER NORTH KOREA'S MISSILE LAUNCH: ARE NUCLEAR TALKS DEAD? (Int'l Crisis Group, Asia Briefing No. 52, Aug. 9, 2006), at 2.

⁷³ See David E. Sanger, *Test Follows Warning from U.N.*, INT'L HERALD TRIBUNE, Oct. 11, 2006.

⁷⁴ See S.C. RES. 1718, U.N. Doc. S/RES/1718 (Oct. 14, 2006); S.C. RES. 1695, U.N. Doc. S/RES/1695 (Jul. 15, 2006).

⁷⁵ See David E. Sanger, *News Analysis: Outside Pressure Broke Korea Deadlock*, INT'L HERALD TRIBUNE, Feb. 13, 2007.

⁷⁶ Press Release, U.S. Department of State, *Initial Actions to Implement Six-Party Joint Statement*, Feb. 13, 2007, available at <http://www.state.gov/r/pa/prs/ps/2007/february/80508.htm>.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Edward Cody, *US Says Macau to Release \$25M in Frozen N. Korean Funds*, WASH. POST, Apr. 10, 2007.

⁸⁰ See Press Release, U.S. Department of State, *North Korea – Denuclearization Plan*, Feb. 13, 2007, available at

The third phase of the Fifth Round represented a shift in the U.S. policy of resisting one-on-one talks with North Korea; the bilateral talks occurring in early 2007 were the first instance of the Bush Administration speaking unilaterally to Pyongyang.⁸¹ The agreement finally called for the commencement of the Sixth Round of the Six-Party Talks on March 19, 2007.⁸²

2. The Sixth Round

The Sixth Round of talks began on March 19, 2007, and ended quickly on March 22, when North Korea's frozen \$25 million were not released. While the United States agreed on March 19, 2007 to unfreeze the funds, the funds were not readily accepted by the Bank of China since the United States had not removed the Banco Delta Asia from its blacklist.⁸³ As a result of this delay, North Korea refused to negotiate further, and the sixty-day deadline established in the February 13, 2007 agreement was not met.⁸⁴

In June 2007, with Russia's help, North Korea received the unfrozen funds, and in July 2007, South Korea sent fuel aid to North Korea.⁸⁵ In response, Pyongyang announced that the nuclear facilities at Yongbyon had been shut down and that the permanent international inspection team was readmitted.⁸⁶

Thus, at the resumption of the first phase of the Sixth Round of talks the denuclearization program gained momentum. Yet the talks again failed to set a timetable for disarmament, and the setting of specific deadlines was left to working groups to determine.⁸⁷ The press release issued at the conclusion of the meetings emphasized the setting of common goals and the principle of "action for action" underlying all parties obligations.⁸⁸

In late September 2007, the Sixth Round of talks continued with the second phase and the establishment of deadlines. North Korea agreed to disable all existing nuclear facilities subject to abandonment under the Joint Statement and the February 13, 2007, agreement.⁸⁹ Specifically, the Yongbyon facilities were to be disabled by December 31, 2007, and North Korea was to provide a complete and accurate declaration of all of its nuclear programs as enumerated in the

<http://www.state.gov/r/pa/prs/ps/2007/february/80479.htm>

⁸¹ See Mark Landler & Thomas Shanker, *US Holds 'Substantive' Talks with North Korea*, INT'L HERALD TRIBUNE, Jan. 17, 2007.

⁸² Press Release, United States Department of State, Initial Actions to Implement Six-Party Joint Statement, Feb. 13, 2007, available at <http://www.state.gov/r/pa/prs/ps/2007/february/80508.htm>.

⁸³ See Heejin Koo & Allen T. Cheng, *North Korea Talks Recess Amid Transfer Snafu*, BLOOMBERG, Mar. 22, 2007.

⁸⁴ *Id.*

⁸⁵ See Choe Sang-Hun, *With Money in Hand, North Korea to Close Nuclear Facility*, INT'L HERALD TRIBUNE, June 25, 2007.

⁸⁶ See David E. Sanger, *North Koreans Say They've Shut Nuclear Reactor*, INT'L HERALD TRIBUNE, July 14, 2007.

⁸⁷ See Howard W. French, *N. Korean Talks Fail to Set Timetable, but Yield Agreement on Goals*, INT'L HERALD TRIBUNE, July 19, 2007.

⁸⁸ Press Communiqué of the Head of Delegation Meeting of the Sixth Round of the Six-Party Talks (July 20, 2007), available at <http://hr.china-embassy.org/eng/zxxx/t343875.htm>.

⁸⁹ Press Release, United States Department of State, Second Phase Actions for the Implementation of the Joint Statement, (Oct. 3, 2007), available at <http://www.state.gov/r/pa/prs/ps/2007/oct/93217.htm>.

February 13 agreement.⁹⁰ Again, in return for these actions, North Korea would receive economic, energy, and humanitarian assistance up to the equivalent of one million tons of heavy fuel oil.⁹¹ The ongoing normalization of relationships between countries is also provided for in this agreement, with both Japan and the United States agreeing to continue working toward normalizing their relationships with North Korea.⁹²

3. The Nuclear-Activity Declaration

North Korea did not disable the Yongbyon nuclear complex or provide a complete list of its nuclear activities by the December 31, 2007 deadline.⁹³ Prior to the December 31 deadline, U.S. Assistant Secretary of State Christopher Hill visited the Yongbyon facility and remained positive regarding North Korea's progress in disabling the facility.⁹⁴ In particular, Hill emphasized that North Korea had taken the fuel rods out from the facility which prevents them from restarting the facility in the future.⁹⁵

In May 2008, however, North Korea turned over approximately 19,000 pages of documentation to the United States detailing North Korea's nuclear program production records.⁹⁶ A month after producing that information, on June 26, 2008, North Korea finally submitted its sixty-page report to Chinese officials,⁹⁷ and demolished the sixty-foot-tall-cooling tower at Yongbyon on June 27, 2008.⁹⁸

Despite this apparent progress, critics of North Korea's declaration argue it fails to provide information on three key points. First, the declaration did not include details regarding North Korea's suspected uranium-enrichment program.⁹⁹ Second, the declaration failed to mention the North Korean regime's alleged exports of nuclear materials to Syria and Libya.¹⁰⁰ Finally, the declaration did not provide any account of the quantity of nuclear weapons that North Korea has produced already.¹⁰¹

Even though the declaration failed to provide information that the nations in the Six-Party Talks agreed was required, the declaration and the cooling-tower demolition were greeted with cheers from the international community and especially from the United States. While still cautious regarding whether North Korea would continue to be accountable to the international

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ See Choe Sang-hun & Steven Lee Myers, *North Korea Says Earlier Disclosure Was Enough*, N.Y. TIMES, Jan. 5, 2008.

⁹⁴ See Allen T. Cheng, *North Korean Nuclear Program Almost Ended, Hill Says*, BLOOMBERG, Dec. 6, 2007 (stating that North Korea was "on target to complete the dismantling of its nuclear program this month").

⁹⁵ *Id.*

⁹⁶ See Carin Zissis, *The Six-Party Talks on North Korea's Nuclear Program* (June 28, 2008), available at <http://www.cfr.org/publication/13593>.

⁹⁷ See Jayshree Bajoria, *Pyongyang's Deal* (June 27, 2008), available at <http://www.cfr.org/publication/16657/>.

⁹⁸ See Barbara Demick, *North Korea puts on a demolition show at nuclear compound*, LOS ANGELES TIMES, June 28, 2008.

