

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES  
POLICY DEPARTMENT



## WORKSHOP

# Human rights in North Korea: accountability vs. engagement?

DROI



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# WORKSHOP

POLICY DEPARTMENT, DG EXPO FOR  
THE SUBCOMMITTEE ON HUMAN RIGHTS (DROI)



Wednesday, 20 April 2016 – **10:30-12:30**  
ALTIERO SPINELLI BUILDING – ROOM **1G3**

CONTACTS AND REGISTRATION: [poldep-expo@europarl.europa.eu](mailto:poldep-expo@europarl.europa.eu)

Chairman:

**László TŐKÉS**

Vice Chair of the Subcommittee on Human Rights

## Human Rights in North Korea: accountability vs engagement?

## PROGRAMME OF THE WORKSHOP

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES

POLICY DEPARTMENT



For the Subcommittee on Human Rights (DROI)

## WORKSHOP

### Human rights in North Korea: accountability vs engagement?

Wednesday, 20 April 2016

Brussels **Altiero Spinelli Building, room 1G3**

10.30-12.30

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## PROGRAMME

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### Welcome and introductory remarks by

- **László TŐKÉS**, Vice-Chair of the Subcommittee on Human Rights (DROI)

### Presentations by:

- **Dr Veronika BÍLKOVÁ**, Researcher at the Institute of International Relations Prague
- **Dr Ramón PACHECO PARDO**, Senior Lecturer in International Relations at King's College London
- **Silvia CATERINI**, Consultant, North Korea Accountability Project

### Address by:

- **H.E. LEE Jung-hoon**, Ambassador for Human Rights, Republic of Korea
- **Julian WILSON**, Head of Division for Japan, Korea, Australia and New Zealand, European External Action Service

### Q&A with Members

Concluding remarks by **László TŐKÉS**

## 1 Welcome and introductory remarks

This report summarises the proceedings of a workshop held by the Subcommittee on Human Rights (DROI) of the European Parliament (EP) on 20 April 2016.

László Tőkés MEP (EPP, Hungary), Vice-Chair of the Subcommittee on Human Rights (DROI), opened the workshop by emphasizing that the Democratic People's Republic of Korea (hereinafter DPRK or North Korea) was one of the most challenging cases worldwide regarding its accountability for human rights violations. He noted that the subcommittee organised this hearing to gain a better understanding of the political choices relating to the pursuit of accountability for serious and persistent human rights violations in the country.

Mr Tőkés recalled that the landmark report of the United Nations (UN) [Commission of Inquiry \(Col\) on Human Rights in the DPRK](#)<sup>1</sup>, published in 2014, documented a wide range of crimes against humanity, which it found to be without parallel in the contemporary world and called on the UN Security Council (UNSC) to refer the perpetrators to the International Criminal Court (ICC). No consensus had been reached on such a referral due to the opposition of two permanent members of the UNSC (China and Russia) but in March 2016 the UN decided to establish a panel of experts to assist the on-going work on pursuing accountability. MEP Tőkés emphasised that the UN Special Rapporteur on North Korea and member of the Commission of Inquiry, Marzuki Darusman, was proactive and had been urging the international community to ensure that the senior North Korean leadership, including Kim Jong Un, was held accountable for the crimes against humanity committed in the country.

Mr Tőkés stressed that the European Union (EU) had been at the forefront of efforts to keep the issue of human rights in North Korea high on the international agenda. It had been a leading force behind recent resolutions of the UN Human Rights Council and General Assembly and it was one of the main supporters of the establishment of the Commission of Inquiry. The EU maintained a policy of critical engagement with North Korea, which included political dialogue, humanitarian assistance programmes, diplomatic pressure and targeted sanctions. Mr Tőkés underlined that the recent nuclear tests and rocket launches by the DPRK were worrying developments that might further increase tensions on the Korean peninsula and in the wider region. Despite the lack of direct hard security involvement by the EU in the region, there was, he believed, a clear need for the EU to play an active and constructive role in the present context. This had also been underlined by the European Parliament's resolution of 21 January 2016 ([2016/2521\(RSP\)](#))<sup>2</sup>.

