

## Complementing Pressure with Engagement: North Korean Human Rights at the United Nations

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### Summary

Will the international community be able to bring changes to the trajectory of North Korea's human rights issue? Stephan Haggard, Distinguished Professor at the Graduate School of International Relations and Pacific Studies (IR/PS) at UC San Diego (UCSD), points out that the establishment of the Commission of Inquiry (COI) on Human Rights in North Korea by the UN Human Rights Council was critical for shedding new light on the issue, starting from the release of the COI report last year to the subsequent votes in the General Assembly and the Security Council. Dr. Haggard notes that North Korea has been unusually responsive during this process, most likely because it could involve a potential referral of the issue to the International Criminal Court (ICC) that may hold Kim Jung Un accountable for the human rights violations in North Korea. Considering that China and or Russia would likely veto any such measures, however, Dr. Haggard argues that the more important aspect of this process lies within the possibility for Pyongyang to take this as an opportunity to engage in the remedies offered by the COI and alleviate some of the gross violations, even if that may be temporary or cosmetic. Dr. Haggard suggests that the U.S. and South Korea refrain from taking leadership in the UN process, given North Korea's intentions to portray it as part of U.S. hostile policy as well as the risk of complicating inter-Korean relations and the nuclear issue. In that sense, providing space for a different group of actors to engage North Korea at the international fora might prove to be more effective. Finally, Dr. Haggard argues that the human rights issue should not be considered as just another way to corner North Korea by means of greater sanctions. In fact, he emphasizes the complementary relationship between pressure and engagement as a better strategy to induce change in North Korea. For South Korea, Dr. Haggard urges Seoul to take greater initiatives from President Park Geun-hye's *trustpolitik*, including the lifting of the "May 24th sanctions" as its first step. He argues that it is very unlikely to see anything happening by choosing to follow the U.S. strategy of strategic patience.

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## **The Establishment of the UN Commission of Inquiry on Human Rights in North Korea**

- Starting from the mid 2000's, the international community began to seriously consider the human rights situation in countries that have been very gross violators of human rights. The UN Human Rights Council received more attention, and one of the first developments of that time was the creation of individual country mandate holders. In this context, the North Korean human rights issue became a focus of the Council, resulting in North Korea receiving one of the first special mandate holders and the establishment of the UN Commission of Inquiry on Human Rights in North Korea.
- The North Koreans have been unresponsive and uncooperative with all aspects of the UN's involvement in the North Korean human rights issue. In this regard, the UN and the relevant agents are having difficulties carrying forward their plans. For example, both the UN Special Rapporteur Marzuki Darusman and Michael Kirby, head of the investigating team for the Commission of Inquiry, have never visited North Korea while conducting their research.

## **Significance and Implications of the UN Process on North Korean Human Rights**

- The significance of the North Korean human rights issue is not confined to the problems of human rights itself, but could be expanded to judging and estimating the position of North Korea in the international community and the possibility of North Korea becoming a proper member of the global system.

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- The North Korean government reacted strongly to the Commission's findings because it implies that individual leaders, even Kim Jong Un, could be responsible and tried for crimes against humanity. This information itself could result in a loss of legitimacy for the Kim regime inside the country.

## **Recommendations: Complementing Pressure with Engagement**

- South Korea and the U.S. should allow other parties, such as the EU, to take the lead on the North Korean human rights issue at the UN and cooperate with them. Taking leadership would likely be exploited by North Korea's claims that the process is just another form of U.S.-led hostile policy and complicate inter-Korean relations and the nuclear issue.
- In the absence of some form of engagement with North Korea, it is very unlikely that any of the types of pressure are going to have significant effect. The human rights issue should not be considered as just another brick to corner Pyongyang; it is rather a challenge that North Korea needs to address if it truly intends to participate in the international community.
- The U.S. is currently not in a good position to take risks with respect to North Korea and strategic patience will not be able bear fruit to meaningful change. If anything is going to happen, therefore, it would have to come out of an initiative taken up by South Korea and opening commercial channels outside of Kaesong by lifting the "May 24th sanctions" could be a first step towards this direction.