⁹⁹ Zissis, *supra* note 96.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

community, President George W. Bush stated in a joint press conference with South Korean President Lee Myung-bak on August 5 that he was, “pleased that the five-megawatt reactor at Yongbyon was destroyed.”¹⁰²

Further evidence of the American response to the declaration was more tangible. Two shipments of U.S. food aid have arrived in North Korea since late June – 37,000 tons of wheat arrived shortly after the declaration was made,¹⁰³ and another 23,000 tons of corn arrived in August.¹⁰⁴ A total of 500,000 tons of emergency food aid has been promised by the United States amid progress in the nuclear-program negotiations.¹⁰⁵

A final reward to North Korea for making its nuclear disclosures was to be its removal from the state sponsor of terror list. At first and shortly after North Korea issued its report to China in June, the U.S. government indicated that North Korea would be removed from the terror blacklist.¹⁰⁶ The earliest the removal could take place was on August 12, 2008 – but removal did not occur because, as the U.S. State Department said in a news conference, North Korea would not receive that concession until there is a “strong verification regime” in place.¹⁰⁷

4. Discussions on Verification Protocol and Beyond

In late July 2008, the nations involved in the Six-Party Talks meet informally during a larger meeting of the ten-member Association of Southeast Asian Nations (ASEAN).¹⁰⁸ Importantly, these meetings involved each nation’s top-level diplomats, including Secretary of State Condoleezza Rice for the United States and Foreign Minister Pak Ui Chun for North Korea.¹⁰⁹ According to Christopher Hill, the main issue discussed was how North Korea would allow for verification of the information in the disclosure and the dismantlement of the Yongbyon reactor.¹¹⁰ While dismantlement is supposed to occur by October, North Korea has taken initial steps toward putting back together the nuclear reactor it was dismantling because of its frustration over not having been removed from the state sponsor of terror list. The U.S. insists it is a question of North Korea needing to agree to a verification protocol before this can happen.¹¹¹

¹⁰² *President Bush Participates in Joint Press Availability with President Lee Myung-bak of the Republic of Korea*, Office of the Press Secretary, The White House, Aug. 6, 2008. Technically, it was the cooling tower that was destroyed, not the reactor itself.

¹⁰³ See Choe Sang-Hun, *supra* note 26.

¹⁰⁴ Donald Kirk, *Blunt Bush Changes Korean tune*, ASIA TIMES ONLINE, Aug. 8, 2008.

¹⁰⁵ *US food aid shipment arrives in North Korea*, ASSOCIATED PRESS, Aug. 5, 2008.

¹⁰⁶ Richard Spencer, *North Korea to be removed from terror blacklist after nuclear disclosure, says George Bush*, TELEGRAPH (LONDON), June 26, 2008.

¹⁰⁷ Foster Klug, *US Will Not Take NKorea Off Terror List – Yet*, ASSOCIATED PRESS, Aug. 12, 2008.

¹⁰⁸ Shamim Adam & Daniel Ten Kate, *North Korea Pledges to Meet Obligations Under Nuclear Agreement*, BLOOMBERG, July 23, 2008.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *North Korea Takes Nuclear Equipment Out of Storage*, LOS ANGELES TIMES, Sept. 4, 2008.

B. The United Nations

Since North Korea's test of a nuclear weapon on October 9, 2006 – and the UN Security Council Resolution imposing sanctions on North Korea as a result¹¹² – North Korea has remained a key topic of discussion in both the General Assembly and in other UN bodies. More specifically, after the nuclear weapon test and the accompanying Security Council resolution, various UN bodies also took further actions on human rights issues through two resolutions of the General Assembly,¹¹³ and reports from the Secretary-General¹¹⁴ and the Special Rapporteur for Human Rights in North Korea.¹¹⁵

1. Security Council Action

When North Korea tested a nuclear weapon on October 9, 2006, the UN Security Council acted quickly to condemn its actions and to impose sanctions on North Korea. Resolution 1718 cited numerous factors beyond the nuclear weapons test to provide context for the decision to impose sanctions: North Korea's violation of the NPT and the country's subsequent withdrawal from that treaty; North Korea's refusal to participate in the Six-Party Talks without certain preconditions being met; and North Korea's failure to address the other security and humanitarian concerns raised by the international community.¹¹⁶

Sanctions imposed on North Korea both precluded countries from exporting military goods and supplies such as battle tanks, combat aircraft, and missile systems and technologies related to nuclear weapon creation to North Korea, as well as a ban on the export of luxury goods to North Korea.¹¹⁷ The Security Council also imposed an asset freeze on any North Korean funds controlled or owned directly or indirectly by the persons and entities engaged in the nuclear weapons program and imposed a travel ban on the persons tied to the program.¹¹⁸ In addition, the Security Council further resolved that UN Member States were empowered to inspect cargo to and from North Korea to enforce the ban on trafficking in chemical, biological, or nuclear weapons.¹¹⁹

The Security Council made clear, however, that these sanctions were not meant to preclude humanitarian aid to the North Korean people.¹²⁰ North Korea was called on to return to the Six-Party Talks without any preconditions.¹²¹ And finally, the Security Council established a committee comprised of all Security Council members to continue to monitor and review North

¹¹² S.C. RES. 1718, UN Doc. S/RES/1718 (Oct. 14, 2006).

¹¹³ G.A. RES. 61/174, UN Doc. A/RES/61/174 (Dec. 12, 2006).

¹¹⁴ Secretary-General Ban Ki-moon, *Situation of Human Rights in the Democratic People's Republic of Korea*, U.N. Doc. A/62/318 (Sept. 4, 2007).

¹¹⁵ SPECIAL RAPPORTEUR FOR THE COMM'N ON HUMAN RIGHTS, *supra* note 10.

¹¹⁶ S.C. RES. 1718, *supra* note 112, p 1.

¹¹⁷ *Id.* at ¶ 8(a).

¹¹⁸ *Id.* at ¶¶ 8(d) & 8(e).

¹¹⁹ *Id.* at ¶ 8(f).

¹²⁰ *Id.* at ¶ 9(a).

¹²¹ *Id.* at ¶ 14.

Korea's actions to ensure that the sanctions remained appropriate – along with promising additional measures against North Korea should these prove necessary.¹²²

North Korea's response to the Security Council's resolution was defiant. A United Nations press release regarding the resolution quoted the North Korea representative as stating that his country "totally rejected" the resolution.¹²³ North Korea's representative complained further that the Security Council's actions were "gangster-like" in adopting such coercive sanctions while neglecting the nuclear threat against North Korea posed by the United States.¹²⁴ The North Korea representative closed by stating that the Security Council had lost its impartiality in dealing with North Korea by applying a double standard in its work.¹²⁵

2. General Assembly Action

In December 2006 and again in December 2007, the UN General Assembly approved resolutions addressing the North Korean human rights situation. Resolutions 61/174¹²⁶ and 62/167 covered similar ground as previous General Assembly resolutions,¹²⁷ but added concerns regarding the North Korean government's "violations of economic, social and cultural rights, which have led to severe malnutrition and hardship for the population in [North Korea]."¹²⁸ The General Assembly most recently urged North Korea to "put an end to the systematic, widespread and grave violations of human rights," to "tackle the root causes leading to refugee outflows and criminalize those who exploit refugees by human smuggling, trafficking and extortion, while not criminalizing the victims," and to extend access and cooperation to the Special Rapporteur, the UN High Commissioner for Human Rights and other UN agencies and humanitarian actors.¹²⁹

To show its concern regarding the human rights situation in North Korea, the General Assembly requested in Resolution 61/174 that the Secretary-General, "submit a comprehensive report on the situation in the Democratic People's Republic of Korea and [that] the Special Rapporteur . . . report his [own] findings and recommendations."¹³⁰ This was the first time the Secretary-General was asked to report to the General Assembly about the human rights situation in North Korea.¹³¹ In response, the Secretary-General investigated the human rights situation over the course of the next nine months, reporting to the General Assembly in September 2007.

