Drawing the Line: Combating Atrocities in North Korea

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North Korea has long been considered one of the worst abusers of human rights, which is saying a lot given the world’s record of atrocities. Its notoriety mushroomed in February 2014 when the UN’s Commission of Inquiry on Human Rights in the Democratic People’s Republic of Korea (DPRK) produced its 371-page report, concluding that the country’s atrocities do not “have any parallel in the contemporary world.” The special commission, established by the UN’s Human Rights Council, determined that this totalitarian state’s systematic and widespread cruelties against its people are tantamount to ‘crimes against humanity,’ on par with genocide, ethnic cleansing, and war crimes. Over two hundred witnesses and experts chronicled forced labor, forced abortions, infanticides, public executions, a massive gulag system, and overseas abductions, among other barbarities. North Korea, in short, was found to be violating practically every single one of the thirty articles in the Universal Declaration of Human Rights.

For decades, the regime has escaped punishment for these crimes. The international prosecutorial mechanism has failed because, too often, accountability
has taken a back seat to peninsular security and inter-Korean relations. The commission’s verdict, and the UN General Assembly’s subsequent endorsement of its conclusions and recommendations, have begun to change that. The report, compiled by Michael Kirby, a former Australian Supreme Court justice; Marzuki Darusman, the UN’s Special Rapporteur on the Situation of Human Rights in the DPRK; and Sonja Biserko, a Serbian human rights activist, was a defining moment, galvanizing the global community to break North Korea’s chronic pattern of atrocities.

What’s more, the report has given rise to a new strategy: embracing human rights as an effective tool, not a distraction, in reducing North Korea’s security threat and, eventually, increasing the chances of Korean unification. The recently adopted UN Security Council Resolution 2270 (March 2, 2016) reflects this new approach. While the unanimous resolution sanctioned North Korea’s fourth nuclear test and subsequent missile launch, its opening page expressed in the strongest terms yet the Security Council’s “deep concern at the grave hardship that the DPRK people are subjected to.” It expressed “great concern” at Pyongyang’s diversion of funds to weapons programs at the expense of DPRK citizens’ “great unmet needs.”

Can the international community put to use this new comprehensive approach, linking security and human rights, to counter the Kim Jong Un regime? Will the world finally draw a line to combat atrocities in North Korea? The first step in answering these questions is a frank assessment of both the situation and our options.

How Did We Get Here?

This road began in March 2013, when the UN Human Rights Council established the commission of inquiry and mandated that it investigate North Korea’s “systematic, widespread and grave violations of human rights.” Almost one year later, in February 2014, the commission recommended that the UN Security Council (UNSC) refer responsible North Koreans, including Kim Jong Un, to the International Criminal Court (ICC) or an ad hoc international tribunal, and impose targeted sanctions on the leadership. These were among the 35 categories of recommendations that also included wholesale political reforms to which the Pyongyang regime should adhere. The commission discussed the UN’s ‘Responsibility to Protect’ (R2P), since the North Korean regime appeared unwilling to halt its crimes against humanity. It also denounced China’s forcible repatriation of North Korean refugees as being tantamount to “aiding and abetting” crimes against humanity.
In late 2014, the Human Rights Council and General Assembly overwhelmingly endorsed the commission’s findings and recommendations. For the first time, the Assembly forwarded a country-specific report on North Korea to the Security Council for action. With the support of eleven Council members, including the United States, the United Kingdom, France, and South Korea, the commission’s findings and recommendations were placed on the Council’s agenda in December 2014. Though China and Russia opposed the agenda, they couldn’t overturn the UN Charter’s stipulation that permanent members cannot veto a procedural decision (Article 27, para. 2).