Mr Tőkés said contacts with the North Korean regime were limited but the EU enjoyed a close relationship with the Republic of Korea. In the EP, a friendship group had been formed in October 2015. It was chaired by MEP Paul Rübig and brought together MEPs with an interest in strengthening relations with the Republic of Korea with the aim of promoting deeper understanding on issues of common interest such as trade, research and development (R&D), environment, human rights and security. Mr Tőkés invited interested MEPs to join this platform.

<sup>1</sup> <http://www.ohchr.org/EN/HRBodies/HRC/ColDPRK/Pages/CommissionInquiryonHRinDPRK.aspx>

<sup>2</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0024+0+DOC+XML+V0//EN&language=EN>



## 2 Presentation by Veronika Bílková, Researcher at the Institute for International Relations, Prague

Accountability issues vis-à-vis North Korea gained a prominent place on the international agenda especially since 2014 when the UN Commission of Inquiry published its report. The report established 'systematic, widespread and grave violations of human rights, unparalleled in the contemporary world', which have taken place in the DPRK for years if not decades. They range from violations of the right to life, to freedom of expression or freedom of movement. The Col concluded that some of these violations amounted to crimes against humanity – one of the four core crimes under international law. It is clear that this gives rise to the responsibility of the state in question on the one hand and to individual criminal responsibility on the other hand. It is equally clear that the international community, including EU member states and the EU itself, has at least a political obligation to ensure accountability in DPRK and to help people there under the concept of responsibility to protect, which is clearly applicable to this situation.

However, it is less clear what exactly could and should be done by the EU and similarly minded actors in the DPRK case. All the accountability measures available have their advantages as well as disadvantages and risks. They can be categorised into three groups, serving three different purposes:

- holding perpetrators accountable;
- helping the victims (inside and outside North Korea);
- improving the situation in the country.

### 2.1 Holding perpetrators accountable

So far, accountability measures taken or contemplated by the international community have been focused primarily on this category. However, it is very difficult to achieve justice in a country that is prone to either civil conflict or to a non-democratic regime, as seen over the past two decades in former Yugoslavia, Rwanda, Sudan or in contemporary Syria.

In theory, it is possible to prosecute those responsible for human rights violations in North Korea. However, in practice, this has not happened: the DPRK is not willing to prosecute its leaders or public officials, while courts in other countries may be willing, but face difficulties in getting hold of the perpetrators and securing evidence.

In its 2014 report, the UN Col proposed two more options:

1. Establishment of an ad hoc tribunal (like for Rwanda or former Yugoslavia), which is however unlikely given that permanent members of the UNSC have made it clear that they are not positively disposed to the establishment of new ad hoc tribunals. Moreover, even if established, the tribunal might have no one to prosecute due to being unable to get hold of the persons in question, thus casting a negative light on its activities and legitimacy. This option is therefore not to be recommended.
2. Referral to the ICC. This option may suffer from the same disadvantages, namely the difficulty to achieve UNSC consensus and difficulty to get hold of the perpetrators and evidence. Experience confirms that the ICC is only able to do its job properly if the state concerned does not radically oppose the prosecution (unlike e.g. in the case of Sudan, where the ICC has not been very successful). However, a referral to the ICC should still be the option to be supported, for two reasons: symbolic (signalling that the world is genuinely concerned) and practical (ICC would start collecting evidence for later use). The ICC already dealt with the situation in North Korea in a 2013 case of a border accident and the court concluded that it did not have jurisdiction, proving that the ICC is not biased against North Korea.



These measures will have to be undertaken at some point, but one should not expect too much from them in terms of changing the situation on the ground. The two other, broader aspects of accountability may be more promising in terms of practical impact.

## 2.2 Helping the victims

Within North Korea, provision of material help to those in need and provision of alternative information on the situation in the country and the outside world should be undertaken, bringing immediate relief. However, these measures need to be implemented carefully, taking into account the possible risks for the country's inhabitants at the receiving end of such assistance.

In addition, *non-refoulement* and reparation measures should be implemented outside North Korea, especially in the countries of the region. The principle of *non-refoulement* should be consistently applied to ensure that those who managed to escape North Korea are not returned to the country as they risk being subjected to prosecution, penalty or even torture. Moreover, reparation measures can be undertaken, not only in the form of financial compensation but also psychological help and rehabilitation, e.g. assistance with starting a new life outside North Korea. There is an emerging consensus in international human rights law that there is an obligation for states to provide such reparation even to victims of violations committed by someone else. Such reparation schemes could also benefit from financial help from the EU.