In his report, the Secretary-General outlined the UN's history in dealing with North Korea's human rights issues. This outline identified the conditions which led to General Assembly resolutions 60/173 and 61/174, including North Korea's failure to cooperate with the UN High Commissioner for Human Rights and with the various Special Rapporteurs appointed

¹²² *Id.* at ¶ 15.

¹²³ Press Release, *Security Council Condemns Nuclear Test by Democratic People's Republic of Korea, Unanimously Adopting Resolution 1718 (2006)*, U.N. Doc. SC/8853 (Oct. 14, 2006).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ G.A. RES. 61/174, *supra* note 113.

¹²⁷ See G.A. RES. 60/173, U.N. Doc. A/RES/60/173 (Dec. 16, 2005).

¹²⁸ G.A. RES. 61/174, *supra* note 113, at ¶ 1(b)(vi).

¹²⁹ G.A. RES. 62/167, U.N. Doc. A/RES/62/167 (Dec. 18, 2007).

¹³⁰ *Id.* at ¶ 5.

¹³¹ See THE SECRETARY-GENERAL, *supra* note 114, at ¶ 1.

by the Commission on Human Rights, including the Special Rapporteur on human rights.¹³² The report also summarized the work and findings of various UN entities on the status of human rights in North Korea.¹³³

Based on the information set forth in his report, the Secretary-General noted that little progress has been made in implementing any of the international treaties or resolutions of the General Assembly or the Commission on Human Rights.¹³⁴ While requesting that the High Commissioner for Human Rights continue her efforts to engage North Korea in constructive dialogue,¹³⁵ the Secretary-General made a direct call on the North Korean government, “to extend full and free access to the United Nations agencies and other humanitarian actors in order for them to carry out their mandates.”¹³⁶

3. The Special Rapporteur’s Reports

Since the publication of *Failure to Protect*, the Special Rapporteur on the situation of human rights in North Korea, Vitit Muntarbhorn, has issued three reports. The first report, issued in February 2007, lamented North Korea’s refusal to cooperate with the Special Rapporteur and highlighted the ongoing human rights problems within the country, including food shortages and malnutrition, a lack of basic freedoms, the mistreatment of prisoners and the exploitation of refugees. Mr. Muntarbhorn’s report also positively cited this report’s predecessor, *Failure to Protect*, while discussing the theory that a state has a responsibility to protect its population and that the international community has an obligation to take collective action should a state fail to do so.¹³⁷ The Special Rapporteur concluded by calling for North Korea to abide by its international human rights obligations, facilitate humanitarian aid while improving food security, reform its prison system and improve the treatment of refugees, and engage substantively with the Special Rapporteur, human rights bodies and the High Commissioner for Human Rights. In addition, he urged the international community to continue to provide food aid on a “no access, no aid” basis, to engage North Korea as appropriate and to work for the protection of human rights, accountability for human rights violations, and an end to impunity.

In August 2007, Special Rapporteur Vitit Muntarbhorn issued a second report to the General Assembly.¹³⁸ While North Korea had continued to refuse to provide the Special Rapporteur access to the country, the Special Rapporteur did note that some improvements in North Korea’s relationships with the outside world had occurred – particularly the progress made through the Six-Party Talks.¹³⁹ Despite these outward appearances of improvement, the Special

¹³² *Id.* at ¶¶ 4, 10-16.

¹³³ These agencies include the Office of the United Nations High Commissioner for Refugees (UNHCR), the Food and Agriculture Organization (FAO), the World Food Programme (WFP), the United Nations Children’s Fund (UNICEF), the United Nations Development Programme (UNDP), and the United Nations Educational, Scientific and Cultural Organization (UNESCO).

¹³⁴ *Id.* at ¶ 42.

¹³⁵ *Id.* at ¶ 43.

¹³⁶ *Id.* at ¶ 44 (emphasis of entire paragraph removed).

¹³⁷ SPECIAL RAPPORTEUR FOR THE COMM’N ON HUMAN RIGHTS, *Situation of Human Rights in the Democratic People’s Republic of Korea*, U.N. Doc. A/HRC/4/15 (Feb. 7, 2007).

¹³⁸ SPECIAL RAPPORTEUR FOR THE COMM’N ON HUMAN RIGHTS, *supra* note 10.

¹³⁹ *Id.* at ¶ 6-7.

Rapporteur reported that many of the same problems and abuses highlighted in his February 2007 report continued, as did North Korea's refusal to cooperate with the Special Rapporteur's efforts. The Special Rapporteur reiterated his previous recommendations, both for North Korea and the international community. In concluding his report, the Special Rapporteur noted that, "[t]aking stock of the human rights situation at the ground level in the country, regrettably it is the ordinary people of the Democratic People's Republic of Korea who suffer at the hands of the authorities and who bear the brunt of a myriad of abuses that are both systematic and pervasive."¹⁴⁰

The Special Rapporteur's most recent report was issued in February 2008.¹⁴¹ While noting that there had been some potentially promising developments in the Six Party Talks, the report states that "[w]hile much depends upon global-local political will to test the desire for transparency and responsibility . . . it is important to underline the longstanding and systematic nature of human rights transgressions in the country which are highly visible, substantial, and exponential."¹⁴² The Special Rapporteur also includes an important discussion about the "impunity factor," which has enabled such violations to exist and persist for so long. He explains that a softer entry point might be to press for the misdeeds of local officials to be prosecuted within the country, though he cautions that the absence of rule of law and non-independent nature of the judiciary will make it difficult to ensure that "justice is done and seen to be done."¹⁴³ He adds that a harder entry point is to advocate for accountability in an international setting, whether in terms of state responsibility or individual accountability.¹⁴⁴ The Special Rapporteur also mentions that civil society, through reports such as *Failure to Protect*, has been advocating to apply the "responsibility to protect" doctrine to the situation in North Korea. He aptly concludes that "the question remains whether the issue of violations in . . . [North Korea] . . . will be taken up at some stage at the pinnacle of the system, within the totality of the United Nations framework."¹⁴⁵

4. Comments of the UN Secretary-General

On July 4, 2008, speaking in Seoul, South Korea, UN Secretary-General Ban Ki-moon made a strong public statement about the need for North Korea to address human rights concerns. In a press conference he said:

I think that North Korea should also take necessary steps to improve their human rights situation . . . There are still many areas where human rights are not properly protected, and even abused . . . This is an unacceptable situation.¹⁴⁶

In response to this statement, the Committee on Human Rights in North Korea sent a letter to the Secretary-General stating "we agree, and trust your singling out this situation . . .

¹⁴⁰ *Id.* at ¶¶ 57-59.

¹⁴¹ SPECIAL RAPPORTEUR FOR THE COMM'N ON HUMAN RIGHTS, *Situation of Human Rights in the Democratic People's Republic of Korea*, U.N. Doc. A/HRC/7/20 (Feb. 15, 2008).

¹⁴² *Id.*

¹⁴³ *Id.* at ¶ 44.

¹⁴⁴ *Id.* at ¶ 45.

¹⁴⁵ *Id.*

¹⁴⁶ *Ban Urges NK to Improve Human Rights*, KOREA TIMES, Jul. 4, 2008.

will mark the beginning of a sustained effort to hold the government of North Korea accountable for its serious human rights transgressions.”¹⁴⁷ The letter then provided substantial recommendations about the following key areas: (1) human rights access; (2) humanitarian access; (3) political/penal labor camps; (4) freedom of movement; and (5) trafficking in women and girls.¹⁴⁸

C. South Korea

Although the Sunshine Policy continued to dominate South Korea’s relations with North Korea through 2007, relations between the two countries have deteriorated since the election of President Lee Myung-bak in early 2008. As thoroughly examined in *Failure to Protect*, the Sunshine Policy has been the South’s official policy of engagement with the North for roughly the last ten years.