Pyongyang was stunned. After refusing to cooperate with the investigation, it suddenly launched a ‘charm offensive.’ The government, which had always scorned human rights investigations and hearings, finally responded to the UN’s 2009 Universal Periodic Review (UPR), a UN process that evaluates all members’ human rights record approximately every four years. Having previously rejected or otherwise failed to accept all of the UPR’s 167 recommendations, the DPRK decided belatedly in May 2014 to fully or partially “accept” 87 of them. It took this step just prior to the beginning of the second UPR cycle on North Korea in 2014. This time, presumably under pressure from the commission of inquiry report, the DPRK submitted a timely response, fully or partially “accepting” 117 of 268 recommendations. North Korean Foreign Minister Lee Su-young, making a rare appearance at the 69th General Assembly to give a speech that made over ten references to human rights, was another ostensible example of Pyongyang’s ‘charm offensive.’ This was followed by Pyongyang’s unexpected release of three U.S. detainees—Jeffrey Fowler, Kenneth Bae, and Matthew Miller. Cautious optimism sprang up, but unfortunately, North Korea’s gestures soon proved to be nothing more than theater intended to derail the UN proceedings. The singular objective of these diplomatic initiatives was to block any referral of North Korean officials to the ICC or another tribunal.

There are ample grounds for a referral. The Rome Statute, establishing the ICC, details two relevant crimes—‘crimes against humanity’ and genocide. ‘Crimes against humanity’ are inhumane acts which are part of a widespread or systematic attack, knowingly directed against a civilian population. The commission of inquiry extensively documented these atrocities. Genocide is proven by acts committed with the intent to destroy, in whole or part, a national, ethnic, racial, or religious group. The London-based international law firm, Hogan Lovells, concluded that Pyongyang’s intentional and destructive targeting of Christians,
children of Chinese heritage, and other groups classified as “hostile” could amount to genocide.\textsuperscript{14}

The good news is that the Rome Statute eliminates national and international immunities, including for heads of state, and has no statute of limitations. Though ICC jurisdiction is limited to events occurring after the statute’s July 1, 2002, effective date, this will not be a major hurdle for prosecuting North Korean officials, given the documentation of recent and continuing crimes. The bad news is the Court’s requirements for personal jurisdiction. The Court may prosecute an individual who is a national of a state party to the Rome Statute or who committed a statutory crime in a party’s territory.\textsuperscript{15} The ICC has 124 state parties, including South Korea, but not North Korea. A nonparty can accept jurisdiction for a particular matter, but Pyongyang’s leadership will not voluntarily place its head in the judicial noose. That’s why the best hope is a UN Security Council referral to the ICC or special tribunal.

Pessimism surrounds these and other possible enforcement steps. Chinese and Russian vetoes are expected if the Security Council votes for an ICC referral, tribunal, or targeted sanctions. Sanctions responding to the regime’s nuclear weapons and ballistic missile tests have barely changed its bellicose behavior. Not surprisingly, Special Rapporteur Marzuki Darusman concluded in January 2016 that, despite the commission’s report, the human rights situation in the DPRK has not improved and crimes against humanity appear to continue.\textsuperscript{16}

But there are reasons to be optimistic. The international community remains firm. After the Security Council failed to act on the General Assembly’s 2014 referral of the commission of inquiry report, the Assembly once again, in 2015, overwhelmingly voted to support the commission’s conclusions and encourage the UNSC to consider an ICC referral and targeted sanctions. On December 17th, 119 countries, including several who voted against or abstained in the 2014 vote, passed a resolution condemning the “gross violations of human rights” in North Korea.\textsuperscript{17} A week earlier, on December 10th, the Security Council held an important meeting where some members called for a debate on an ICC referral.\textsuperscript{18}

In time, maneuvers in the Security Council, General Assembly, ICC, or among individual states may yet produce an international tribunal; we now know that merely placing North Korean human rights on the global stage, and particularly the possibility of criminal prosecution, rattles Pyongyang’s complacency, creating opportunities for pressure and dialogue. Sanctions, despite past failures, can be an effective tool in mitigating the worst of Pyongyang’s human rights atrocities.

Most importantly, we now realize that promoting human rights, reducing the security threat, and improving inter-Korean relations are mutually reinforcing policy goals. The threat of an international criminal prosecution, particularly that of Kim Jong Un, is emerging as new leverage that could help reign in
Pyongyang’s nuclear and ballistic missile programs. Any improvement in the country’s human rights that widens the populace’s access to the outside world can empower the North Korean people to demand more from their government. Such an outcome could increase the impact of international sanctions designed to impede military escalation. Even if, for now, we are not able to establish a tribunal or effectively sanction the regime, there are other ways to compel individual North Korean officials to stay their hands before committing human rights violations. Genuine progress on North Korean human rights just may be within reach.