Many of these measures are not new but so far they have not been conceptualised as accountability measures. They should be seen as such since they can mitigate the damage caused by human rights violations of the North Korean regime and demonstrate to the regime that its actions do not pass without response.

## 2.3 General measures to improve the situation in the country

Military intervention is certainly only a theoretical option in the case of North Korea – given the presence of weapons of mass destruction (WMD), the costs of such intervention would be too high for the inhabitants as well as the international community. The remaining options are (i) political tools, such as dialogue with DPRK itself and other countries, Universal Periodic Reviews (UPRs) undertaken by the UN, and activities of special rapporteurs with country-specific or thematic mandates; and (ii) targeted sanctions.

It might seem that political tools are toothless in the case of the DPRK as it is indeed difficult to secure dialogue on core issues such as freedom of expression and political prisoners, whose existence the DPRK consistently denies. But it is important to mention that over the past year the regime has shown some willingness to engage with the UN. In particular, they took part in the Universal Periodic Review process and appeared willing to accept most of the ensuing recommendations.

The DPRK has also been subject of 'targeted sanctions', however the UN Col found that these were not targeted enough. More needs to be done to target the elite and decision-makers rather than the broad population.

To conclude, the final goal of all accountability measures should be to help the people of North Korea. The impact of all measures contemplated should be carefully considered and actions that risk doing more harm than good should be avoided. All accountability measures should pursue the three aims mentioned, which are intertwined and equally important. However, since they are unlikely to be achieved simultaneously, help to victims and efforts at general improvement of the situation in the country should be prioritised. There is no miracle solution - a combination of different measures will need to be pursued. Patience is also needed and change on the ground cannot be expected overnight. Finally, it is important to engage with other actors, such as China, in pursuit of the accountability measures mentioned.

### 3 Presentation by Ramón Pacheco Pardo, Senior Lecturer at King's College London

Engagement with the North Korean regime is a key for improving the human rights situation in the country, as well as bringing economic and possibly political reform. The EU is uniquely placed for such engagement given that in East Asia it is increasingly seen as a reliable partner, a political and economic power without military presence and an honest broker whose foreign policy is not based on geostrategic considerations as in the case of the United States (US) or Russia.

It is important to engage with the DPRK on its own terms, connecting to its own narrative. The DPRK is building up a nuclear deterrent because it considers itself to be still at war with the Republic of Korea, albeit currently enjoying armistice. Officials of the regime also justify the human rights situation with the need to 'protect the country from enemies inside'. Economic sanctions are seen as a tool to wage war against the country and economic reforms being undertaken are intended to improve but not change the country's socialist system. The DPRK feels isolated and misunderstood while being aware that the Republic of Korea is much more successful.

During the Cold War as well as in the years of the Clinton and Bush administrations, the North Korean regime has been engaged in various formats of dialogue. Today, the EU needs to ponder what to do if the DPRK remains intransigent, as well as policy options in case they become more willing to engage.

1. If the DPRK does not change its behaviour, the EU can still use its humanitarian assistance instruments, which have had the effect of avoiding the famines seen in the 1990's, and engage on non-political issues such as development of the tourism industry and preparations for a possible eruption of Mount Paektu volcano, which is a concern for the government. The EU can find many receptive, accessible interlocutors on non-political issues among scientists and members of the middle class and mid-ranking officials. It can build in this respect on its record of being engaged with North Korea for a long time without interruption (unlike the US and Japan). The latter countries have an equal if not bigger stake on the non-proliferation issue but the EU is better placed than them to engage with the regime. If the DPRK maintains a non-cooperative stance over a longer time horizon, the EU should adopt a step-by-step, action-by-action approach, similar to that used during the Clinton and Bush administrations years.
2. If the DPRK does change its behaviour, responding positively also to US signals of willingness to engage like in the cases of Cuba or Iran, the EU can engage by financing development projects linked to a gradual reduction of the weapons of mass destruction programme, through an action-for-action process. The EU can provide valuable training and capacity-building assistance, as it already did in the past. Another possible avenue of engagement is in the area of workers' rights: according to its constitution the DPRK is supposed to be a worker's paradise, but in reality the regime has not been willing to improve workers' rights, and there are tens of thousands of DPRK workers overseas working in very poor conditions. Human rights dialogue could start from issues such as workplace safety, and then move slowly into different issues. It could also engage workers overseas when implementing European programmes.

