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## **The international community and North Korea**

### **Which way to go?**

*Encourage conversion to capitalism or sanctions?*

**Paper presented at a seminar organized in Seoul by the Hans Seidel Stiftung**

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## **The international community and North Korea Which way to go? Encourage conversion to capitalism or sanctions ?**

*North Korea continues to be a totalitarian state but the regime turns a blind eye to the development of underground private economy. Will this change have an impact on human rights?*

**By Willy Fautré, *Human Rights Without Frontiers***

The North Korean regime continues to be a totalitarian state, the oppression of the population is ongoing and none of the fundamental individual freedoms are respected: freedom of expression, freedom of opinion, freedom of religion or belief, freedom of movement, and so on. This is the main conclusion drawn by a fact-finding mission of *Human Rights Without Frontiers* in Seoul from 26th September to 4th October 2013. Moreover, the sealing off of the border between China and North Korea seems to have been strengthened in the last few months.

Living conditions remain difficult and precarious, even if some observers note some stabilization and sometimes some slight progress in the macro-economic area. Though, the durability of totalitarianism must not conceal some very important realities concerning the North Korean population and the future of human rights in the DPRK.

On the one hand, it should be noted that the Party-State has alleviated its control on economic activities. This process started during the mid-1990s famine when the state was forced to allow the population (mainly women) to take the necessary initiatives to guarantee the survival of families. This economic alleviation has become more marked with the passing time, though with ups and downs.

A significant part of the population is concerned by this development. Thanks to the information and products coming from China, most North Koreans are now aware of the living standards of their neighbors. A part of this population, namely the leaders and senior managers of state companies (they are officially all state companies), now behave like real private businessmen and under cover of their official status make a lot of profit. The state just levies a tax on these activities and paradoxically benefits from this system as well.

On the other hand, the state cautiously tries to take back the control of the situation. Quite recently, it has initiated a number of timid but authentic reforms in the agricultural and industrial realm. The objective is to grant more autonomy to the companies and not to submit them any more to rigid planning.

It remains to be seen if the state will just keep it to some experiments (for the moment, one per province) or if it will attempt to extend this new economic policy.

North Korea undeniably seems to be at a turning point of its history but we do not know if the steering mechanism still works in this 70-year old vehicle and which impact this possible new course will have on the human rights situation.

### **Establishment of a UN Commission of Inquiry about human rights violations**

On 22<sup>nd</sup> March 2013, the UN Human Rights Council decided at its 22<sup>nd</sup> session to establish a special, three-person UN Commission of Inquiry (CoI) to examine rights abuses in North Korea. This was the result of an 18-month campaign carried out by the *International Coalition to Stop Crimes Against Humanity in North Korea (ICNK)* which was created in Tokyo in September 2011. *Human Rights Without Frontiers Int'l* participated in this historical meeting that put in place the International Coalition. In the next few months, more than 40 human rights organizations from all the continents and a few experts on North Korea joined the International Coalition.

This was a historical step towards ensuring accountability for human rights abuses in North Korea. This initiative is in line with a number of resolutions adopted in the last few years by the UN General Assembly and the Human Rights Council as well as with the reports of the successive UN Special Rapporteurs on human rights in North Korea. The violations of the UN standards in this hermit state are described as “systematic”, “widespread” and “egregious”.

### ***The EU and human rights violations in North Korea***

The European Union has sponsored several UN Resolutions at the Commission on Human Rights and the General Assembly since 2003. Entitled “Situation of human rights in the Democratic People’s Republic of Korea”, these resolutions articulate the fears regarding the worrying situation of human rights in North Korea.

In November 2009, the resolution – adopted with 99 votes in favour to 20 against and 63 abstentions – called North Korea to immediately put an end to the systematic, widespread and grave human rights violations in the country, to fully cooperate with the UN human rights system and to ensure full, safe and unhindered access to humanitarian aid on the basis of need in accordance with humanitarian principles.

The EU was also instrumental in securing UN Human Rights Council resolution on 25 March 2010 about the “Situation of human rights in the Democratic People’s Republic of Korea” prepared by the Special Rapporteur on Human Rights in North Korea, Vitit Muntarbhorn. Tabled by the EU and Japan, the resolution supporting the mandate of the UN Special Rapporteur was passed by the 47-member council with 28 votes in favour, 5 against and 13 abstentions.

