

The Establishment of the UN Commission of Inquiry on Human Rights in North Korea: Significance and Tasks

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On 21 March, in Geneva, the UN Human Rights Council, a body of forty-seven States, adopted a resolution on human rights conditions in North Korea by consensus. Although a consensus does not mean unanimity, i.e., explicit show of agreement by all concerned States, it is a typical decision-making method used at multilateral conferences when addressing issues that have clear justification. As such, the consensus reflects the grave concerns of the international community regarding the human rights violations in North Korea. For the last ten years, the UN has adopted annual resolutions on the human rights situation in North Korea through the UN Commission on Human Rights, the UN Human Rights Council (substituted the UN Commission on Human Rights in 2006), and the UN General Assembly (from 2005 onwards). The number of States participating in the resolution has been increasing every year. In March and December, 2012, for the first time, the resolutions on human rights in North Korea was adopted without a vote, by consensus, at the UN Human Rights Council and the UN General Assembly respectively, in the context of the North Korean escapees problem appearing as an international issue.

Of the recently adopted North Korean Human Rights Resolution, the section about the establishment of a Commission of Inquiry (COI) on human rights in North Korea has received most attention. The establishment was possible because Navi Pillay, the UN High Commissioner for Human Rights, and Marzuki Darusman, the UN Special Rapporteur on human rights in North Korea, have actively

endorsed what the non-governmental organizations involved in the North Korean human rights issue both inside and outside Korea, including Human Rights Watch and Amnesty International (world's leading human rights organizations) have been asserting for over a year. With the absence of the countries that are amicable towards the North, i.e., China, Russia and Cuba, Venezuela might have demanded to take a vote on the resolution. However, ultimately, the resolution was adopted by consensus with no such demands. South Korea also participated in the adoption by making a joint proposal with the EU and Japan.

The Decision to Establish the Commission of Inquiry on Human Rights in North Korea and its Significance

The 2013 UN Human Rights Council Resolution on North Korean Human Rights¹⁾ first reaffirms that it is basically the responsibility of the government of North Korea to ensure the full enjoyment of all human rights and fundamental freedoms of its entire population. At the same time, the resolution demands that other States engage fully and constructively through all-encompassing mechanisms of the UN Human Rights Council, so that the human rights situation in North Korea can improve (preamble). Further, the resolution strongly condemns the ongoing 'grave, widespread, and systematic' human rights violations in North Korea (para. 1), and extends the mandate of the Special Rapporteur for a year (para. 3). The resolution also decides to establish, for a year, a COI comprising of three members, one of whom should be the Special Rapporteur, with the other two members appointed by the President of the UN Human Rights Council (para. 4). The COI is assigned to comprehensively investigate nine violations of human rights (violations of the right to food, violations associated with prison camps, torture and inhuman treatment, arbitrary detention, discrimination, violations of freedoms of expression, violations of the right to life, violations of freedom of movement, and enforced disappearances including abductions) stipulated in the report²⁾ that was recently submitted to the UN Human Rights Council by the Special Rapporteur. At the same time, the resolution clearly states that the purpose of such investigation is to ensure full accountability, in particular where these violations may amount to crimes against humanity (para. 5). Further, the resolution urges the North Korean government to fully cooperate with the Special Rapporteur and the COI, and to permit them and their staff unrestricted access to visit the country and to provide them with all information necessary for them to fulfil their mandates (para. 6). It also requests the UN Secretary-General to provide them with all assistance and adequate staffing necessary to carry out their mandates effectively (para. 9). The COI is requested to present an oral update to the Human Rights Council at its twenty-fourth session and to the General Assembly at its sixty-eighth session, both this September, and a written report to the Council at its twenty-fifth session, March next year (para. 11).

1) UN Doc. A/HRC/22/L.19 (18 March 2013).

2) These violations include, the violation of the right to food, the violations associated with prison camps, torture and inhuman treatment, arbitrary detention, discrimination, violations of freedom of expression, violations of the right to life, violations of freedom of movement, and enforced disappearances, including in the form of abductions of nationals of other states.

Traditionally, inquiry (or enquiry, also called as fact-finding) was used by States to manage inter-state disputes. Institutions such as commissions of inquiry established facts objectively and clearly and mediated negotiations to devise solutions. In principle, the outcome of the inquiry is not legally binding, but in practice they were generally accepted by the concerned parties. Such traditional dispute settlement mechanism is now actively being utilised by the international community to investigate massive violations of human rights. The establishment of a COI to investigate the Darfur Crisis, Sudan, in 2004 by the UN Security Council is a case in point. More active cases would be the establishment of COIs on Lebanon (2006), Libya (2011), Cote d'Ivoire (2011), and Syria (2011, extended the term for the third time at the recent twenty-second session of the Human Rights Council). Also, the UN Human Rights Council dispatched Fact-Finding Missions (FFM), a moderate version of a COI, to Palestine (2006), Darfur, Sudan (2006), Democratic Republic of the Congo (2008), Gaza (2009), Israel (2010), and Syria (2011).