As in the earlier cases of China, Vietnam and today Myanmar, certain factions within the country will certainly be more willing to open up, not only at the national level but also at local and regional levels, which are less and less beholden to the central government because of the very poor economic situation. It is important to build trust and familiarity through less political contacts, e.g. through education and research programmes, which can reach people unreachable through political dialogue. One interesting example is the Dutch universities' support for training tourist guides in North Korea, helping to develop the country's tourism sector.

In fact, the EU is already today engaging in political dialogue with the DPRK. Going forward, it has to be made clear to DPRK that the EU is interested in preserving this dialogue but that human rights will be part of it. In the past, countries like China were highly reluctant to discuss human rights, but the EU's insistence has borne fruit. Due to its reputation as an honest broker, the EU may also serve as an intermediary between DPRK and countries that are not willing to engage with the regime.

In conclusion, a dialogue is not the same as two monologues. The DPRK regime does feel isolated. But if interlocutors such as university officials can be reached and the most controversial human rights issues are set aside in favour of e.g. education and training of tourism guides, as some institutions in the Netherlands are doing, then dialogue can happen. It is vital to facilitate as many people-to-people contacts and dialogue as possible and go beyond government officials, e.g. through the abovementioned education and research programmes, even if this will need to happen with DPRK government approval. The EU should also work to build trust with government officials, both at the top level, but also at the mid-level with those individuals that are going to play a role in the future in the country. The EU has done this well in China and is doing it well in Vietnam and Myanmar.

The EU should not give up on the possibility of dialogue even if other actors do. It should build on its reputation as possible honest broker as well as on the activities of European civil society organisations that have tried to develop contacts in North Korea for a number of years now. As for the role of the EP, it could engage with the DPRK's People's Assembly, which the regime used in the 1970s to approach the US Congress. For this purpose, the EP should use the expertise and experience developed in European civil-society organisations that have worked with the DPRK.

## 4 Presentation by Silvia Caterini, Consultant, North Korea Accountability Project

The North Korea Accountability Project (NKAP) has been recently launched by civil society organisations in an effort to support on-going UN-level accountability efforts. Further to the findings of the UN Col report, it aims to trigger concrete steps to hold DPRK leaders accountable for crimes against humanity.

The main goal of the project is to strengthen the international framework for discussing accountability options. To this end, the NKAP undertakes advocacy within and beyond the UN framework. It produces research on accountability options; provides consultations, advocacy and assistance with and to survivors of North Korean human rights violations, hearing their views on the best options for justice; and promotes follow up and implementation of the recommendations of the UN Col. The NKAP will closely engage with the UN group of independent experts whose mandate was established in March 2016 and which will conduct its mission for six months starting in September 2016.

Civil society efforts regarding accountability for North Korean human rights violations vary widely. Some NGOs have been asking the ICC to carry out investigations for abductions of South Korean nationals, arguing that disappearances are on-going crimes. Other NGOs started talking about accountability only after the publication of the UN Col report, which mentioned crimes against humanity for the first time.

It is not useful to oppose accountability and engagement: if the DPRK authorities admitted human rights problems, it would be worth to engage, but always alongside accountability, not instead of it. In any case, accountability for crimes against humanity needs to be pursued. The question should be not whether but how and when to do so. The international community must understand that there is a responsibility to act when crimes against humanity are being committed. Action was taken in the past e.g. through the Nuremberg trials for WWII crimes, trials for Khmer Rouge crimes in Cambodia or for the genocide in Rwanda. The DPRK case should be no exception.

The North Korean case poses major challenges to justice and the country's level of isolation makes immediate prospects for justice difficult. But NKAP believes that the unprecedented cruelty committed

over generations could make the country a textbook case for justice. Focus on accountability of perpetrators now will lay the ground for prosecution in the future, sending a signal to the regime that crimes will no longer be tolerated. This can be compared to the impact on Nazi leaders of learning about plans for their prosecution already during WWII.