All Eyes on the Security Council

Despite the popular perception that the Security Council does not address domestic human rights violations, it should be remembered that, in 2006, the Council formally endorsed the Responsibility to Protect (R2P), making explicit that the gravest human rights violations, including crimes against humanity and genocide, are indeed threats to international peace. The Council’s March 2 resolution makes this connection between human rights and a peaceful North Korea by recognizing that the regime’s WMD programs exist at the expense of the people’s “unmet needs.”

North Korea would not be the Security Council’s first ICC referral. Darfur, a region of Sudan, was consigned in 2005, also based on a UN commission of inquiry report detailing violations of humanitarian and human rights laws, and Libya was referred in 2011 for widespread and systematic attacks against civilians during its civil war. But given the low chance of a North Korean referral any time soon, the Council could instead establish a special tribunal, as it did for serious violations of international humanitarian law committed in the former Yugoslavia and in Rwanda. A special tribunal could, unlike the ICC, consider events that occurred before July 1, 2002. A tribunal might be more acceptable to China and Russia, since the Council could shape the court’s jurisdiction and procedural rules, as was done with those earlier courts.

Be it an ICC referral or an independent tribunal, bringing North Korea to such a place requires nine Council votes. The current membership probably will be less supportive than its 2014 predecessor, which agreed to place the commission’s report on the Council’s agenda. Three of the eleven members that voted for the agenda (Argentina, Rwanda, South Korea), have been replaced by countries that voted ‘no’ or abstained during the 2015 General Assembly ballot (Venezuela, Angola, Malaysia). So advocates can, for now, probably count on eight solid votes, one
short of the nine required to pass an enforcement measure. However, Malaysia, which abstained during the Assembly’s 2015 vote, joined this eight-country coalition in December 2015 to reject a Chinese procedural motion and permit the second Council discussion on North Korean human rights. So, a new nine-country bloc may be coalescing, but the Council will be reshuffled on January 1, 2017, when five current members, which are a mix of enforcement supporters and opponents (Angola, Malaysia, Venezuela, New Zealand, and Spain), are replaced by a slightly more favorable mix (Ethiopia, Kazakhstan, Bolivia, Sweden, and Italy).

Potential Chinese and Russian vetoes loom over any enforcement resolution. Their positions seemed clear during the 2014 and 2015 debates on the commission’s findings and recommendations, and during the subsequent votes in the General Assembly. They contested placing the commission’s report on the Security Council’s agenda in 2014. A year later, they tried to prevent renewed UNSC discussions. Their vetoes of a 2014 resolution to refer the Syrian situation to the ICC, despite backing from the rest of the Council members and 65 countries, cannot bode well for a North Korean referral. Yet, global politics are constantly shifting, not static. China and Russia are cognizant of their responsibilities and reputations as global stewards on the Security Council. That is probably why, in the 2005 Council vote to refer the Darfur situation to the ICC, Russia agreed and China abstained, and they both supported Libya’s ICC referral in 2011.

When it comes to North Korea, however, there is still much skepticism surrounding China’s position, and for good reasons. Time and again, we have seen Beijing turn a blind eye to Pyongyang’s inhumanity and provocations. Although Beijing allows large numbers of North Koreans to illegally reside in China, as persona non grata, an estimated tens of thousands have been forcibly returned to the North during the past two decades, irrespective of refugee status and non-refoulement obligations (a principle of international law that forbids returning a persecuted person back to the perpetrator, usually a state actor). Beijing reiterated to the Commission of Inquiry “that DPRK citizens who have entered China illegally do it for economic reasons. Therefore they are not refugees… [and]… the allegation that repatriated DPRK citizens from China face torture in the DPRK is not true.” Against this background, Beijing’s rather soft response to the North’s 2010 sinking of the Cheonan naval vessel and the bombardment of Yeonpyeong Island was not entirely surprising.