## Transcript of the Interview (abridged):

### The Establishment of the UN Commission of Inquiry on Human Rights in North Korea

*“Commission of Inquiry head Michael Kirby was given a mandate to investigate the possibility that North Korea had committed gross and systematic human rights violations, but also to specifically consider whether any of those human rights violation rose to the level of crimes against humanity.”*

**Question:** North Korea's human rights issue has gained much attention over the past year, especially following the release of the UN COI report. What are your thoughts on this development and how do you assess the UN's role to address the challenges of human rights violations in North Korea?

**Haggard:** The decision on the part of the United Nations Human Rights Council to vote or mandate to establish the Commission of Inquiry on Human Rights in North Korea was really quite an extraordinary development, and I understand that it was worthwhile to go back a bit to the history of the human rights council and what its activities of human rights have been. Up until about 2004 and 2005, it really did not do that much. In part because the Human Rights Council itself had members who are themselves human rights violators and the United States and the other democracies did not pay much attention to it, because they did not think it was worthwhile to operate through the council. But starting in the mid 2000's, industrial states and the United States started to pay more attention to the Human Rights Council and tried to put together coalitions of countries that were interested and seriously considering the human rights situations in countries that have been very gross violators of human rights [...] But I have to confess, I was personally surprised when the Human Rights Council, in early 2013, made a decision by consensus, and interestingly at that time, China was a member of the Human Rights Council, to establish a Commission of Inquiry on Human Rights in North Korea. And so, it is really the establishment of the commission, which led to the commission report, which then led to the subsequent votes.

**Q:** How was the COI report consolidated? Did the North Koreans play any role or cooperate in its development?

**Haggard:** Once the Commission of Inquiry was established, it was headed by a Australian jurist named Michael Kirby with two other members, both with strong backgrounds in the human rights area. And one of the things about the process that Kirby set in place was the incredible thoroughness of his investigation. He was given a mandate to investigate the possibility that North Korea had committed gross and systematic human rights violations, but also to specifically consider whether any of those human rights violation rose to the level of crimes against humanity. Now, it is important to understand that the Commission of Inquiry is not a prosecutorial body. It is a fact-finding body seeking to establish the question of whether there are maybe grounds for considering violations of human rights that rise to the level of crimes against humanity. And so, very systematically drawing on a testimony from camp-survivors, refugees, secondary materials, Kirby and his team and staff worked through all of these nine areas that he was tasked to investigate in an extremely thorough manner and produced a report, which is almost 400 pages long.

The North Koreans have been unresponsive and uncooperative with all aspects of the UN's involvement in the North

Korean human rights issue, as at the time the Special Rapporteur was created in 2004, the Special Rapporteur had never visited North Korea. Kirby's team did not visit North Korea. It was forced to take depositions in the United States, Japan, and South Korea from refugees and conducted investigation outside the country, though Justice Kirby was always very clear that he was open and wanted to have the input of the North Korean government, but they completely rejected the entire Commission of Inquiry process as well as the Commission of Inquiry findings.

### **Significance and Implications of the UN Process on North Korean Human Rights**

*“The biggest issue with respect to the Commission of Inquiry findings was the finding that, in fact, there was adequate evidence to think that crimes against humanity had been committed in North Korea.”*

#### **Q: What is the significance of the Commission of Inquiry's findings?**

**Haggard:** So the biggest issue with respect to the Commission of Inquiry findings was the finding that, in fact, there was adequate evidence to think that crimes against humanity had been committed in North Korea. And because of the nature of the Rome Statute, and the way that international human rights law has evolved, the implication of that is that individuals can be found legally culpable for the commission of those crimes. So this idea of individual culpability is a fundamental breakthrough in the way that we think about international law. So it is not the country that is responsible: it is individuals within the government that are responsible for committing these crimes. And in principle, those individuals who are culpable could be referred to the International Criminal Court for prosecution and ultimately indictment, detention, and punishment if they are found guilty of those crimes. So this was obviously something that touched right at the heart of the North Korean system because, at that time the Commission of Inquiry report was written, Justice Kirby wrote a letter transmitting a report to Kim Jung Un. He stated to Kim Jung Un that Kim was personally or potentially personally accountable, and could be held accountable, for crimes that have been committed under his leadership because it is not necessary under international human rights law to prove that he was responsible for the commission of these crimes if he could have prevented them. And that is obviously, given the top-down, authoritarian nature of the system, something that could have been done.