Prosecutions should therefore start being planned already now and a long-term roadmap designed for accountability for crimes against humanity. Clarity is needed regarding the level of responsibility, the period covered, etc. Accountability mechanisms need to be prepared for the event of regime change. The likelihood of a special tribunal being set up through the UN General Assembly, based on the principle of universal jurisdiction and the Uniting for Peace resolution, is very small, because of the precedent it would create for other countries. In the best-case scenario, the DPRK would therefore be referred to the ICC by the UNSC, in which case the question of temporal jurisdiction would arise. It is debatable whether the ICC would be able to examine crimes that occurred before its establishment (2002), but the question must be answered as abuses date back to the fifties. The Republic of Korea is party to the Rome statute of the ICC but its reunification plans currently do not take into account accountability and possible prosecution of DPRK leaders. However, accountability should not fall victim to possible political compromises. If the Republic of Korea is not able to deliver justice alone while managing the economic and security pressure of re-unification, it may need the involvement of the international community. Neither the Republic of Korea nor Japan are currently investigating and prosecuting abductions undertaken on their territories by North Korean agents.

In conclusion, civil society can provide a major contribution to making accountability happen. The UN Col was not a reality in 2012 and suddenly it became reality. Various other accountability mechanisms outside the UN can be explored.

## 5 Address by Lee Jung-hoon, Ambassador for Human Rights of the Republic of Korea

As in the case of the abhorrent terrorist attacks in Brussels, crimes against humanity require a response no matter where in the world they occur. In 1945, when WWII ended, the world was shocked to learn what had been going on in Auschwitz and other places. This was translated into the Nuremberg tribunals and in 1948 in the adoption of the Universal Declaration on Human Rights. In subsequent years, international institutions were built up in response to serious threats to human dignity, such as apartheid in South Africa, genocide in Rwanda or the Khmer Rouge massacres in Cambodia. But despite the fact that atrocities committed in North Korea are considered some of the worst, the country has been able to divert the attention. There are no famous concerts for North Korea and no Hollywood celebrities are speaking up for victims of that regime. It remains uniquely closed off. Almost nobody can get out, nobody can get in. Few manage to escape to China, but over 70 % of North Korean defectors are women and a significant number of them are subjected to sexual abuse in China and their testimonies about North Korea are scarcely heard. There are no pictures and videos of DPRK human rights violations, which is an important reason why they are able to remain under the radar. All we have are hundreds of testimonies by victims. It is crucial to realise that not being able to see something does not mean that it is not taking place. It is, at this very moment.

North Korea's nuclear weapons programme and human rights violations go hand in hand as the two most important tools for the DPRK regime to sustain itself. Nuclear weapons are for external deterrence; human rights violations are for suppressing internal opposition. The regime believes that with WMDs, nobody will touch them. And so we are well into 70 years of the Kim dynasty now.

If the DPRK regime were interested in the country's development, they would have changed policies a long time ago. North Korean Gross Domestic Product (GDP) was higher than South Korean GDP as recently as in 1974. However, the government is not interested in the well-being of the people; that

would in fact threaten the regime, and the regime has repeatedly rejected offers from the international community to help initiating economic development. In order to deter the populace from any direct or indirect challenges, the regime resorts to some of the fiercest human rights violations conceivable.

The UN has documented these amply and it has adopted (especially in the Human Rights Council) a number of relevant resolutions since 2003. A special rapporteur for North Korea was appointed more than a decade ago and since the Col report came into being in 2014, there has been a sea-change in the way human rights in North Korea are perceived and the way they are dealt with by the international community. Today, human rights issues in North Korea have even become an agenda point in the UN Security Council and this needs to continue.