The European Parliament has also adopted a number of resolutions about North Korea and MEPs have always sponsored the conferences and other events we have organized to raise

awareness about specific issues: the food crisis, the plight of North Korean refugees in neighbouring countries, the abduction of Japanese and other foreign citizens, and so on.

The European Union, Japan, South Korea and the USA played a crucial early role in persuading other key countries to support the creation of the Commission of Inquiry. A number of EU member states also played leading roles in making the UN Commission a reality. Consequently, North Korea's regime will now be under greater pressure than ever to account for its extensive human rights violations.

### ***Why is a UN Commission of Inquiry needed for North Korea?***

First of all, the persisting deterioration of the human rights violation in North Korea, the systematic non-cooperation of Pyongyang with the UN human rights mechanisms – including with the UN Special Rapporteur – and the rejection of UN resolutions on North Korean human rights make the setting up of this new mechanism particularly timely.

Moreover, it must also be stressed that there is no domestic mechanism of complaint or redress for the victims of grave human rights crimes in North Korea. Therefore, the Commission of Inquiry will give them an opportunity to ensure their voices, and their experiences, reach decision-makers in the UN and the international arena. In this way, the Commission will serve as an entry point to ensure that North Korea's human rights record – and the issue of accountability for those abuses -- will be increasingly placed at the core of the international community's approach vis-à-vis North Korea. For families of foreign nationals abducted and forced to North Korea, the Commission will also offer an opportunity to demand the return of their loved ones.

The Commission of Inquiry is put under the leadership of the current UN Special Rapporteur on human rights in North Korea, Marzuki Darusman, and the UN has appointed two additional independent experts of significant stature to join him in carrying out an in-depth investigation.

The resolution that established the Commission of Inquiry called for it to be “adequately resourced,” meaning it will have the means to carry out a serious investigation. Its mandate will be to “investigate all systematic, widespread and grave violations of human rights in the People's Democratic Republic of Korea.” Particularly encouraging is the fact that the Commission's mandate stipulates an investigation into the full range of regime abuses. Several areas are specified: violations of the right to food, treatment of prison camp inmates, torture and inhumane treatment, arbitrary detention, discrimination (among other things, the calibrated deprivation of families based on perceived degree of loyalty), violations of the right to life, restrictions on personal movement, and enforced disappearances, including of foreign nationals, with a view to ensuring full accountability, in particular where these violations may amount to crimes against humanity.

Part of the problem is not only the seriousness of the violations but the lack of information about them. The Commission is expected to provide more detailed figures showing the number of prisoners who are still in the political camps and the number of persons who have been released. By collecting the testimonies of victims, their families, survivors and witnesses and gathering all other available information, the Commission should produce a highly authoritative account on the patterns of abuse in North Korea that can inform further future actions towards accountability.

### ***What are the available avenues of accountability?***

The International Criminal Court (ICC) has jurisdiction over crimes against humanity, war crimes, genocide and the crime of aggression committed AFTER entry into force of the ICC Rome Statute on 1 July 2002.

Unfortunately, North Korea is not a party to the Rome Statute, will not want to become one and will not accept its jurisdiction. The Security Council can refer the situation of North Korea to the ICC under its Chapter VII powers but a positive vote by 9 of the 15 Council members would be required without any veto of none of the five permanent members. Obviously, at least China would object to it.

The “Universal Jurisdiction” might be another avenue of accountability. This mechanism allows the domestic judicial system of states or international organizations to investigate and prosecute a person accused of certain crimes - such as war crimes and torture, genocide and crimes against humanity - regardless of where the alleged crime was committed, and regardless of the accused's nationality, country of residence or any other relation with the prosecuting entity. Crimes prosecuted under the Universal Jurisdiction are considered crimes against all.