Now I should say there are a number of areas in the Commission of Inquiry report that had to do with starvation, movement of people, abductions, denial of the right to food, denial of expression, and so forth. But I think the issue that has probably captured international attention more than any other in the Commission of Inquiry report is the condition in the prison camps. As you know, there is a large political prison camp system—effectively, a concentration camp—that may house as many as hundred thousand, hundred and fifty thousand inmates. We simply have satellite evidence that some of those inmates might have been moved and that some of the more notorious camps like Yoduk have been shut down. But one of the things that Marcus Noland and I found in our research on refugees is that the abuses that take place in the political prison camps are actually pervasive features of the entire North Korean penal system going down to low level labor camps for minor violations of crossing the border or illegal movement within the country and so forth. So I think in terms of a focus for the international human rights community, the question of closing down the large prison camps and getting access to what is going on in the North Korean penal system has probably become one of the major foci in the aftermath of the report.

**Q: Is there any chance that North Korea could be referred to the International Criminal Court?**

**Haggard:** Now we know the endgame of this, which is obviously that the Chinese and the Russians, or the Russians, would veto a proposal to refer North Korea to the International Criminal Court—partly for alliance reasons, and partly because of their own concerns about human rights issues. But one of the issues is whether forcing the Chinese to veto such a proposal would itself serve some political purpose highlighting this question. I do not know if it is worth embarrassing the Chinese in that way, but there is a case to be made that we should pursue that course of action, in part because the Chinese have involved themselves in important human rights violations with respect to North Korea. Most notably, in the return of refugees from China back to the North Korean authorities where they subsequently go in to the penal system, then are subject to the abuse that is detailed in the Commission of Inquiry report. So, one possible purpose of forcing a Chinese veto might be to think about luring China or convincing China into reconsideration of its policy of returning the North Korean refugees.

**Recommendations: Complementing Pressure with Engagement**

*“It is possible that the North Koreans would respond by moderating at least some of the worst abuses on the ground. [...] What we are really interested in is trying to reduce and mitigate the worst of the abuses which are taking place in the country.”*

**Q: The fact that crimes against humanity may have been committed in North Korea alone does not seem to provide answers to the problem other than the unlikely ICC referral. How can we bring actual change to North Korea's human rights violations?**

**Haggard:** I think it is important to look at some of the remedies that the Commission of Inquiry Report itself left open, which I do not think have gotten quite the attention they deserve. One of the things that the report suggests is the opening of a human rights dialogue between the UN, or the member countries, and North Korea over the human rights issue. Believe it or not, the UN Human Rights Council maintains a technical assistance program which assists countries in building a human rights infrastructure. And again, it may seem strange to think North Korea would accept such a thing and it is in fact doubtful that they would. But there are reasons to think that such a dialogue might be possible. And then there is the question whether the UN Special Rapporteur on human rights in North Korea might visit North Korea, either to deliver the report or to actually inspect some of the sites that have been identified as places where some of these crimes against humanity may have been committed.

As someone who watches North Korea and is incredibly cynical about political developments in the country, I was personally surprised to see the extent to which that North Korea was diplomatically engaged in seeking to forestall a vote on the decision to refer this to the UN Security Council for a further referral onto the International Criminal Court. And I think the reason is there, and we can all guess they have to do with the sanctity of Kim Jong Un and the leadership and the fact that this was a direct affront to the leadership. But in the course of the negotiations to try to get Japan and the EU to desist on presenting the resolution, the North Koreans made some very interesting concessions, because in the Cuban amendment, as initially proposed, the Cubans suggested that rather than taking a confrontational ap-

proach to human rights in North Korea that we take a more engaged approach. And it specifically mentioned the creation of the EU dialogue on human rights with North Korea, the visit of the Special Rapporteur, and technical assistance from the UN Human Rights Council to North Korea.

So, the fact that the North Koreans were able and willing to consider these kinds of human rights dialogue suggest to me that, under this kind of pressure, it is not impossible that that kind of dialogue could begin in ways which would moderate some of the worst abuses in the North Korean system. Now, it is very hard to always to know about how serious the North Koreans were about this; they may have seen that the resolution was going to pass anyway, and so these were gesture which they knew they would not have to follow through on. But it is interesting that they at least held out the possibility that these type of human rights dialogues with Pyongyang might actually occur.