Many argue that sanctions are futile and that it is important to engage rather than push the regime against a wall. But we have already 'engaged' with North Korea for decades and it does not work. International pressure must be kept, especially now that North Korea is for the first time showing signs that it feels uncomfortable. The DPRK has ignored UNSC sanctions for its WMD programme. But when it comes to human rights violations and the prospect of an ICC referral for the regime's leaders, including Kim Jong Un, it is responding in a significant way. For whatever reason, this is working. We therefore need concerted action to keep up the pressure. The apartheid system in South Africa did not come to an end in 1994 out of the blue – it took long years of international pressure. University campuses were putting pressure on companies to divest from South Africa throughout the 1980s; the country's excellent sporting teams were not able to participate in international rugby or cricket tournaments. By contrast, North Korean athletes are still welcome in international sports events today. This is sending the wrong message to the DPRK.

The best step would be for the UNSC to make an ICC referral but this does not seem likely any time soon due to the positions of China and Russia. Yet, China's ambition for a global leadership role may eventually lead it to reconsider its position. In 2005, China changed its mind on the ICC referral of Sudan's leadership in relation to the Darfur massacres, and then again in the case of Libya. So if circumstances change, e.g. if a fifth nuclear test is conducted by the DPRK, there is no guarantee that China will remain obstinate on this issue. Hopefully the EU can manage to convince China to be on the right side on the North Korean issue.

What should not be forgotten either is the plight of North Korean nationals working in degrading conditions in several EU countries (e.g. Poland or in a Chinese clothing factory in Malta). The EU should look at this situation carefully, making sure that labour rights are not violated and in case they are being violated with the involvement of the North Korean regime, the countries in question could initiate a case at the ICC. Thus, referral by the UNSC is not the only option. The General Assembly could also resort to the Uniting for Peace resolution and establish an ad hoc court, or universal jurisdiction could be invoked, as with the Spanish prosecution of Chilean dictator Pinochet or Belgian prosecutors pursuing Rwandan Hutu leaders. There are mechanisms available to put a squeeze on DPRK leadership.

To conclude, a sense of urgency is justified. We do not have the luxury to debate whether crimes against humanity are taking place or to build up further cases and arguments. There are hundreds of cases, on which we must act, identifying the accountability and enforcement measures. Let us not forget the approximately 100 000 DPRK political prisoners. Dealing with human rights violations in the DPRK represents a litmus test for the EU, the Republic of Korea and the international community as a whole. Over the 20th century the world has built up important human rights institutions – but the North Korean case will show if they have been really carried over to the 21st century.



## 6 Address by Julian Wilson, European External Action Service, Head of Division — Japan, Korea, Australia, New Zealand

The EU pursues a policy of critical engagement vis-à-vis the DPRK, aiming to play an active and constructive role, based on a calibrated use of carrots and sticks, depending on DPRK actions. Given the DPRK's actions over the past years, the EU currently needs to press ahead with targeted sanctions, so that the DPRK gets an unmistakable message.

UN resolutions show a growing international front against DPRK behaviour, on which we should build. The DPRK well understands that positive cooperation with the EU is possible if its actions warrant it and the climate is conducive, which is unfortunately not the case at present.

The EU continues to support the six parties engaged on WMD issues, including by strengthening sanctions, and it plays a leading role in combatting the horrible human rights situation. For over ten years, the EU and Japan have initiated several yearly resolutions at the UNGA and Human Rights Council in Geneva in this sense, each year adopted with a growing majority, sending a strong signal to the DPRK. The EU also highly appreciates the work of the UN Special Rapporteur, M. Darusman, over the last 6 years. Unfortunately, since the UN Col report was published in 2014, there have been no indications that the human rights situation in the DPRK has changed for the better; serious human rights violations seem to be continuing. The EU therefore continues to press for a referral to the ICC.

Last year the EU did hold political dialogue with the DPRK and human rights were addressed as a priority along with WMD policies. However, in view of increasingly frequent weapons tests, no similar dialogue will be held this year, and neither human rights dialogue. The EU tried to engage with the DPRK on the UN Col report, but failed. Last time some space for a common agenda for cooperation could be seen was prior to the last nuclear test, building on the DPRK's apparent openness to respond to the recommendations of the 2014 UN Universal Periodic Review. In its targeted sanctions, the EU always seeks to avoid hurting the general population and will continue humanitarian aid where required as recommended by the Col.

The increasingly unanimous front in the international community and China's support to a UN package of sanctions related to WMD represents an opportunity to work better together on DPRK issues, where China indeed plays a pivotal role. This is the time to send a clear and unmistakable message to the DPRK.