According to Amnesty International, a proponent of the universal jurisdiction, certain crimes pose so serious a threat to the international community as a whole that states have a logical and moral duty to prosecute an individual responsible for it; no place should be a safe haven for those who have committed genocide, crimes against humanity, extrajudicial executions, war crimes, torture and forced disappearances. The Geneva Conventions and the Convention Against Torture oblige state parties to extradite or prosecute alleged offenders who are under that state's jurisdiction.

A number of countries have passed a universal jurisdiction law or are entitled to exercise universal jurisdiction.

*Australia:* In 1991, the High Court of Australia confirmed the authority of the Australian Parliament, under the Australian Constitution, to exercise universal jurisdiction over war crimes in the “Polyukhovich v. Commonwealth” case.

*Belgium:* In 1993, it adopted such a law but it was amended in 2003 in order to reduce its scope.

*Canada:* To implement the Rome Statute, Canada passed the “Crimes Against Humanity and War Crimes Act”. According to Michael Byers, a law professor at the University of British Columbia, this law goes further than the Rome Statute, providing Canadian courts with jurisdiction over acts pre-dating the ICC and occurring in territories outside of ICC member-states. “As a result, anyone who is present in Canada and alleged to have committed genocide, torture [...] anywhere, at any time, can be prosecuted [in Canada],” he said.

*France:* The article 689 of the *Code of Criminal Procedure* states the infractions that can be judged in France when they were committed outside French territory either by French citizens or foreigners: torture, terrorism, nuclear smuggling, naval piracy and airplane hijacking.

Germany, Israel, Malaysia, Spain and UK also have similar mechanisms, though with limitations as well.

In conclusion, the establishment of a UN Commission of Inquiry is not a magic rod that will allow the international community to put an end to the egregious violations of human rights in North Korea. International jurisdictions are still too weak and too fragmented to cope with the problems posed by North Korea, which is a *sui generis* case, but the universal jurisdiction avenue deserves to be further explored by experts in international law as a credible and complementary alternative.

## **UN sanctions**

Up to now, North Korea has demonstrated an extraordinary ability to survive the UN sanctions of which the EU is part of.

In 2006, sanctions under UN Resolution 1718 imposed

- an embargo on heavy armaments and on material that can be used for ballistic purposes;
- an assets freeze;
- a ban on technical assistance, on travels of persons involved in DPKR’s nuclear and ballistic program, as well as on the transfer of luxury goods to North Korea, since the Kim dynasty uses them to reward regime loyalists.

Enforcement of the sanctions is however difficult as it requires intrusive inspections of all cargo entering North Korea, which the main neighboring country, China, will not do.

### ***Embargo on weapons***

Nuclear tests in 2009 resulted in the adoption of Security Council Resolution 1874 which strengthened the international sanctions imposed under Resolution 1718. The elements of the regime are:

- Expansion of the partial arms embargo and the ban on technical assistance of the previous resolution into a full arms embargo except for small arms and light weapons;
- Authorisation to all states to inspect North Korean vessels suspect of carrying items banned under the embargo, even on the high seas, and to seize and dispose of such items if found;
- Ban on the provision of bunkering services to vessels suspected of carrying prohibited cargo;
- Ban on the provision of financial services that could contribute to the DPRK's ballistic missile, nuclear or other WMD programs;
- Ban on the provision of new grants, financial assistance, loans to the DPRK except for humanitarian and developmental purposes 'directly addressing the needs of the civilian population as well as of public financial support for trade with the DPRK – including the granting of export credits.

On 15<sup>th</sup> July 2013, the North Korean ship “Chong Chon Gang” was intercepted in the Panama Canal with Cuban military equipment found beneath the 10,000 tons of sugar: two Cuban fighter jets in perfect condition to operate and 15 relatively new plane engines which could be used as replacements, nine missiles in parts and two anti-aircraft systems. The equipment was not listed on the ship's manifest.

After the seizure, Cuba said the cargo included "obsolete defensive weapons" that were being shipped to North Korea "to be repaired and returned."

According to Belsio Gonzalez, director of Panama's National Aeronautics and Ocean Administration, the fighter jets "are in operational condition and their engines are in excellent shape." He said the planes were iconic in the 1960s and 1970s and their navigation systems are obsolete compared to jets built in recent decades, "but they are still fighter planes."