In describing what became the Sunshine policy towards North Korea, President Kim Dae-jung said he sought “to lead North Korea down a path towards peace, reform, and openness through reconciliation, interaction and cooperation with the South.”¹⁴⁹ At this point, the future of the Sunshine Policy remains uncertain.

1. Reaction to the North’s Nuclear Test

During the end of 2006 and early 2007, some observers concluded the South’s dedication to the Sunshine Policy was beginning to fade.¹⁵⁰ Following the North’s July 2006 missile test, South Korea reduced its substantial food donation program.¹⁵¹ Then, in October, the relationship chilled further when the North tested a nuclear weapon, leading South Korea to suspend all food aid.¹⁵² South Korea continued to refuse to provide further humanitarian aid until it received assurances – gained through the Six-Party Talks – that North Korea would scrap its nuclear weapons program.¹⁵³ Once that assurance was given, on March 2, 2007, South Korea resumed aid to North Korea in the form of food and fertilizer.¹⁵⁴

¹⁴⁷ Letter from Richard V. Allen and Stephen J. Solarz, Co-Chairs, Committee for Human Rights in North Korea, to UN Secretary-General Ban Ki-Moon, Aug. 11, 2008 [Internal Committee Document]. Reports of the Committee include: David Hawk, *The Hidden Gulag: Exposing North Korea’s Prison Camps – Prisoner’s Testimonies and Satellite Photographs*, 2003; Stephan Haggard & Marcus Noland, *Hunger and Human Rights: The Politics of Famine in North Korea*, 2005; Stephan Haggard & Marcus Noland, ed., *The North Korean Refugee Crisis: Human Rights and Int’l Response*, 2006; FAILURE TO PROTECT, *supra* note 1; *Legal Strategies for Protecting Human Rights in North Korea* (jointly published with Skadden, Arps, Slate, Meagher & Flom LLP & Affiliates), Nov. 28, 2007; Lee Hae-Young et al., *The Treatment of North Korean Women in China*, 2008 (forthcoming).

¹⁴⁸ *See id.*

¹⁴⁹ *See* FAILURE TO PROTECT, *supra* note 1, at 77-80.

¹⁵⁰ Anthony Faiola & Joohee Cho, *North-South Relations Suffer A Sudden Chill: As ‘Sunshine Policy’ Dims, So Does Hope for Families*, WASH. POST, Oct. 11, 2006.

¹⁵¹ Donald Kirk, *North Korea Heads Toward Hunger*, CHRISTIAN SCIENCE MONITOR, Oct. 19, 2006.

¹⁵² *Id.*

¹⁵³ *S. Korea to Resume Food Aid to North*, AUSTRALIA NEWS, Mar. 2, 2007.

¹⁵⁴ *Id.*

2. The Second Inter-Korean Summit

In early October 2007 in Pyongyang, then-South Korean President Roh Moo-hyun met with North Korean leader Kim Jong-il in only the second-ever Inter-Korean Presidential Summit.¹⁵⁵ South Korea and North Korea came to agreements on several economic, military, and cultural issues, ranging from pledging to expand the Kaesong industrial complex and setting up a peace-and-cooperation zone in the West (Yellow) Sea to agreeing to send joint cheering teams by rail to Beijing for the 2008 Beijing Olympics.¹⁵⁶ The summit focused almost entirely on business and security issues, with POWs and abduction victims either being discussed briefly – as Roh Moo-hyun stated – or not at all, according to Unification Minister Lee Jae-joung.¹⁵⁷ In the end, it was clear that the issues and projects discussed were in keeping with the South’s long-term goal of reducing the economic gap between the two Koreas, but more immediately reflected the South’s strategy of trying to gain security on the peninsula by forging economic and other ties.¹⁵⁸ A short time later, South Korea abstained from supporting the UN General Assembly resolution on the human rights and humanitarian situation in North Korea, which it had supported for the first time in 2006.¹⁵⁹

3. Korea’s New President

On December 19, 2007, South Korea elected the former mayor of Seoul, Lee Myung-bak, to be the next president of the country.¹⁶⁰ In speaking after his election, Mr. Lee promised to undertake a “great transformation” of South Korea, which will affect Inter-Korean relations.¹⁶¹ Mr. Lee had stated his intent to dissolve the Unification Ministry – the government agency established in 1969 to deal with North – South relations.¹⁶² But in negotiations following the election between the major political parties, the decision was made to retain the Unification Ministry, though reducing its influence over South Korean foreign policy.¹⁶³

President Lee also indicated his plans to revisit the agreements made during the 2007 Inter-Korean Summit.¹⁶⁴ Further, he indicated he would link increased investment in North Korea to progress towards North Korean de-nuclearization.¹⁶⁵ Additionally, President Lee stated his intention not to ignore North Korea’s dismal human rights situation.¹⁶⁶ Both of these steps would constitute a clear reversal of the Sunshine Policy that Mr. Lee’s predecessors had followed.¹⁶⁷

¹⁵⁵ *Korean Peace Process Leaps Forward*, FORBES.COM, Oct. 8, 2007.

¹⁵⁶ *Id.*

¹⁵⁷ *No POWs, Abduction Victims in Next Family Reunions*, CHOSUN ILBO, Oct. 16, 2007.

¹⁵⁸ Norimitsu Onishi, *Korean Summit Results Exceed Low Expectations*, N.Y. TIMES, Oct. 5, 2007.

¹⁵⁹ *Lee Gov’t Takes Stand on North Korea Human Rights*, CHOSUN ILBO, Mar. 4, 2008.

¹⁶⁰ Choe Sang-hun, *South Korea’s Sunshine Policy Dims*, N.Y. TIMES, Jan. 17, 2008.

¹⁶¹ Andrew Salmon, *New Leader Vows ‘Great Transformation’*, WASH. TIMES, Jan. 18, 2008.

¹⁶² *Id.*

¹⁶³ *Unification Ministry Will Be Retained*, KOREA TIMES, Feb. 10, 2008.

¹⁶⁴ Donald Kirk, *Sundown for Seoul’s Korean Policy?*, ASIA TIMES ONLINE, Jan. 16, 2008.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

President Lee was inaugurated on February 25, 2008.¹⁶⁸ Immediately, the new South Korean government began to heighten the profile of the South's new approach towards North Korean human rights abuses. Speaking at the UN Human Rights Council, Park In-kook, Deputy Foreign Minister for International Affairs and Global Issues, called upon North Korea to "take appropriate measures to address the international community's concern that the human rights situation in the DPRK has not improved."¹⁶⁹ This vocal policy of pressure marked a change in approach from the two previous South Korean administrations on how to promote human rights in North Korea. Even more interesting is that in his speech, the Deputy Foreign Minister also indicated Seoul might be willing to press for further action in the Human Rights Council on the situation in North Korea. Deputy Foreign Minister Park said "[t]he council should be equipped with appropriate mechanisms to effectively respond to persistent and gross violations of human rights . . . Country-specific resolutions are the mechanism designed to best serve this function, by urging the U.N. system and the country concerned to take appropriate actions."¹⁷⁰ These comments suggest this government of South Korea may afford greater attention to human rights abuses in North Korea than its predecessors.