But ever since Kim Jong Un took power following his father’s death in December 2011, North Korean brinkmanship has escalated to a point where Beijing may be

Swift implementation of the 2016 sanctions may be a sign that China’s North Korea policy is changing.
hard pressed to continue standing by its old ally. Beijing’s patience is likely wearing thin over concern that the international perception of Chinese responsibility, if not complicity, in Kim Jong Un’s reckless behavior will compromise its ambitions to be recognized as a bona fide global leader. Until China embraces universal values and starts policing international law’s basic human rights, particularly in North Korea, it cannot command respect from the international community, despite its extensive military and economic power. Beijing may be finally onto this calculus; its rather swift implementation of the March 2, 2016, sanctions against North Korea, where cross-border trade has fallen by as much as 30 percent, may be a sign that China’s North Korea policy is changing.

Other Avenues to a Tribunal

Until a new day dawns in Beijing and Moscow, we should push for a tribunal without expecting help from the Security Council. At least three options exist: one, an ICC prosecution based on Pyongyang’s abuses of North Korean workers employed in ICC member states; two, a special court established by the UN General Assembly; and three, universal jurisdiction exercised by individual states to prosecute North Korea officials.

The ICC and Overseas North Korean Laborers

ICC member states and the Court’s prosecutor can, on their own, target North Korea’s labor abuses taking place within members’ borders. The North’s extra-territorial labor network is estimated to employ 50–60,000 workers in forty countries, including ICC members Nigeria (200), Poland (400–500), Malta (80–90), and Mongolia (1,300–2,000). This state-run enterprise of exporting laborers is an important source of foreign currency for the regime. The recent toughening of international sanctions has increased Pyongyang’s reliance on this income source. Pyongyang’s mistreatment of these workers appears to amount to forced labor. The ASAN Institute for Policy Studies determined that North Korea constantly surveils the workers, confiscates their wages, refuses reentry until their contracts are completed, and forces them to work as much as twenty hours a day, with only one or two days rest each month. The law firm, Hogan Lovells, found “strong indications” that these conditions may constitute crimes against humanity, even enslavement. The September 8, 2015, report by the Special Rapporteur on North Korea concluded that companies hiring DPRK workers are “complicit in an unacceptable system of forced labor.”

Pressuring countries and companies to bar these forced laborers is the first step. Last year, in an unprecedented move, a Qatari construction company decided to dismiss over one hundred North Korean workers because of labor abuses by their
supervisors. There have been individual cases of expulsion for illegal activities, and cases where visas were not issued, but never a group expulsion as in Qatar. More importantly, any ICC member state where workers are employed can refer the situation to the ICC, or the ICC prosecutor can, with approval of the Court, initiate an investigation of the situation in a member state.

**A General Assembly Court**

If the Security Council refuses to act, and the ICC does not otherwise gain jurisdiction, the commission of inquiry recommended that the General Assembly consider setting up a special tribunal. This power could lie in the UN Charter (Article 22) which provides that the Assembly “may establish such subsidiary organs as it deems necessary for the performance of its functions.” There is also the 1950 Uniting for Peace Resolution, where the Assembly claimed authority to recommend collective action to UN members if a permanent member’s veto prevents the Security Council from addressing a threat to international peace. (Coincidentally, that resolution was passed to circumvent Soviet vetoes during the Korean War.)

Still, the Assembly’s power to unilaterally create a tribunal is problematic. It was the Security Council that established the special courts for Rwanda and ex-Yugoslavia, relying on its Charter powers to maintain international peace and security. The General Assembly has no such explicit powers, and the Uniting for Peace Resolution authorizes it only to recommend an action to member states. But, the debate over the Assembly’s tribunal power continues, and even a mere recommendation for a special court would legitimize a tribunal established by a coalition of willing states, perhaps organized by South Korea. This leads to the next judicial option.