If these types of dialogues were opened—and again, I do not think the United States or South Korea can lead this; I think this is something in which Europe can play a very constructive role because it has greater neutrality with respect to the geo-strategic issues. But if such a dialogue could open, then it is possible that the North Koreans would respond by moderating at least some of the worst abuses on the ground. No one in this community believes that North Korea is going to turn into a democracy, even become a competitive authoritarian regime any time of the future. But we are concerned about the worst abuses that are taking place—torture, illegal detention, the movement of peoples, rape, sexual abuse in the prisons, or the prison camps themselves. What we are really interested in is trying to reduce and mitigate the worst of the abuses which are taking place in the country.

Now there are, of course, other instruments at the COI that have been left open to the parties. One of them would include human rights-related sanctions on North Korea. I am a little skeptical of this, because North Korea is already an over-sanctioned country and it is not clear how many more sanctions you can levy. But there is the possibility, for example, levying designated individuals for sanctions including travel or financial transactions abroad that could have some effect at the higher levels of the leadership. Again, it is not clear that China would cooperate in the imposition of those types of sanctions, which would be an important factor if they were actually to come into existence, but we cannot rule out that the UN Security Council could take up the issue of increased sanctions as a tool for getting North Korea to move forward.

To summarize where I think things are, there is a next round of all of this out of the Commission of Inquiry report which has to do with how the UN Security Council approaches it. And my hope is actually that South Korea and the United States to a certain extent pull back from leading the process, because if we do, it gets tangled up in the thorny issues of North-South relations, the Six-Party Talks, and the nuclear question. We may allow either a group of middle income democracies or the Europeans to take a lead and see if they can pick up some of the threads that were open at the UN General Assembly meetings for creation of dialogue with North Korea on these issues. Again I am not particularly hopeful that this will come about, but I think it is probably the best path forward out of the Commission of Inquiry process.

**Q: You mentioned that the U.S. and South Korea should pull back. What risks are involved with such a strategy and would the United States be willing to let others take the lead on this issue?**

**Haggard:** The United States has by no means been the only country driving the process: Japan, South Korea, and the European Union all played central roles in pushing this forward. Head of the Commission of Inquiry Justice Kirby is Australian. But from the North Korean perspective, it is very clear that they want to portray this process as one which has the United States at its center, as the instigator of this process as part of its hostile policy [...] So I think that if the United States were to take very aggressive leadership on this issue, it will validate the North Korean concern or claims that this is driven by U.S. intent. And if it is picked up by countries that are not United States, Japan, and South Korea—of course Japan is interested in the issue because of the abductions which were also mentioned in the Commission of Inquiry report—then it will provide the space for a different group of actors to engage North Korea in this issue. [...] Having the International Red Cross, EU observers, the Special Rapporteur, the UN Human Rights Council going in to North Korea to discuss these issues, I think it is possible that these could have an effect; it is too cynical to say that they would have no effect because the North Koreans will then have to figure out some response to this dialogue. And if that means shutting down camps, and even if that is moving prisoners, maybe that is better than nothing. And I think we should look for ways to engage.

**Q: How do you balance the human rights issue with all of the other issues that pertain to relations between South Korea, the United States, and North Korea?**

**Haggard:** One of the problems that both South Korea and the United States face is how to square the question of engaging North Korea while maintaining the focus on human rights. And we actually see this in the NGO community in both countries. The NGOs in South Korea that are interested in human rights are less interested in humanitarian issue and the NGOs interested in humanitarian issues, engagement, aid, health, assisting with agriculture, medicine, etc are willing to overlook the human rights abuses because they believe that the first task of humanitarian assistance is to help those who are in need of humanitarian assistance. And so this is just an ongoing tension, I think, that exists.

But I think it is possible to devise a holistic strategy of engagement and South Korea's Park Geun-hye government is attempting to do this kind of thing, in which South Korea and the United States continued to maintain their principles that human rights are in fact international, human, that all individuals are entitled to the rights which are enshrined in the relevant UN conventions. And it should be remembered that North Korea is a signatory to a number of these conventions. So these are things which North Korea itself has agreed to, at least in principle. It is a delicate line. But I think it can be done as long as we are thinking about other ways to engage, so that the human rights issue is not simply another brick in a strategy of cornering or pressuring North Korea.