4. Rising Tensions

North Korea reacted with hostility to the new South Korean government's approach to inter-Korean relations, cutting off official dialogue and demanding that Lee Myung-bak endorse the agreements reached by his predecessors and Kim Jong-il under the Sunshine Policy in 2000 and 2007. Although he had initially expressed intentions merely to "review" the agreements, by July 2008 an already politically-battered Lee was faced with mounting domestic pressure to demonstrate increased flexibility. He subsequently announced a willingness to "engage in serious consultations on how to implement" the agreements, noting that "[f]ull dialogue between the two Koreas must resume."¹⁷¹

On the same day that Lee made his conciliatory announcement, however, a North Korean soldier shot and killed a South Korean tourist. While accounts of the incident differ, the tourist, a 53-year old housewife from Seoul, had reportedly ventured off the grounds of the North Korean Mt. Geumgang resort and wandered into a restricted military zone while attempting to watch the sun rise. North Korea promptly blamed Park Wang-ja for her own death and refused to allow South Korean investigators to survey the site of the incident. South Korea responded by discontinuing tours to the resort, a symbol of Korean reconciliation, until it could "guarantee the safety of tourists" and the South Korean company that ran the tours withdrew the majority of its personnel from the area. Calling this decision an "intolerable insult," North Korea demanded an apology and announced in early August that it would "expel all persons of the South side staying in the tourist area we deem unnecessary." North Korea further pronounced South Korea's response to be "a racket" and warned that "Lee Myung-bak is driving the frozen inter-Korean relations to a catastrophic phase."¹⁷² Tensions from the incident continued to rise throughout

¹⁶⁸ *Lee Myung-bak Inaugurated as President of South Korea*, ASSOCIATED PRESS, Feb. 25, 2008.

¹⁶⁹ *South Korean Envoy Signals Shift in North Korea Human Rights Policy*, VOICE OF AMERICA, Mar. 4, 2008.

¹⁷⁰ *Id.*

¹⁷¹ Choe Sang-hun, *South Korean Offer to North Marred by Shooting*, INT'L HERALD TRIBUNE, July 11, 2008.

¹⁷² Heejin Koo, *North Korea Vows 'Strong' Military Action at Geumgang*, Bloomberg.com, Aug. 3, 2008; Barbara Demick, *North Korea and South Korea: The gulf grows*, LOS ANGELES TIMES, Aug. 11, 2008.

August, with North Korea refusing at the last minute to allow its athletes to march alongside their South Korean counterparts in the opening ceremony for the 2008 Olympic Games, as they had in 2000, 2004 and 2006.

Recommendations

For the purposes of the further processes of engagement between the North and the South, the Six Parties, and the broader international community, we recommend the following steps:

In General

- The situation of the people of North Korea as documented in this report, our prior report, and reports of numerous governments and non-governmental organizations should be raised directly with North Korean authorities. The international community should both explain its expectation that the North will abide by its commitments under international law and offer its support to help achieve these requirements;
- The situation in North Korea should be followed vigorously by the UN Secretary-General, through his good offices, including the Special Rapporteur on Human Rights in North Korea, who should insist on visiting North Korea, and report to the Human Rights Council on a regular basis;
- The international community should insist on immediate, safe, and unhindered access to all of North Korea for purposes of ensuring food distribution to the most vulnerable groups of the population;
- Humanitarian aid to North Korea should be provided unconditionally and through appropriate channels, with an emphasis on international institutions and non-governmental organizations to facilitate monitoring.
- Foreign governments without a diplomatic presence in Pyongyang should consider establishing such missions to provide greater opportunities to engage with North Korea on human rights, humanitarian issues, and other concerns;
- Economic cooperation, cultural exchanges, sharing of information and other confidence building measures should be further developed for the mutual benefit of all sides; and
- Other international organizations should be encouraged to strengthen their presence in North Korea with a view to facilitate increased cooperation in such areas as health care, education and training, worker and trainee exchanges, trade, culture, and sports.

To the Six Parties¹⁷³

As “Phase Three” gets underway, human rights issues should be addressed in virtually all with “Working Groups” and subsidiary negotiations with the exception of the Working Group on the Denuclearization of the Korean Peninsula.

¹⁷³ See *infra*, at Appendix I, for detailed explanation of these recommendations.

1. At the Working Group on the “Normalization of DPRK-U.S. Relations,” the United States should:
 - Seek to clarify whatever misunderstandings North Korea may have with respect to the role of human rights issues in constructing a political relationship between the United States and North Korea;
 - Seek to extend international cooperation with North Korea into support for technical cooperation in the implementation of the recommendations by the UN Committees responsible for reviewing the human rights conventions and treaties signed by both North Korea and the United States;
 - Discuss with North Korea the advantage of cooperation with the UN High Commissioner for Human Rights and the various Working Groups and Rapporteurs of the UN Human Rights Council;
 - Explore with North Korea the need to allow access by the International Committee of the Red Cross (or an alternative group) to places of detention inside North Korea, particularly those area referred to as control zones or managed places; and
 - Discuss the need to moderate policies and punishments meted out to North Koreans who left North Korea in search of food or income that, in turn, cause North Korea refugee flows through a variety of countries in East Asia by North Koreans seeking shelter or asylum in the other parties to the Six Party Talks.
2. At the Working Group on the “Normalization of DPRK-Japan Relations,” North Korea should:
 - Cooperate in the newly re-opened investigation into the abductions of Japanese nationals so that a proper accounting can be made to bring closure for the families of the abducted persons who died in North Korea following their abductions.
3. At the Working Group on “Economy and Energy Cooperation,” all parties except North Korea should:
 - Recognize that the wrong kind of economic aid can be counter-productive to sustainable economic development and should seek to provide economic assistance to North Korea in ways that assist, not impede, the economic reform needed for real growth and development; and
 - Ensure that large-scale, long-term infrastructure investments be accompanied by “bottom-up” people-centered measures that facilitate remittances and enterprise between individual North Koreans and citizens of the other parties.
4. At the Working Group on a “Northeast Asia Peace and Security Mechanism” all parties should:

- Include a provision regarding “respect for human rights” as one of the guiding principles for interstate relations among the parties to the envisioned security cooperation mechanisms.
5. At the subsidiary negotiations envisioned in the September 2005 Joint Statement to replace the Korean War armistice with a “peace regime” on the Korean peninsula, relevant parties should:
- Include, along with the military, political and legal provisions to convert the armistice into a peace treaty, the human rights-related provisions of the never-implemented 1991 Basic Agreement on Reconciliation, Non-Aggression and Exchanges, and Cooperation between North and South Korea.

To the UN General Assembly

At the UN General Assembly, the sponsors of the resolution on the situation of human rights in North Korea should:

1. Include in the preamble to a 2008 resolution on the human rights situation in North Korea a reference to the key documents that endorse the “responsibility to protect” doctrine and the obligation of all states to protect their citizens from human rights atrocities, including crimes against humanity (e.g., paragraphs 138 and 139 of the 2005 World Summit Outcome Document and paragraph 4 of Security Council Resolution 1674); and
2. Include in the operative paragraphs of the resolution, a recommendation to the Secretary-General to appoint a group of experts to report to the General Assembly about whether North Korea has committed violations of international human rights law and, if so, whether these violations constitute a failure to protect its citizens from crimes against humanity.

To the Government of South Korea

The Government of South Korea should:

- Respond affirmatively, in light of the renewed threat of famine, to the request of the World Food Programme for food donations for the people of North Korea, notwithstanding North Korea’s refusal to request food aid from South Korea;
- Resume voting in favor of the EU-sponsored resolution on the situation of human rights in North Korea at the UN General Assembly;
- Enhance dialogue about and expand economic cooperation with North Korea;

- Elaborate on the viewpoint expressed by South Korean President Lee Myung-bak that human rights are matters of universal values and international norms;
- Allow radio stations to broadcast northward in the direction of North Korea; and
- Press for an accelerated schedule of family reunions, even if it is unlikely that North Korea will agree.

Appendix I: Discussion of Six-Party Talks Recommendations

As the Six-Party Talks move from “Phase Two” to “Phase Three,” if progress continues on denuclearization, the human rights, human security, and humanitarian concerns discussed in *Failure to Protect* and this report can – and should – become central concerns in four of the five Six-Party Talks Working Groups established following the February 13, 2007 “Initial Actions for the Implementation of the Joint Statement”: (1) the Working Group on Normalization of DPRK-U.S. Relations; (2) the Working Group on Normalization of DPRK-Japan Relations; (3) the Working Group on Economy and Energy Cooperation; and (4), the Working Group on a Northeast Asia Peace and Security Mechanism.

