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2017 UN General Assembly Resolution on Human Rights in the DPRK and the Right of Consular Access

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I. Establishment of the Right of Consular Access within the North Korean Human Rights Resolution

The United Nations General Assembly has adopted the resolution on human rights in the DPRK since 2005. The resolution of the UN General Assembly on North Korean Human Rights plays a significant role in informing the world about the human rights situation in North Korea and gathering the capacity to improve human rights in North Korea. The United Nations General Assembly's 2017 resolution on North Korean human rights was adopted in 14 November 2017. The resolution on North Korean human rights is expected to be adopted in the plenary session of the General Assembly around December 20. One point that must be highlighted in the 2017 resolution is the new inclusion of human rights abuses committed against foreigners both inside and outside North Korea. Considering the fact that existing resolutions have been focusing on human rights of North Korean residents, overseas defectors, and overseas dispatch workers, 2017 resolution is meaningful in that it raises the issue of foreigners' human rights in North Korea. In particular, the resolution

on North Korean human rights in 2017 is considered to have marked a milestone in the human rights of foreigners in North Korea since the issue of consular protection for foreign detainees in North Korea has been included. The death of Otto Warmbier is viewed as having been a decisive factor in the inclusion of the human rights issue of foreign prisoners in the 2017 resolution. Otto Warmbier, an American college student, was accused of plotting to overthrow the North Korean regime and was sentenced to 15 years of hard labor. He died in the US six days after he, in a state of coma, was released from North Korea on June 13, 2017.

II. Actual Application of the Right of Consular Access for Foreign Prisoners

As of November 3, 2017, there are 9 cases of 11 detained foreigners who have had a criminal trial in North Korea. They are US nationals Euna Lee, Laura Ling, Aijalon Mali Gomes, Kenneth Bae, Matthew Todd Miller, Otto Frederick Warmbier, and Kim Dong Chul. There are also South Korean nationals Kim Jung Wook, Kim Kook Ki, Choi Chun Gil along with a Canadian national, Pastor Lim Hyun Soo. Euna Lee and Laura Ling, Gomes, Kenneth Bae, Matthew Todd Miller and Lim Hyun Soo were released, but unfortunately, Kim Jung Wook, Kim Kook Ki, Choi Chun Gil and Kim Dong Cheol are still in confinement.

The US and North Korea have not yet established consular relations. However, even in the absence of consular relations, the right of consular access can still be practiced through the protection power. North Korea acknowledged the right of consular access to US citizens Euna Lee, Laura Ling, Gomes, Kenneth Bae and Otto Warmbier through the Swedish embassy, which is a protecting power state. However, in the case of Matthew Todd Miller and Kim Dong Chul, it is unclear whether they had consular access. Rev. Lim Hyun Soo, a Canadian national, met two Canadian diplomats on December 18, 2015. North Korea, however, does not recognize the right of consular access for South Korean citizens Kim Jung Wook, Kim Kook Ki, and Choi Choon Gil. Meanwhile, consular access for foreign detainees has been blocked for a long time after the detainment of Kenneth Bae, making it

difficult for them to have access to consular service. In addition to Kim Dong Chul, North Korea also detained US national Tony Kim (Sang Deok Kim) and Hak Sung Kim. There are also six South Korean detainees, including Jung Wook Kim, Kook Ki Kim and Chun Gil Choi.

III. North Korea's Obligation to Comply with the Right of Consular Access

When the US-Iran hostage crisis in Tehran broke out in 1980, the International Court of Justice (ICJ) ruled that Vienna Convention on Consular Relations was a codified convention of existing customary international laws on the consular relations. From a state's point of view, as stipulated in the Vienna Convention, the right of consular access is a legitimate right to access and protect overseas nationals. On the other hand, from an individual's point of view, the right of consular access also implies that one has the right to meet a consul of his or her own nation. The ICJ's verdict over the LaGrand case in 2001 stated that the right of consular access is not only a lawful right of a nation but also the right of an individual. As a state party of the Vienna Convention, North Korea has an obligation under international law to comply with the Right of Consular Access. Therefore, the international community should continuously urge North Korean authorities to comply with the Right of Consular Access.

The right of consular access should also be guaranteed to South Korean detainees. It is difficult to find the legal grounds to justify North Korea's recognition of the right of consular access only for American and Canadian citizens but not for South Korean citizens. The rationale behind North Korea's non-recognition of the right of consular access for South Koreans, which is guaranteed under customary international law, can be found in the special relationship between South and North Korea. Even if the relationship between North and South Korea is not a typical one between nations, the actions of the North Korean authorities cannot be justified. The South Korean people and the government should urge the North Korean

government to allow for consular protection and should raise objections against North Korean authorities for not allowing consular access in the process of detaining, investigating, and trying South Korean detainees. Although South Korea and North Korea do not have a consular relationship, the South Korean government can nonetheless demand the right of consular access through a third state like the US does, using Sweden as a protecting power state. The UN General Assembly should also actively consider ways to specify consular protection rights of South Koreans in the North Korean Human Rights resolution. While the international community regards North and South Koreans as two separate nationals, due to the peculiarity of Inter-Korean relations, South and North Koreans are not seen as foreigners domestically. The exceptionality of Inter-Korean relations is also confirmed by differences in prison facilities. While ordinary foreigners are imprisoned in a prison camp(kyohwaso) for foreigners during trial, South Koreans are imprisoned in other facilities. If the UN General Assembly resolution on North Korean human rights is formally adopted, the possibility that North Korea may make arguments regarding the non-foreigner status of South Koreans should not be ruled out. ©KINU 2017

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