The issue of North Korean workers in Europe has come up strongly this year and the European External Action Service (EEAS) has engaged in discussions with the relevant Member States, which are of confidential nature. The Member States in question are working on these issues, including as regards visa issuance, which is not the competence of the EU. The numbers of workers in question are certainly not as high as those seen elsewhere (e.g. Russia and China) but they do exist and Member States do see the need to tackle this and are seeking solutions. The issue will certainly not be growing into a greater problem.

## 7 Questions & answers

MEP Cristian Dan Preda (EPP, Romania) pointed out that totalitarianism in North Korea was growing year by year because there was no opposition in the country. He noted that the DPRK leadership was unfortunately so irrational that anything could happen. In his view, China bore great responsibility for what was happening in the country; it continued to protect the regime because of vested economic interests. If China agreed to abandon the North Korean leadership, the latter would change overnight.

MEP Mark Demesmaeker (ECR, Belgium) strongly agreed with Ambassador Lee Jung-hoon's appeal that no more time should be lost. He pointed out that the situation on the ground was known but that North Korea was one of the most closed-off societies on the planet and that Europe had practically no influence over this regime. He recalled that the UN Security Council had recently voted for the toughest sanctions on North Korea in some 20 years and asked what kind of impact this would have on the population and on the government. He also enquired whether the EU would develop additional sanctions.

MEP Petras Auštrevičius (ALDE, Lithuania) pointed to a recent claim by *The Economist* that the world tended to underestimate the extent to which the authorities of the DPRK were rational and their policies were planned, on the basis of predicted responses from the West. The regime did seem to have a domestic plan and even with the economic sanctions in place it survived, including by managing to bypass some of them. He asked whether more effective and resolute economic sanctions could be imposed on North Korea, squeezing the leadership more. A fifth, sixth, etc. nuclear test would represent a huge danger to regional as well as global security. Mr Auštrevičius concluded that, unfortunately, the DPRK seemed to calculate with and be ready for a military response.

Mr Tóké recalled the end of Ceaușescu's regime in Romania in the 1980s when the dictator was preparing to acquire nuclear weapons. He noted that the situation in the DPRK was familiar to him adding that there was no time for patience. He said it was very important that the EU and the EP's Subcommittee on Human Rights paid sufficient attention to the situation of human rights in North Korea. He also stressed that China's and Russia's complicity in the UN Security Council towards such an inhumane regime was unacceptable. In his view, the Republic of Korea was a key strategic partner of the EU and the EU had to cooperate with this country more. Mr Tóké made a comparison between the relationship between the two Koreas and the relationship between East and West Germany, and noted that it was time for reunification.

Concerning the effectiveness of the current sanctions, Julian Wilson (EEAS) recalled that North Korea had EUR 5 billion worth of trade with China, but only EUR 34 million with Europe. The direct economic impact of the EU sanctions was therefore limited in his view but the political signal was important. He noted that the DPRK was indeed sensitive to EU criticism of its human rights situation. Some tactical changes on human rights dialoguing could be observed in 2014-15, but these seem to have been just tactics, without any change in substance. According to Mr Wilson, human rights violations and WMD development remained the two key pillars of that regime; the EU's goal was to change that narrative and perception. This would be a long-term process, on which the EU needed to work with China and others. By comparison, he added, the Republic of Korea was a strategic partner of the EU: the volume of mutual trade was around EUR 80 billion, political ties were immensely close and cooperation took place on a daily basis. The number of North Korean foreign labourers worldwide was estimated at 50 000 – 100 000 workers, of whom probably less than 1 000 worked in Europe. Mr Wilson underlined the need to discuss with other countries what the true scale was, while addressing the issue in the EU. As for changes in the DPRK's attitudes, Mr Wilson believed that they are tactical and not substantive. The narrative of WMDs and human rights violations as policies of internal control and external security needed to be changed, and the current situation where Europe was united with China provided an opportunity for this.



Ambassador Lee Jung-hoon pointed out that China considered the DPRK as a buffer state in its competition with the US. The real question therefore was to convince China that a united Korea would not pose a security threat to China. Moreover, he added, Korean reunification would have a positive spill-over effect on the Chinese economy, particularly on the development of China's North-East regions, which lagged significantly behind China's coastal regions. Korean corporations would be readily able to invest in North-Eastern China. The Republic of Korea needed to keep convincing China of the merits of unification.