Human rights, human security, and humanitarian concerns should also play a central role in negotiations to replace the Korean War Armistice Agreement with a permanent “peace regime” on the Korean peninsula – subsidiary discussions posited in the September 2005 Joint Statement that provides the basic framework for the ongoing six party negotiations.¹⁷⁴

Because the Six-Party Talks are aimed at a comprehensive agreement that would settle core outstanding issues between the various parties, the negotiations are not simply a “security for security” trade-off.¹⁷⁵ In other words, while the overriding concern of the United States is non-proliferation and arms control, the other parties also focus equally on regional stability and mutual arrangements to facilitate continued economic growth among the parties. North Korea, for its part, wants a great deal more, including compensation if it agrees to forgo exporting nuclear or missile technology (its major potential foreign exchange earners and export industries). More importantly, such a comprehensive agreement would also include normalizing diplomatic relations. In particular, this would include the U.S. and Japan recognizing and accepting North Korea’s sovereignty and existence, and then entering into normal diplomatic, political, and economic relations with it.

North Korea contends that it will only enter into arms control agreements with the U.S. if the U.S. replaces what the North Koreans term “hostile intent” with non-hostile, normal, “friendly” relations, even an alliance. It is for this reason that the Six-Party Talks also includes the series of working groups on U.S. and Japan relations, economic cooperation, security arrangements for Northeast Asia to complement the bilateral military alliances, and a negotiated peace agreement to end the Korean War.

However, if North Korea wants normal relations and the assurance that the United States will extend a place for it in the global and regional political-economy largely constructed by the U.S. following Japan’s defeat in World War II – security and political arrangements and economic relationships that brought peace and prosperity to Japan, South Korea and the other tiger economies of East and Southeast Asia, and later an opened and reforming China and

¹⁷⁴ North Korea has long insisted that replacing the Korean War armistice with a peace treaty is part of ending enmity between North Korea and the United States. The U.S. has expressed a willingness to undertake such negotiations. Such talks would have to include all parties to the Korean War. These subsidiary negotiations have not yet started.

¹⁷⁵ As, for example, the exchange of a U.S. pledge not to attack or threaten North Korea in exchange for North Korean de-nuclearization.

Vietnam – then the U.S. and the other parties to the talks can and should seek the assurance that North Korea will move toward adherence to its international human rights obligations. As the United States moves to extend to North Korea the assurances it seeks, it is reasonable to expect North Korea to reassure the world that it will abide by those norms.

From Phase Two to Phase Three

What is usually referred to as the Second Phase of the Six-Party Talks is, with fits and starts, on its way to some form of completion. During this timeframe, North Korea was to “disable” the plutonium production, separating and reprocessing facilities at its nuclear reactor at Yongbyon¹⁷⁶ and to “declare, correctly and completely, all of its nuclear programs.”¹⁷⁷ In exchange, North Korea would be given one million tons of “heavy fuel oil (HFO) or equivalent”¹⁷⁸ and North Korea would be removed from the U.S. list of “state sponsors of terrorism” and its designation under the U.S. “Trading With the Enemies Act” (TWEA)¹⁷⁹, aimed at demonstrating North Korea’s improved political relations with the United States in that the U.S. would no longer formally, officially designate North Korea as an “enemy” and “state sponsor of terrorism.”¹⁸⁰

North Korea proceeded to substantially disable the plutonium-producing reactor at Yongbyon, an action symbolized by the televised blowing-up of the reactor’s cooling tower. However, despite having previously agreed to make a complete and correct declaration of all its nuclear programs, North Korea balked at declaring any element of uranium enrichment.¹⁸¹ And, North Korea also refused to admit to providing nuclear technological capacity or knowledge to Syria.¹⁸² Rather, in a compromise worked out with the U.S., North Korea agreed only to accept U.S. information and “acknowledge” U.S. concerns on these other issues, in effect postponing discussion of them to Phase Three.

¹⁷⁶ In the parlance of the denuclearization negotiations “disablement” means, roughly, taken apart to such an extent that it would take a year to reassemble and restart those facilities, as opposed to the “freeze” on facilities that was mandated by the 1994 Agreed Framework, which would have required roughly three months to restart. Also by comparison, the “dismantlement” projected for Phase Three will entail taking the previously disabled facilities so completely apart and carted away that plutonium production facilities would have to be completely rebuilt from scratch.

¹⁷⁷ This “declaration” would, in turn, become the basis for subsequent “verification” (Note that “programs” is in the plural).

¹⁷⁸ HFO is a type of fuel oil that can only be used for several conventional electrical power generators in North Korea. “Equivalent” is steel plates and rods, copper tubing and other materials used to repair conventional power generating equipment and facilities. North Korea is being compensated in energy production assistance because, in theory, the plutonium-producing nuclear reactor it is “disabling” could be used to generate electricity.

¹⁷⁹ This was imposed on North Korea in 1950 at the outset of the Korean War.

¹⁸⁰ There are a number of additional and overlapping U.S. sanctions still in place against North Korea. Removal from TWEA and the state sponsor of terrorism list will remove legal, though not necessarily non-legal, barriers to North Korea trade with the United States and a North Korean relationship with international financial institutions. It is possible, however, that North Korea may also seek to insist on trade and aid as measures of “good faith” by the U.S.

¹⁸¹ While there are intelligence disputes as to how far along the North Korea uranium enrichment program had progressed, it was U.S. accusations that North Korea had acquired uranium enrichment blueprints and technology from Pakistan that lead to the breakdown of the 1994 Agreed Framework.

¹⁸² The North Korean-assisted secret nuclear reactor in Syria was bombed by the Israeli Air Force. A number of prominent arms control negotiators take this proliferation extremely seriously, as do key House and Senate leaders.

As it was the plutonium-producing reactor at Yongbyon and the plutonium-based fissile material used for the nuclear device that North Korea exploded in 2007 (and which is the basis for such nuclear weapons as North Korea may have in its arsenal), the other five parties decided to move ahead to Phase Three even though there are several important and unresolved carry-overs from Phase Two.¹⁸³ This phase was capped off by an informal Ministerial-level meeting at the sideline of the ASEAN Regional Forum¹⁸⁴ in July 2008, where U.S. Secretary of State Rice met with the Foreign Ministers from all five parties to the Six-Party Talks, including North Korean Foreign Minister Pak Ui Chun.

On to Phase Three

Phase Three is intended to take up “dismantlement” of fissile-material production facilities and the removal of previously produced fissile material, wherein North Korea would part with its “nuclear deterrent.” There are indications that North Korea would like to divide Phase Three into two parts, drawing out dismantlement, perhaps for a prolonged period, while continuing to hold on to its existing stock of fissile material and/or nuclear warheads.¹⁸⁵ Phase Three will also take up the verification of North Korea’s “declaration” and the unresolved issues from Phase Two described above. How this will work, and how this process will be impacted by a new administration in the United States remains to be determined.

However, what is important for our present purpose is that the working groups where human rights, human security, and humanitarian issues will arise, are supposed to move ahead during Phase Three. Thus, it is important to look in more detail as to how human rights and humanitarian issues are situated in these various working groups. And it is important to consider again that the Six-Party Talks are intended to be comprehensive in nature and not a narrowly construed “security-for-security” trade-off.

