



Online Series

2018. 08. 06. | CO 18-33

Role of the Gaesung Joint Liaison Office and Guarantee of Personal Safety for South Korean Nationals

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Preparations are speeding up to open the Gaesung Joint Liaison Office, scheduled for August. The author recommends that the new liaison office play the following roles, which should rightly be specified in a follow-up agreement of the Panmunjom Declaration. First, talks and exchange and cooperation projects with an aim to enhance inter-Korean relations, as agreed upon in the Panmunjom Declaration, should go through the liaison office. Second, the South and North need to utilize the liaison office to discuss and reach consensus on how to alleviate military tension and build trust. Third, the liaison office's scope ultimately needs to expand to cover dialogues on inter-Korean economic exchanges and cooperation, and the resumption of the Gaesung Industrial complex and Mt. Kumgang tourism projects corresponding to North Korea's denuclearization progress and subsequent lifting and easing of sanctions. Fourth, the liaison office should be tasked with ensuring the safety of Korean citizens. The author recommends that the consular access be backed by institutional means such as amending the existing the Agreement for Access and Sojourn and, ultimately, signing a consular agreement between the two Koreas.

Preparations are speeding up to set up the Gaesung Joint Liaison Office in August as agreed upon on April 27 via the Panmunjom Declaration (hereinafter referred to as “Declaration”). It is known that the Korean government has requested a sanctions exemption for the establishment of liaison office to the UN Security Council Sanctions Committee. Since the historical Declaration, inter-Korean relations have entered a whole new phase, and inter-Korean exchange and cooperation has been simultaneously carried out in a number of areas. In this regard, elevating the status of liaison office will be a good approach to actively respond to pressing issues on inter-Korean relations and exchange and cooperation. Meanwhile, on July 24, the Ministry of Unification briefed the Foreign Affairs and Unification Committee of the National Assembly that it will seek to elevate the level of liaison office to permanent representative offices in Seoul and Pyongyang, corresponding to the progress of inter-Korean relations. This is evaluated as a desirable policy direction given that inter-Korean ties should be developed toward a goal of normalization.¹⁾ This paper explores what roles the Gaesung liaison office needs to play, and which aspect needs to be institutionalized to protect South Koreans in the North.

Signing Follow-up Agreement and Clarifying the Role of Liaison Office

To establish and operate the joint liaison office in Gaesung, the two Koreas first need to sign tentatively titled “agreement to establish and operate an inter-Korean joint liaison office” as a follow-up measure to the Declaration, clarifying specifics such as the office’s role, scope, and size, rank of its head, and the conveniences, exemptions, and privileges granted for its employees. Among them, clarifying the role of the liaison office is crucial. The Panmunjom Declaration stipulated two functions of the Gaesung liaison office: facilitating inter-Korean dialogue and consultation, and ensuring smooth people-to-people exchange and

1) Lee, Kyu-Chang, “Remaining Challenges for Institutionalization of Inter-Korean Relations in Panmunjom Declaration,” (KINU Online Series CO18-13, May 2, 2018).

cooperation. Building on the agreement, Seoul and Pyongyang need to spell out the liaison office's role through follow-up meetings, which should include the following.

First, talks and exchange and cooperation projects with an aim to enhance inter-Korean relations, as agreed upon in the Declaration, should go through the liaison office. Article 1 of the Declaration specified the two sides' shared commitment to facilitating cooperation, exchanges, visits, and contacts in various fields and at multiple levels; hosting various joint events that involve participants from all levels, including the central and local governments, parliaments, political parties, and civil organizations; jointly participating in international sports events such as the 2018 Asian Games; promptly resolving humanitarian issues caused by the division of the peninsula; convening the Inter-Korean Red Cross Meeting to discuss and address issues on reunion of separated families; and connecting railways and roads on the eastern transportation corridor as well as between Seoul and Sinuiju.

Second, the South and North need to utilize the liaison office to discuss and reach consensus on how to alleviate military tension and build trust. In this regard, the Article 2 of the Declaration sets out the two side's agreement to cease all hostile acts against each other; transform the demilitarized zone into a peace zone in a genuine sense; turn the areas around the Northern Limit Line in the West Sea into a maritime peace zone; and take various military measures to ensure active mutual cooperation, exchanges, visits and contacts.

Third, for the long term, the liaison office's scope ultimately needs to expand to cover dialogues on inter-Korean economic exchanges and cooperation, and the resumption of the Gaesung Industrial complex and Mt. Kumgang tourism projects. Since the two projects are closely related to international sanctions against Pyongyang, it is difficult to task the office with the matter in the short term. What is at stake here is North Korea's denuclearization. Only after the United Nations Security Council (UNSC) and U.S. decide to lift or at least ease sanctions based on significant progress made in the North's denuclearization efforts, whether inter-Korean economic cooperation should be resumed will be put on the table.

Fourth, the liaison office should be tasked with ensuring the safety of Korean

citizens. As many remember, the shooting and death of a Korean tourist by North Korean soldiers in Mt. Kumgang Tourist Zone in 2008 marked a starting point of strained inter-Korean relations. In the process of resuming and expanding inter-Korean exchanges and cooperation, more and more South Korean nationals are expected to visit the North. Therefore, a matter of ensuring their personal safety should not get in the way of developing inter-Korean relations. At the moment, there are six South Korean citizens detained by Pyongyang, whose safety, consular access and repatriation should be sought through the liaison office. Canadian and American citizens under the same conditions have been allowed to have consular access during their detention and trial process. In contrast, Koreans detained in the North are denied of rights to consular access—a basic individual right and a sovereign right and duty.