The weapons' shipment was part of an agreement between Cuba and North Korean and that Havana was going to receive \$200 million for them.

A U.N. panel of experts monitoring sanctions against North Korea visited Panama in mid-August to investigate the arms seizure. But its report has yet to be made public.

U.N. sanctions state that member states shall prevent the direct or indirect supply, sale or transfer of all arms and materiel to North Korea, and related spare parts, except for small arms and light weapons.

### ***Luxury goods***

The United Nations sanctions on luxury products were intended to put pressure on North Korea's regime in response to its nuclear weapons tests. It was hereby hoped that a ban on luxury products would focus the minds of the North Korea's cognac-swilling elite - North Korea's late dictator (and the father of its current leader) Kim Jong-Il reportedly spent \$720,000 a year on Hennessy cognac.

Unfortunately, no one can agree on what counts as a ‘luxury’ item, and China in particular, while agreeing to sanctions in principle, tends to apply a far narrower definition than most. North Korea does not publish data on its imports, but UN data from 2010 details exports including 50,000 bottles of wine, 3,559 sets of videogames from China, 3,191 cars (including one from Germany costing almost \$60,000) and 839 bottles of spirits worth an average of \$159 each.

According to a report published by Radio Free Asia (RFA) on 13<sup>th</sup> September 2013, department stores in North Korea’s capital Pyongyang sell Chanel perfume, designer clothing and Rolex watches to the country’s elite, and senior North Korean officials visiting China have no problem stocking up on luxuries to take home.

“A one-piece dress from U.S. fashion house St. John is in vogue among rich women in Pyongyang ... [and] there is a shortage even though it costs U.S. \$2,000,” the official told RFA’s Korean Service, speaking on condition of anonymity following a recent visit to the capital. Additional sources confirmed that the value of the dress was enough to purchase two tons of rice and five tons of corn in North Korea, which frequently suffers from food shortages, and could support a family of four for up to three years.

About a dozen department stores in Pyongyang sell luxury items. Some deal in both domestic and foreign products, while others sell imported goods exclusively. Two of the most popular stores stocking lavish products from abroad in the capital which are located on Ansangtaek St. in the Moran Hills district and in Eastern Pyongyang’s Rugosa Rose [Haedanghwa] Hall were recently opened by Jang Song Thaek, the uncle of North Korean leader Kim Jong Un. Nobody knows where the items are coming from or how the profits are used.

Among the more popular items for women are Chanel stockings at U.S. \$250 per pair and perfumes at around U.S. \$300 per bottle, while men were buying up Rolex watches at more than U.S. \$10,000 a piece, an official told RFA.

The big fuss that the North Korean regime is kicking up over ski lifts suggests that Switzerland’s decision to respect sanctions has hurt and riled the country’s leadership.

All UN member states are legally required to enforce the sanctions. Japan and South Korea, which had been significant economic partners in the past, are committed to enforcing international sanctions and are imposing additional unilateral sanctions as well. The final objective is to pressure North Korea to return to denuclearization talks and to fulfill its non-proliferation commitments.

### **EU restrictive measures**

The EU has autonomous restrictive measures that exist independently of the UN sanctions regime and of the US own sanctions regime vis-à-vis North Korea.

In December 2010, the EU renewed and extended its restrictive measures against persons and entities in North Korea due to their involvement in the DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programs or activities. The restrictive measures include both travel restrictions and an asset freeze as well as restrictions on financing activities and trade with North Korea, particularly of arms and related material.

The ability of the restrictive measures to produce changes in the behavior of the targeted country depends on the extent to which all alternative economic channels are successfully blocked. In this regard, the question could still be posed as to whether the regime in North Korea is truly denied access to other economic channels. This does not seem to be the case. It is indeed worth mentioning that the policies of China towards North Korea have changed recently towards supporting the regime economically with the idea of generating positive inducements for reforms similar to the reforms taking place in China itself. China and North Korea have jointly launched an initiative to develop two separate, "Government-led, enterprise-based and market-oriented" economic and trade zones close to the Chinese border: one of them in the North Korean border city of Rason and the other on two separate North Korean islands (Hwanggumpyong and Wihwa).