**Universal Jurisdiction**

Individual states can also take up the commission’s suggestion to employ universal jurisdiction and try North Korean officials for crimes against humanity. States have often relied on this power to prosecute individuals who committed crimes so serious that they damage the international community. Amnesty International lists at least 125 states that have incorporated some form of universal jurisdiction and documents at least seventeen countries that have exercised it since the end of World War II. Other governments have extradited the accused for prosecution in foreign venues. Famous examples include Spain’s attempt to try former Chilean dictator Augusto Pinochet for human rights violations during his 1973–1990 regime, and a Belgium court’s convictions of four Rwandans for the 1994 genocide. UN fact-finding missions on Gaza and Darfur also recommended using universal jurisdiction to try accused violators of international human rights law.
There has been some pushback against universal jurisdiction in Europe. Belgium and Spain narrowed its availability to cases with close connections to their citizens or country, and Britain removed local magistrates’ power to issue arrest warrants. But contrary to this trend, a universal jurisdiction case began last year with Senegal prosecuting and recently convicting former Chadian dictator, Hissène Habré, on charges including crimes against humanity.

Of course, any tribunal would have difficulty arresting North Korean officials. In other instances, Sudan’s President, Omar Hassan Ahmad al-Bashir, and the Lord’s Resistance Army leader, Joseph Kony, were indicted by the ICC, but remain at large; ICC charges against Kenyan President, Uhuru Kenyatta, were dropped after the prosecutor claimed that the Kenyan government failed to provide requested evidence. Still, a tribunal is worth the effort to gain negotiating leverage and, perhaps, deter North Korean officials from committing the most abhorrent crimes.

**Targeted Sanctions**

Another commission recommendation is targeted sanctions, which focus on leaders, other decision-makers, their principal supporters, and discrete economic sectors. Against North Korea, they can serve multiple goals: they may coerce officials to cooperate on human rights, deny the government resources needed to engage in human rights violations, and stigmatize behavior.

There are naysayers when it comes to North Korean sanctions. They argue that an array of heavy penalties has failed to produce positive results. That is far from the truth. Until the Security Council’s March 2 resolution, international sanctions were weak compared to those against other countries like Iran. Even with the new, tougher Council resolution, enforcement has a long way to go.

Ninety of the 193 UN member countries have not even submitted reports on implementing any of the Council’s prior sanctions, and the Panel of Experts charged with monitoring compliance blames continued North Korean evasion on states’ inadequate enabling legislation, lack of understanding of the resolutions, and low prioritization. Lobbying those countries to more fully report and comply is essential. Besides the WMD-related targets, priority should remain on the sources of North Korea’s foreign currency such as sales of illegal drugs, counterfeiting, arms trafficking, and exporting labor.

Embargoing luxury goods is also an effective tactic. North Korean leadership expert Ken Gause has chronicled the critical role that gift-giving plays in the
stability of Kim Jong Un’s regime. He argues that sanctions have the effect of constricting the regime’s ability to continue this largess and consolidate power.\(^{33}\) China and other countries exporting these non-essential goods are vulnerable to a global ‘naming and shaming’ campaign as well as secondary sanctions. Seoul, meanwhile, is in a much better position to push other states to enforce firmer sanctions now that it has shut down the Kaesong Industrial Park, a North–South collaborative economic project within the DPRK where the North provided workers to South Korean manufacturers. Turning a blind eye to Kaesong’s ‘forced labor’ conditions, not to mention the transfer of about US$9 million annually to the Pyongyang regime, has for years compromised South Korea’s principles. At a minimum, sanctions are a normative declaration that we are not oblivious to the North’s atrocities and that countries and firms which do business with Pyongyang are trafficking with an international pariah.

The Security Council’s March 2 resolution is most encouraging because member states are now required to, among other things, expel North Korean diplomats, inspect all cargo to and from North Korea, and ban its flights and port calls for illicit activities. What’s more, members must limit financial dealings with Pyongyang, prohibit transfers of aviation fuel, including rocket fuel, and stop importing certain minerals. Still, as comprehensive as the new list is, loopholes remain in the name of avoiding “adverse humanitarian consequences.” China, for example, can continue to import coal from North Korea, provided the proceeds are used for “livelihood” purposes, an exception that could render the sanctions ineffective.\(^{34}\) The fact that Air Koryo, the North Korean flagship carrier that is used to transport tens of thousands of forced laborers, is allowed to refuel overseas is another example of the resolution’s shortcomings.\(^{35}\) The new resolution is undoubtedly the toughest to date, but there is room for improvement.