Up to this point, with the exception of the bilateral working group to normalize DPRK-Japanese relations – which is almost entirely focused on the human rights issue of abductions¹⁸⁶ – the other working groups are driven by the progress, or lack thereof, in the key denuclearization negotiations. Thus, pending the partial completion of the Phase Two actions regarding the “declaration” of North Korea’s nuclear programs and the “dismantlement” of plutonium production facilities at Yongbyon, some of the working groups where human rights issues are key issues are just getting underway. If and when Phase Three moves seriously ahead, the recommendations below regarding human rights and humanitarian issues will come directly to the fore. This phase will involve more substantial commitments to the North’s security and

¹⁸³ As of August 2008, the compensation promised to North Korea in HFO and equivalent is only roughly half completed, though these delays are recognized as technical rather than political in nature.

¹⁸⁴ See *supra* note 108.

¹⁸⁵ Indeed, there is a view held by a number of experts on North Korea that while it has decided to forgo the production of additional fissile/bomb-making material, it has not yet decided at all to give up such fissile material, and that North Korea wants, for both deterrent and prestige reasons, to remain a nuclear weapons state, notwithstanding previous and standing commitments to denuclearize and rejoin the Non-Proliferation Treaty “at an early date.” It should also be noted that some arms control experts believe that the disabled plutonium production and reprocessing sites are so contaminated it may take a decade to dismantle them safely.

¹⁸⁶ See FAILURE TO PROTECT, *supra* note 1, at 42-48, and *infra* Section I.A.3.

economic development, which should make it more possible to advance human rights goals without threatening the North Korean regime.

To be sure, if there is a deal to be made on North Korean denuclearization (which has yet to be established)¹⁸⁷, it is highly unlikely the U.S. Congress would turn down or un-make such a deal on human rights grounds. However, as restated recently by Robert Gallucci, the lead U.S. negotiator with North Korea for the 1994 Agreed Framework, there is not going to be a non-nuclear North Korea until there is a fully normal relationship with the United States. Until full and final normalization North Korea will retain nuclear weapons as a hedge against U.S. efforts at “regime change”:

And it is going to be very hard to have political and other relations with a country guilty of gross human rights violations. Imagine what it would be like to have robust communications and cultural exchanges with a country that has gulags, forced labor and a dictatorial cult for a government. It will be very hard for the U.S. government to sustain that sort of relationship.¹⁸⁸

The following analysis examines the key issues on human rights that can be addressed in the Working Groups of the Six-Party Talks.

I. Working Group on the Normalization of DPRK-U.S. Relations

It is in the context of views, such as those expressed by Robert Gallucci, which reaffirms the importance of human rights issues being tackled as part of the bilateral Working Group on U.S.-DPRK normalization. The “disablement” component of Phase Two involved extensive discussions with U.S. officials and U.S. scientists, who worked with the North Koreans on a virtually daily basis. Normalization discussions will have to cover a variety of issues, probably interfacing with a variety of North Korean counterparts.¹⁸⁹

A. Developing Common Ground

To begin a human rights dialogue with North Korea, the U.S. will likely have to discuss with the North Koreans that human rights are universal values recognized in a series of norms and standards drawn up under the auspices of the United Nations, not part of an ideological weapon to crush North Korea’s social system or poison the minds of its citizens. It will likely also have to be discussed with North Korea that its country is not being singled out; that the U.S. has had human rights discussions with virtually every country with whom it has reconciled and

¹⁸⁷ Again, as noted above, North Korea has evidently decided to cease the production of plutonium-based fissile material. Whether or not Kim Jong-il has decided to part with previously produced fissile materials (weaponized or not) remains to be determined in the course of the negotiations.

¹⁸⁸ Robert Gallucci, *The Six Party Talks: Getting to Phase Three*, HERITAGE FOUNDATION, Jul. 1, 2008.

¹⁸⁹ For example, in addition to human rights concerns, there are close to a dozen overlapping sanctions in place against North Korea that will have to be disentangled and removed if normalization is to occur, even step-by-step. In addition to the explicit human rights concerns noted above, there is the matter of the scores of thousands of Korean-Americans with family members in North Korea whose needs and situations will have to be taken into account and regularized by both governments.

established normal relations. It can also be noted that human rights issues have been included in the resolution of Cold War conflicts in Europe, Central America, and Southeast Asia.

B. Human Rights Treaties Signed by both the U.S. and North Korea

It is insufficiently acknowledged that the United States and North Korea have signed some of the same international human rights conventions, most importantly the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The UN Human Rights Committee and the UN Committee on Economic, Social and Cultural Rights (technical UN bodies of experts elected by States Parties to the conventions¹⁹⁰ to review treaty-implementation) have made recommendations to North Korea on improving the implementation of the rights set forth in these treaties. It would be entirely appropriate, and it should be un-objectionable for the U.S. and North Korea as signatories to the same key human rights treaties to discuss among themselves the matters contained in these fundamental statements of human rights in the modern world, including the concluding observations and recommendations from the UN treaty review committees.

C. Technical Cooperation in the Field of Human Rights

When North Korea reported to the UN Committee on the Rights of the Child, its government stated a willingness to engage in international cooperation with respect to facilitating better implementation of the rights set forth in this convention. “Technical cooperation” is the term used at the United Nations for human rights education, training, or advisory services. The United States could certainly indicate to North Korea that it seeks to extend international cooperation with North Korea into the area of human rights.

D. North Korea’s Non-Cooperation with the UN Human Rights Officials

As previously noted in *Failure to Protect* and this report, North Korea refuses to cooperate with the UN High Commissioner for Human Rights and the UN Special Rapporteur on Human Rights in North Korea, as it previously refused to cooperate with the UN Special Rapporteur on the Right to Food. The United States should, therefore, raise with North Korea in the bilateral Working Group the need for North Korea to cooperate with UN officials in the area of human rights.¹⁹¹

For over a decade now, UN programs, agencies, and funds – in particular, the World Food Program, Food and Agriculture Organization, Office for the Coordination of Humanitarian Affairs, UNICEF, UN Development Programme, and UN Population Fund – play major and, now, long-term roles in providing food and medical assistance to the people of North Korea. All the other parties to the negotiations have dealings with the UN High Commissioner for Human Rights and many of the “special procedures” associated with the UN Human Rights Council.

¹⁹⁰ In technical UN bodies, the participants speak as individual experts, unlike the representatives of UN Member States in the political organs of the UN who speak and vote under the instructions of their respective Foreign Ministries.

¹⁹¹ The same point, of course, needs to be made separately by the UN Secretary-General.

E. Detention Facilities

If carefully approached, there are several aspects of North Korea's detention practices that can and should be broached – starting with access by the International Committee of the Red Cross to what the North Koreans term “controlled zones” or “managed places,” which are better known internationally as political penal labor camps.¹⁹² The other most immediate circumstance related to detention practices and facilities is the harsh punishments meted out to North Koreans repatriated to North Korea after entering China in search of food or employment, irrespective of the “right to leave” specified in the International Covenant on Civil and Political Rights, to which North Korea is a State Party. After their punishment, many of these Koreans again flee North Korea but feel compelled to seek asylum in a third country and then enter trans-national refugee streams through China into Mongolia or several of the countries in Southeast Asia.

Until North Korea begins to tackle these issues, its detention policies will besmirch and retard its relationships with other nations. The North Koreans need to be made aware that this is a reality that will not go away.

II. Working Group on the Normalization of DPRK-Japan Relations

The workings of these bilateral negotiations have been completely seized with the human rights issue of the prior North Korean abductions of Japanese citizens and North Korea's unwillingness to date to provide an adequate accounting on the fate of the Japanese abductees. Until this occurs, Japan has refused to participate in other key aspects of the negotiations, particularly in compensating North Korea for the disabling of its nuclear weapons production facilities.

Recently, North Korea has agreed to reopen investigations into the fate of the Japanese abductees (in exchange for some relaxation in the sanctions that Japan imposed on North Korea out of frustration with North Korean intransigence). It can only be hoped that the reopened investigation will be able to provide answers and closure for the families of the Japanese who died in North Korea following their abduction.