### **Attempts of integration of North Korea in the international community**

In parallel to the sanctions regime, persistent efforts have been made to try to integrate North Korea in the international community not only to solve geopolitical problems but also to put in place tools that can have a positive impact on the human rights of the North Koreans.

North Korea is currently part to 4 human rights treaties: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); and the Convention on the Rights of the Child (CRC). North Korea tried to withdraw from the ICCPR, which is technically impossible, and refused the recommendation to sign and ratify the Convention on the Abolition of Torture.

On 7<sup>th</sup> December 2009, North Korea took part in the Universal Periodic Review (UPR) but the outcome of the interactive dialogue was under several aspects utterly discouraging. Of all the recommendations received by North Korea during the UPR, none was accepted. Fifty were rejected and 117 are still pending 18 months later. Discarded recommendations supported by a number of EU member states (Austria, France, Germany, Italy, Lithuania, Poland, Spain, Sweden, UK and others) included fundamental issues of human rights protection such as the elimination of all forms of torture by security forces and prison personnel, the cessation of arbitrary detention, labor camps and collective punishment, as well as the recognition of the Special Rapporteur's mandate.

### **Which policy for the EU to promote human rights in North Korea?**

On the one hand, North Korea is slowly tolerating willy-nilly the development of a private economy which impact this possible new course may have on the human rights situation. Anyway, this new trend should certainly be encouraged as a free economy can pave the way to a more open society and to increased freedom.

On the other hand, North Korea remains a politically totalitarian state and the policies that were adopted by the UN should not be dropped and the EU should contribute to their implementation.

Although no comprehensive study has ever been carried out to assess the efficiency of the UN and the US sanctions, of the EU restrictive measures and of the overall “naming and shaming” policy by various human rights NGOs and institutions around the world, it seems that North Korea has partly curbed its repression policy on some issues that have been highly publicized around the world. On the basis of fragmented information it seems that the number of executions has diminished, that the imprisonment periods of the repatriated defectors are now reduced, that forced abortions of repatriated pregnant defectors and killings of newborn children are less practiced during their detention. It means that North Korea is not totally deaf to pressure of the international community.

This should be both an encouragement and a source of inspiration for the shaping of EU policies concerning North Korea.

In this regard, *Human Rights Without Frontiers* addresses a number of recommendations to the EU in its dealings with the following stakeholders:

### ***North Korea***

Considering that North Korea has the poorest human rights record in the world, the EU should

- go on strictly implementing the UN sanctions and its own restrictive measures, and annually report on them ;
- go on pressuring the North Korean leadership through its own mechanisms (the EEAS, the EU-North Korea Political Dialogue, the European Parliament Delegation for Relations with the Korean Peninsula, etc.) to abide by the international human rights standards, to respect its UN commitments, to sign and ratify other UN instruments.

### ***China, Russia, Mongolia and South-East Asian countries***

Considering that the political leadership of North Korea fails to protect its citizens and that they flee to other countries in search of food and freedom;

Considering that China and other countries have not put an end to the forced repatriation of North Korean defectors although they face imprisonment, are submitted to inhuman and degrading treatments, and risk to be executed;

the EU should

- press the countries in which defectors have taken refuge to apply the principle of *nonrefoulement*;
- press China to allow the international community to provide direct and unhindered assistance to North Korean defectors, and to ensure their physical safety and security; to provide the UNHCR with unimpeded access to North Korean refugees;
- press South Korea to grant asylum to North Korean refugees who reach its embassies and consulates abroad;
- instruct the embassies of its member states in the countries where North Korean refugees have stranded to facilitate their access to the status of refugee.

### ***The international community***

Considering that North Korea fails to protect its citizens and to ensure that they enjoy their basic rights, such as the right to food;

the EU should make the international community aware that

- it is now its responsibility to take over;
- it should maximize dialogue with the Government of North Korea to promote dispute resolution and to enlarge the space for human rights discourse and action;
- it should address impunity from different viewpoints, whether in State responsibility and/or individual criminal responsibility, and enable the totality of the UN system, especially the Security Council, and its affiliates to take measures to prevent egregious violations, protect people and provide effective redress.