While efforts continue in the Council, individual governments can immediately enact measures targeting North Korea’s human rights abuses. Botswana ended diplomatic relations with Pyongyang after publication of the commission of inquiry’s report because it “does not wish to be associated with a Government which continues to display such total disregard for the human rights of its citizens.”\(^{36}\) Other models for bilateral action include the 2016 Gardner-Menendez North Korea Sanctions and Policy Enhancement Act, which requires the U.S. president to investigate any person who knowingly engages in serious human rights abuses, issue a report identifying severe human rights abusers, and sanction them, such as through forfeiture of property. President Obama’s Executive Order 13687, issued in 2015, links U.S. security to ending the North’s human rights violations and allows the Office of Foreign Assets Control to designate for sanctions North Korean cover companies and individuals, exposing them and subjecting their global businesses to penalties.
Years earlier, the U.S. North Korean Human Rights Act created a dedicated human rights envoy position.

Sanctions and tribunals are likely our most effective options, but their realization will take time. Meanwhile, we must find readily applicable tactics to make North Korea more accountable and, perhaps, better behaved.

**Accountability Has Arrived**

In June 2015, the UN High Commissioner for Human Rights opened a field office in Seoul that would monitor and document North Korea’s “repression and deprivation.” Now the UN can interview North Korean defectors, assess whether the UN and other organizations are positively affecting human rights, and suggest policy adjustments. This will lead to briefings before the Human Rights Council and Security Council, which will then require responses from North Korea and its defenders. Along with states and NGOs, the UN should continue to collect evidence for future prosecutions. A good model is the Central Registry of State Judicial Administrations in Salzgitter, where West Germany documented East German human rights violations. With South Korea’s passage of the North Korean Human Rights Bill in March of this year, Seoul is expected to establish a similar documentation center.

But documenting North Korean atrocities is not enough; the time has come for accountability. We should identify the specific North Koreans committing these atrocities. A ‘collective responsibility’ approach drives officials together, but public accusations against particular individuals can drive them apart, encouraging some to open backchannel communications to avoid future criminal prosecutions.

The Secretary General can persuade many of the more than 100 states and the European Union, which have diplomatic relations with North Korea, to incorporate his ‘rights up-front’ policy in their dealings with Pyongyang. Working with UN and other humanitarian agencies, the Secretariat can identify situations where human rights can be integrated into aid packages. States that host North Korean workers can be persuaded to end these employments, as a Qatari construction company did, thus denying Pyongyang’s leadership much needed foreign currency. North Korea could be pressured to join the International Labor Organization (ILO), as suggested by the General Assembly’s December 2015 resolution; ILO membership can become one condition for partially lifting sanctions. The primary goal of these less aggressive policies is to maintain momentum.
Building the Consensus

The most serious and effective enforcement will require an international consensus, and the human rights campaigns surrounding Darfur and Libya provide tactical lessons. Darfur benefited from a publicity engine driven by NGOs, the media, politicians, and celebrities, including George Clooney and Mia Farrow, making it arguably the most well-known humanitarian crisis in the post-Cold War era.\(^{38}\) China’s defense of a recalcitrant Khartoum government became an international embarrassment as the 2008 Beijing Olympics approached. China abstained in the Council’s 2005 vote referring Darfur to the ICC, and it supported the Council’s 2007 decision to deploy thousands of UN peacekeepers. The Darfur case is not directly comparable because the 2008 Olympics offered a unique pressure point with China, but Beijing’s ardent wish, today, to be recognized as a global leader will eventually necessitate standing against North Korean atrocities.

To encourage that, the atrocities need more publicity and exposure, and there is much here that can be done. Global media largely ignore the North’s human rights abuses, preferring exciting stories on Pyongyang’s military brinksmanship and intriguing tales of Kim Jong Un’s mercurial personality. Participation by famous actors and actresses, pop artists, athletes, and iconic leaders from various industries would do wonders for the North Korean human rights campaign.