Need for Inter-Korean Consular Agreement for South Korean People's Safety in North Korea

Personal safety and consular access of Korean people can be guaranteed by institutional means. That role should be assigned to the Gaesung liaison office and, if established, the permanent mission. A dispatch of special envoy to Pyongyang may work as an interim measure, but it is desirable to designate the liaison office or permanent mission as a permanent consular post when considering the aspect of institutionalization. Corresponding with the developmental status of inter-Korean relations, rights to consular access may be institutionalized in the form of either 1) specifying the rights for consular access in the Agreement for Access and Sojourn of the Gaesung Industrial Complex and Mt. Kumgang Tourism District (hereinafter referred to as “Agreement for Access and Sojourn”) or 2) signing an inter-Korean consular agreement separate from the former agreement.

Regarding the first approach, Agreement for Access and Sojourn was signed on Jan 9, 2004, ensuring the guarantee of personal safety of South Koreans in the process of inter-Korean cooperation and exchanges. This agreement, however, lacks

any mentioning of consular access. In Paragraph 3, Article 10, it only stipulates that “North Korea must guarantee basic rights while a South Korean is being investigated.” If the two sides amend the Agreement for Access and Sojourn or newly sign an annex agreement, the revised or new text needs to include the rights to consular access. In the meantime, the jurisdiction of the current Agreement for Access and Sojourn is only limited to the Gaesung Industrial Complex. While the coverage of the agreement extends to both the Gaesung Industrial Complex and Mt. Kumgang Tourism District, the latter is currently deemed non-existent because its legal ground, the Act on Mt. Kumgang Tourism District, was abolished. If Mt. Kumgang tourism resumes, either a new inter-Korean agreement should be signed stipulating access and sojourn and the rights to consular access for South Korean visitors in the Kumgang Tourism District or new clauses should be included that ensures the Agreement for Access and Sojourn’s legal effect on the District.

Concerning the second approach, the starting point may be an inter-Korean consular agreement that primarily covers the Gaesung Industrial complex and Mt. Kumgang Tourist Zone. In the long run, however, there is a need for a consular agreement whose jurisdiction is the entire North Korea. Such arrangement is necessary to ensure the personal safety in incidents occurred outside the two special zones, as were the cases of Kim Jeong-uk, Kim Guk-gi and Choi Chun-gil, three missionaries currently under the detention in North Korea.

Two aspects should be taken into account in writing a draft of the inter-Korean consular agreement. Firstly, key contents of the 1963 Vienna Convention on Consular Relations must be reflected in this agreement. Secondly, the two Koreas should analyze their existing consular agreements signed with other countries and adopt more advanced provisions compared to the Vienna Convention. At the moment, Seoul implements consular agreements with the U.S., Nepal, Russia, and China. Among them, the Consular Agreement between the Republic of Korea and the People’s Republic of China sets forth that: 1) if a national of the sending State...is detained, arrested..., the said authorities shall, whether the national requests it or not, notify the consular post of the sending State, without delay but

no later than four days from the date of the said compulsory actions...(Paragraph 1, Article 7); 2) If consular officers so request, the competent authorities of the receiving State shall arrange for them to visit the said national, without delay but no later than four days from the date of the request (Paragraph 2, Article 7); and 3) In the case of a death penalty imposed on a national of the sending State by the receiving State, the competent authorities of the receiving State shall notify the consular post and let the said post know without delay...(Paragraph 8, Article 7). Pyongyang has also signed and implemented consular agreements with other states. For example, the North Korea-Romania Consular Agreement (signed on Nov 2, 1971) stipulates that a national of the sending State may meet consular officers in case he or she is investigated or brought to a trial (Article 29)—a provision much advanced from the Vienna Convention. While under the Convention, competent authorities of the receiving State shall inform the consular post of the sending State upon the sending State's request (Paragraph 1, Article 36), Consular Agreement between North Korea and Romania does not specify such precondition. In other words, the North Korea-Romania Consular Agreement contains a step forward provision of strengthened guarantee of rights to consular access compared to the benchmark Convention.

In the meantime, a question could be raised whether the signing of a consular agreement is legally binding between the two Koreas since consular relations are set between countries. Indeed, South Korea and North Korea are in special relations as opposed to state-to-state relations. Contrary to other diplomatic relations, however, consular relations do not necessarily require the establishment of diplomatic ties, or state recognition, as a precondition. In that regard, it is possible to sign a consular agreement between Seoul and Pyongyang that are in special relations. Another possible question is whether the term “agreement,” which means treaty in this context, can be used in the text of agreement with North Korea, an anti-government organization. Under relevant international laws, however, the word “treaty” does not necessarily have to be used between two countries. International organizations, insurgents or belligerents can be a signatory to a treaty; so are the

state governments in some federal states. In the past, West Germany and East Germany, in similarly special non-state relations, had also concluded a basic treaty. Using the term “treaty” is desirable because it will make the arrangement legally binding, and help develop inter-Korean ties toward the normalization. It is notable, however, that arrangements between Seoul and Pyongyang have traditionally been titled letters of agreement. To prevent a possible political controversy, the government needs to promote public understanding on using the term—agreement or treaty. ©KINU 2018

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