I certainly think it is the case that, in the absence of some form of engagement with North Korea, it is very unlikely that any of the types of pressure which have been brought to bear are going to have significant effect. And so the difficult issue right now for the Park Geun-hye government, I think, is “Where does *trustpolitik* go from here?” And my suggestion, which is controversial, is that this probably is the time to reconsider and lift the post-Cheonan sanctions on commercial trade, the so-called “May 24<sup>th</sup> sanctions.”

And the reason why I think this is a little bit different: I do not think this is just a strategy of engagement, I do not think we should plan on a *quid pro quo*; but I think that opening commercial channels outside Kaesong could have the effect of forcing the North Koreans to think a little bit harder about their overall grand strategy with respect to engagement with the world economy. Because at this juncture, the North Koreans are in the position of being able to blame the poor state of their external trade and investment relations largely on the sanctions. But in fact, my belief is that North Korea's isolation is largely the result of its own posture with respect to trade and investment. And that if the sanctions are lifted between the North and the South, this would provide an opportunity to think about whether they can make the environment attractive enough to get serious South Korean investment. There is a discussion now about Rason and how a consortium of South Korean firms might invest in Rason more seriously as a trans-shipment point. That could be an opening wedge. But over the long run, I think everyone knows, despite the close ties with China, the natural trading partner for North Korea is South Korea; the language is there, the complementarities are there, proximity and a whole series of things would dramatically deepen North-South trade and investment if the opportunity provided to do so. And that might be the context for getting a strategy of engagement going—get *trustpolitik* going, which I think as sympathetic as I am with the Park government, everyone I think recognizes is currently stalled and not really moving forward in a very satisfactory fashion.

The United States is not really in a position to lead this effort. With two years left in the Obama administration, a lot of other issues on the foreign policy plate with respect to the Middle-East, Israel and Russia. I just do not see much interest in investing in North Korea as a high priority issue at this juncture. But I do think that if South Korea were to take some bolder steps, the United States will be in a difficult position because obviously there would have to be consultation between the two allies. But this would put the United States in a position of having to give its support to the Park administration if it took some risks. And I just do not see those risks being very large, because trade and investment are obviously reversible if they were opened and then North Koreans responded in a hostile fashion. But right now I do not see much progress unless someone is willing to take some risks.

**Q: Could North Korea change course? If so, how can we achieve this?**

**Haggard:** I do not think we can look at North Korea and say it is unchanging forever. There are incremental things happening. They look small, but that was the way that Chinese reform started as well—they started in a gradual way. So I think we have to continually monitor these apparently small movements, because that may add up to something larger. Now the big question is whether the North Koreans can undertake this process of reform and simultaneously maintain their commitment to nuclear weapons. The so-called *byungjin line* that came out in the spring of 2013 makes that difficult for the North Koreans to do, but not impossible. And I could at least imagine, as a low probability event, a sequence in which the North Koreans came back and say they are willing to discuss this; seeking some relief on the sanctions front and a set of concessions with respect to their own security, probably Chinese security guarantees. Do I think this is likely? No. Do I think the probability of this is high? No. But it is not impossible and we should be ready to monitor these types of changes to see if they provide the basis for the South, in particular, making changes. Because again, I do not think the United States, despite the leadership that we supposedly have, is actually in a very good position at this political moment to place a lot of bets or take risks with respect to North Korea. So some of this is really going to have to come out of what the South Koreans choose to do. And if they choose to follow the strategy of strateg-



ic patience, then I can tell you one thing with absolute certainty—nothing is going to happen. So if anything is going to happen, even a low probability event, it would probably have to come out of an initiative taken up by President Park. ■

## About the Interviewee

### Stephan Haggard

Stephan M. Haggard is the Lawrence and Sallye Krause Professor of Korea-Pacific Studies at the University of California, San Diego (UCSD) Graduate School of International Relations and is the director of Korea-Pacific Program (KPP). He is the editor of the *Journal of East Asian Studies* and a member of the Council on Foreign Relations. Professor Haggard has written extensively on the political economy of North Korea with Marcus Noland, including *Famine in North Korea: Markets, Aid, and Reform* (2007) and *Witness to Transformation: Refugee Insights into North Korea* (2011). Haggard and Noland are co-author of the "North Korea: Witness to Transformation" blog at the Peterson Institute for International Economics.