The international community should also look for allies in organizations that globally combat gender oppression, religious persecution, and drug trafficking—all hallmarks of this rogue government. Proto-versions of a global movement have already surfaced with petitions and vigils outside China’s diplomatic posts, protesting its treatment and repatriation of North Korean refugees.\(^{39}\) Forming a local, regional consensus for action is another lesson from the Darfur and Libyan cases. With North Korea, this group should include not only countries in East Asia but states everywhere that historically have friendly ties to Pyongyang.

Building the consensus will become easier as Pyongyang generates more humanitarian and security crises. Famine is the most probable humanitarian emergency. It is nothing to hope for, but if it occurs, so too is the likelihood that Pyongyang will politicize aid as it did during the 1995–98 famine. That could make it difficult for Council members, even China and Russia, to oppose a resolution adopting some of the commission’s recommendations. North Korea’s continued nuclear and missile tests can open discussions on Pyongyang’s use of forced labor in those prohibited activities. Drawing these links may offer opportunities for
concrete human rights stipulations in future resolutions addressing the North’s threats to peace and security.

Whatever the scenario, diplomatic outreach combined with international pressure will be crucial to obtaining China’s support. A blended approach has worked before. In 2006, Macau, a Chinese Special Administrative Zone, cooperated with the United States to freeze tens of millions of dollars in North Korean bank assets. In 2013, after the United States sanctioned the Foreign Trade Bank—the North’s main foreign exchange institution—the Bank of China closed at least some accounts held by the North Korean bank and suspended financial transactions with it. Seoul and Washington may have effectively used the possibility of a closer and more active U.S.–ROK security link to pressure Beijing to agree to the tougher March 2016 resolution, which strongly referenced human rights violations.

The international community can accommodate China and Russia by giving Pyongyang one final chance to avoid punitive action. A ‘trigger’ provision would condition additional sanctions on whether the North takes required steps to alleviate human rights abuses and cooperate with the UN’s inspection and monitoring. If Pyongyang refuses to take those steps, then an enforcement action, such as targeted sanctions or ICC referral, would automatically follow without an additional Council vote. Russia has opposed triggers because they dilute the veto power, and China can be expected to oppose any trigger relating to North Korean human rights. Nonetheless, if the climate improves for action, a trigger clause could make a punitive resolution more palatable, since Pyongyang would control the outcome, and enforcement could take place without Moscow and Beijing directly voting for it.

The Rome Statute has its own trigger mechanism, permitting the Council to refer North Korea to the ICC but delaying any formal investigation for twelve months, a delay which is renewable. The Council mentioned the deferral option when referring the Darfur and Libya situations. A referral of North Korea to the ICC, combined with a delay in the prosecution, would pressure Pyongyang to make good on its recent promises to cooperate on human rights, while providing China and Russia a procedural victory.

Time is necessary for these consensus-building strategies to unfold. The commission’s report can remain on the Security Council’s agenda at least through 2017, and proponents should not do anything which prematurely removes it. This may mean not seeking a vote on the more serious options until political conditions are favorable. While we await an improved climate, proponents should pursue Council resolutions requiring low-level North Korean actions, beginning with the concessions offered by Pyongyang during the 2014 UN proceedings.
The End of the Beginning

The 2014 UN commission of inquiry report on the sorry state of human rights in North Korea caps decades of NGO studies, academic papers, government pronouncements, and legislative hearings, all supporting the commission’s conclusions. Now that the General Assembly—our global legislature—has endorsed that report, the debate is over on how terrible things are in North Korea.

The next step—enforcement—will test the nerve of our international human rights institutions, treaties, and rhetoric. How well that system responds may determine whether this pride of international law and global norms continues to be a remedial and deterrent force for liberal values. If our human rights regime cannot stand against atrocities unparalleled in the contemporary world, then what is its raison d’être? North Korea is a litmus test for whether the 20th century’s hard-won victories for human dignity continue to matter in the 21st century.

Notes


34. UN Security Council, “Resolution 2270,” p. 7, para.’s 29(a)-(b).

35. Ibid., para. 31.


42. Rome Statute, Art. 16 (Deferral).