Until this is achieved and there is progress in the normalizing of relations between Japan and North Korea, advancing the dismantlement and abandonment of North Korea's nuclear arsenal will be impaired.

III. Working Group on Economy and Energy Cooperation

During Phase Two, the mandate of this working group pertained only to energy: organizing the delivery of heavy fuel oil to North Korea and “equivalents” – steel plates and piping and other materials useable for the repair of North Korea's decrepit conventional electricity generating plants – in exchange for North Korea's disabling of its nuclear reactor at Yongbyon. The mandate of this working group during Phase Three has yet to be determined by the plenary sessions at the Six-Party Talks. But it is widely anticipated that Phase Three will

¹⁹² See FAILURE TO PROTECT, *supra* note 1, at 30-42, and *infra* Section I.A.2.

involve economic as well as energy assistance, as no one expects North Korea to forgo nuclear weapons without substantial compensation.¹⁹³

Any such programs of assistance will require substantial consideration. In the words of one Korea expert:

[T]here has been precious little coordination among the six parties or international financial institutions (IFIs) to develop a shared assessment of North Korean's economy and a complementary assistance program. The economic engagement picture is much more complicated than simply providing food, fuel oil, and related energy assistance . . . How will the six parties manage a potential "middle period" when denuclearization is not yet complete? . . . There is a danger that the parties will lose control of economic levers in the negotiations, which could undermine both denuclearization and development objectives. The economic piece is a crucial part of overall implementation.¹⁹⁴

As expressed by a Russian economist with diplomatic experience in Pyongyang:

The long history of developed countries' aid to developing countries suggest that aid can be futile, even counter-productive in the absence of complementary reforms. Therefore, economic assistance to the DPRK, which would be part of the package for the solution of the nuclear problem, should be aimed at assisting system transformation, not a conservation of outdated models by uncritically satisfying North Korean requests.¹⁹⁵

Indeed, one of the striking features of the sorts of economic assistance that are featured in request by, and agreements with, North Korea is that they are huge, multi-billion dollar infrastructure projects that will take years to build and become operational.¹⁹⁶

Two complementary people-centered approaches to sustainable economic development can be recommended for proposal at the Six-Party Talks: (1) normalized and guaranteed remittances from ethnic Koreans in China, Japan, the United States and South Korea to their relatives and friends in North Korea; and, (2) unfettered "bottom-up" economic cooperation – investment and trade connections – between Koreans in North Korea and the prosperous and enterprising ethnic Korean communities in the other five parties to the talks.

¹⁹³ The September 2005 Joint Statement obligates the six parties to discuss, at the "appropriate time" the provision to North Korea of a purportedly proliferation-resistant Light Water Reactor, as the U.S., Japan and South Korea were building for North Korea as part of the 1994 Agreed Framework.

¹⁹⁴ James L. Schoff, *Nuclear Matters in North Korea: Building a Multilateral Response for Future Stability in Northeast Asia*, INSTITUTE FOR FOREIGN POLICY ANALYSIS, 2008.

¹⁹⁵ Georgy Toloraya, *The Economic Future of North Korea: Will the Market Rule?, On Korea 2008*, KOREA ECONOMIC INSTITUTE.

¹⁹⁶ In addition to multi-billion dollar light water reactors, North Korea's entire electricity grid would have to be rebuilt to accommodate the massive energy transmissions from the nuclear reactors, at the cost of additional billions of dollars. There were also huge, multi-billion dollars bilaterally-provided infrastructure projects featured in the October 2007 Summit Agreement between North and South Korea.

Both of these approaches would quickly increase aggregate demand and reinforce the consumer and food markets that have emerged in all cities and towns in North Korea. Both of these approaches were previously in place between North Korea and ethnic Koreans in Japan prior to the breakdown of Japanese-North Korea economic relations over the abductions controversy.

Finally, as also recommended by the Special Rapporteur on Human Rights in North Korea, if a large-scale economic assistance program to North Korea is under discussion, food security in North Korea, should be a central part of the discussion.¹⁹⁷ The famine relief and humanitarian food aid program for North Korea is now well into its second decade. The other five parties to the Six-Party Talks, China, South Korea, U.S., Japan and Russia are also the major food donors to North Korea since that program began in 1995. The September 2005 Joint Statement that provides the framework for the talks specifies humanitarian assistance as well as energy and economic assistance. The transition from humanitarian famine relief to sustainable food security should not be ignored, unless the other five parties intend to provide humanitarian food aid to North Korea into the indefinite future.

IV. Working Group on a Northeast Asia Peace and Security Mechanism

It has been envisioned that the Six-Party Talks might evolve into a regional security cooperation mechanism or organization for Northeast Asia, roughly comparable to the ten-member Association of Southeast Asian Nations (ASEAN). This idea – a semi-permanent format for discussion of security cooperation among the regional powers, as a supplement to the various bilateral military alliance relationships (and bilateral tensions) in the area – has resonance beyond the issues of the denuclearization of the Korean peninsula.

It is common, though not universal, that such international organizations or mechanisms include a statement of principles of interstate relations guiding relations between participating states – sovereign equality, non-use of threat or use of force, non-intervention in internal affairs, peaceful settlement of disputes, fulfillment of obligations under international law, and so on – that will undergird ensuing deliberations. It is also now common, though not universal, in international affairs to include among the statements of principles for interstate relations, a provision relating to “respect for human rights and fundamental freedoms” – most famously in the charters or founding documents of the United Nations and the Organization of Security and Cooperation in Europe (OSCE),¹⁹⁸ the Organization of American States (OAS) and the African Union (AU).¹⁹⁹

All participants in the Six-Party Talks are UN member states. The U.S. and Russia are members of the OSCE. Japan and South Korea have observer status at the OSCE. It would seem reasonable that a human rights provision can be found and agreed upon for any regional security mechanism arising from the Six-Party Talks.

¹⁹⁷ See *supra* note 141, at ¶ 23.

¹⁹⁸ Formerly the Conference on Security and Cooperation in Europe (CSCE).

¹⁹⁹ Formerly the Organization of African Unity (OAU).

Additionally, in as much as a number of human security, human rights, and humanitarian issues transcend the national borders of the six parties – refugees, legal and illegal immigration, ethnic minorities – such a regional security mechanism should contain an arrangement for the consideration of trans-border human security issues, as well as a human rights provision as a principle of interstate relations.

V. A Peace Regime for the Korean Peninsula

As noted above, the September 2005 Joint Statement outlining the course for the subsequent Six-Party Talks also posits subsidiary or parallel negotiations between the relevant parties to replace the Korean War armistice with a full fledged peace treaty. The language used goes beyond a peace treaty in calling for a “peace regime,” which would presumably include not only the military, legal, and political provisions necessary to convert the armistice to a peace treaty, but also “confidence-building measures,” agreements on various forms of exchanges, and some provisions for tackling the huge conventional weapons systems arrayed against each other on both sides of the Korean DMZ.

North Korea has long insisted that the armistice be replaced with a peace treaty in order to fully end the technical state of war with the U.S. And the U.S. has long expressed a willingness to replace the sixty-year-old Korean War armistice arrangements. Such negotiations, should they take place,²⁰⁰ would likely resurrect the December 13, 1991 Agreement on Reconciliation, Non-Aggression and Exchanges, and Cooperation between North and South Korea popularly known as the “Basic Agreement”. This agreement, scheduled to take effect in 1992, was never implemented, in large part because it was overtaken by the first North Korean nuclear crisis.

The Basic Agreement is of enormous potential for human rights issues as it contains many of the same “confidence building measures” and “people to people” contact and exchange provisions as are found in Baskets One and Three of the 1974 Helsinki Final Act setting up the Conference on Security and Cooperation in Europe.

²⁰⁰ These negotiations would need to include all parties involved in the Korean War.



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