The basic purpose of establishment of a COI on human rights issues is also to clarify any exiting ambiguities and establish facts. However, due to the inherent characteristics of the human rights issue, the main purpose of a COI is mostly to confirm violations of international humanitarian law and international human rights law. Such activities can also be considered a process that takes place before imposing punishments prescribed by the international criminal law. Of course, the reports by a COI do not automatically result in criminal prosecution. However, the above mentioned cases of Sudan, Libya, and Cote d'Ivoire are connected to the COI, and the International Criminal Court (ICC) issued warrants to arrest the major international criminal suspects. In some cases, the hearings are going on.³⁾

The significance of the adoption of the resolution and the decision to establish the COI on the human rights violations in North Korea can be analysed as follows. First is the development of consensus by the international community on the severity of the human rights violations in North Korea and the expression of strong will to intervene. The fact that the UN Human Rights Council adopted North Korean human rights resolution by consensus for the past two consecutive years, and decided to establish a COI – mostly, in other cases, established for massive violations of human rights that involve ‘armed conflicts’ - is noteworthy. Such facts reflect the great concerns of the international community. Also, it can be assessed that the resolution realised the second pillar of the ‘Responsibility to Protect (R2P)’ principle, which stipulates that the international community also has the responsibility to help a sovereign State, that is primarily responsible for protecting its own populations, through the UN, by diplomatic, humanitarian and peaceful means.⁴⁾

The most significant aspect is that the international community’s approach to the North Korean human

3) The International Criminal Court issued a warrant to arrest the Sudanese president, Omar al-Bashir in March 2009 and July 2010. The former president of Cote d'Ivoire, Laurent Gbagbo, was extradited to the International Criminal Court in The Hague in November 2011. He is currently being tried for his violations relating to the civil war, which took place after his denial of the result of the presidential election in late 2010.

4) For reference, see, “Report of the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea, Marzuki Darusman”, UN Doc. A/HRC/22/57 (1 February 2013), paragraph 30.

rights problem has fundamentally changed. In the past, the Special Rapporteur conducted a general monitoring; however, the newly established COI will mainly investigate more concrete relevant facts. In other words, in contrast to the past general discussions on human rights situation in North Korea, the international community is taking an approach that includes the possibility of international criminal punishment. This raises the need for a more detailed fact-finding as well as a more professional legal analysis. As pointed out by Marzuki Darusman, the former Prosecutor General of Indonesia and the UN Special Rapporteur on Human Rights in North Korea, in his recent report, the COI will focus on the political prison camp and abduction issues, in the context of ‘crimes against humanity,’ stipulated in Article 7, Rome Statute of the International Criminal Court. For reference, the words that appear in the resolution on human rights in North Korea such as ‘widespread’ and ‘systematic,’ are directly related to ‘crimes against humanity,’ and the expression ‘grave’ is related to ‘war crimes,’ which is also one of major international crimes.

Tasks Forward

Se-pyong Seo, the North Korean representative in Geneva, resolutely rejected the resolution, characterizing it as a product of political confrontation and plot. Also, on 22 March, the North Korean foreign ministry spokesperson condemned that “the U.S. and its followers’ annual condemnation of North Korean human rights condition is nothing but a product of political confrontation and plot.” Further, on 24 March, the Cho Pyong Tong (The North Korean Committee for the Peaceful Reunification of the Fatherland) spokesperson warned that “The U.S. and South Koreans should realise that they are challenging our regime and dignity by condemning human rights condition in North Korea. Such challenges will not be tolerated by the North Korean military as well as the North Korean people.” Based on such responses of the North, one can easily conclude that the North will not allow any visits to the country, or provide any relevant information, just as it did not acknowledge the UN Special Rapporteur on North Korea until now.

Due to the rejections of the North, site visits, which is crucial in fact-finding, is actually impossible and excluding the period of the COI formation and report writing, the period of inquiry is limited to six-months. Considering such limits, for meaningful results to be drawn through the COI on human rights violations in North Korea, the role of South Korea is important more than ever. Specifically, to effectively support the activities of the COI, ‘constructing a system that can coordinate government’s North Korean human rights policy, and also can integrate and manage relevant information and data’ is urgent. Such system is needed not only for short-term response, in a mid to long term perspective as well. In addition, ‘constructing a system for public-private partnership’ needs to be seriously considered in order to effectively respond to the activities of the COI.

In the midst of the COI working, the South Korean society needs to consider the following points. First, it needs to gather wisdom so that the activities of the COI can result in actual improvement of human rights condition in North Korea. Further, the South needs to seek specific strategies so that a reunification that happily satisfies the Korean people can be realised through the improvement of the

North Koreans human rights. In order to do so, the improvement of North Korean human rights and humanitarian assistance need to be approached in a balanced manner. In other words, while actively participating in activities to improve the human rights condition in North Korea through the UN Human Rights mechanisms, the South needs to also deliver positive messages regarding humanitarian assistance for the vulnerables such as infants, so as to improve inter-Korean relations. Second, South Korea needs to facilitate communication within its society so that conflict among the South Koreans is not intensified due to the activities of the COI. Hopefully, the activities of the COI will serve as a momentum for the conservatives•liberals and ruling•opposition parties to work together and gather wisdom that can actually improve the human rights condition in the North. © KINU 2013

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