Regarding the targeting of sanctions and whether they adversely affected the government or ordinary people, Ambassador Lee suggested that almost every North Korean defector enquired why South Korea and the international community continued to provide so much assistance to the North Korean regime, prolonging the regime and the suffering of its people. Therefore, in his view, there was clear scope for stepping up sanctions.

Silvia Caterini (NKAP) recognised some progress recently made by China regarding its responsibility to protect victims of human rights violations in North Korea. However, she added that there were reported cases of *refoulement*, where people were being sent back to North Korea from China. She also argued that an ICC referral still remained unlikely and questioned whether the ICC could look into crimes committed before 2002. Ms Caterini suggested that specific investigation mechanisms should therefore be explored in order to increase pressure on the DPRK regime.

Ramón Pacheco Pardo agreed with Ambassador Lee concerning the potential for the economic development of North-East China. In his view, China was not entirely against Korean reunification but was opposed to American troops remaining in a unified Korea. Concerning the DPRK regime's rationality and the effectiveness of sanctions, he stated that sanctions should be implemented but that North Korea would continue on the path of nuclear tests unless there was a modicum of engagement.

Veronika Bílková cautioned against drawing on the UN Uniting for Peace resolution and attempting to establish a court in this way; the mechanism had not been used since the 1950s and could be very divisive within the international community, setting a dangerous precedent. Concerning the relationship between the UN and North Korea, she found that the DPRK accepted some mechanisms (such as the Universal Periodic Reviews) while rejecting others (e.g. the Special Rapporteur and General Assembly resolutions). The window therefore seemed to be half-open or half-closed depending on how one looked at it.

## PowerPoint presentations



# **HOLDING DPRK ACCOUNTABLE FOR HUMAN RIGHTS VIOLATIONS?**

Veronika Bílková (IIR Prague)  
European Parliament  
20 April 2016



## **Who is Concerned?**

**DPRK:**

- a) Human Rights Violations
- b) Military Programme (including WMD)

The two challenges are interrelated:

- HR violations as a consequence of the Songun programme (military first)
- Military programme as an obstacle to accountability measures



## Who is Concerned?

### International Community:

#### a) *United Nations*

- Human Rights Council (until 2006 Commission)  
2004 Resolutions + Special Rapporteur on the Situation of HR in the DPRK  
2014 Commission of Inquiry on the Situation HR in the DPRK
- General Assembly: Resolution 70/172 (2016)
- Security Council: Resolutions on WMD

#### b) *European Union*

- European Parliament: Resolution 2016/2521



## What is at Stake?

### HR Violations

- ✦ "Systematic, widespread and grave violations of HR" that are "without any parallel in the contemporary world" (CoI Report)
- ✦ Some of these violations amount to crimes against humanity
- ✦ The violations give rise to the responsibility of the DPRK and to individual criminal responsibility of its leaders and other officials



## What is at Stake?

- ✚ The violations also activate the concept of **Responsibility to Protect** (R2P) under which:
  - a) States have the *primary responsibility* to protect their inhabitants from core crimes;
  - b) The international community has a *complementary responsibility* to assist these states;
  - c) The international community has a *subsidiary responsibility* to protect, if the state manifestly fails to assume its primary responsibility



## What Can be Done?

Accountability measures should **aim at:**

- 1) Holding the perpetrators of HR violations responsible
- 2) Helping victims of HR violations in and outside the DPRK
- 3) Improving the general situation in the DPRK



## Holding Perpetrators Responsible?

Mechanisms	Advantages	Obstacles / Risks
<i>DPRK Courts</i>	Domestic justice close to victims	DPRK unable and unwilling to prosecute crimes
<i>National Courts (other states)</i>	Established mechanisms, mostly able and willing	Difficulties to get hold of perpetrators and evidence, risks for victims, lack of experience
<i>Referral to the ICC</i>	Established mechanism, experience with crimes against humanity, neutrality, symbolic value	Veto of the referral, difficulties to get hold of perpetrators and evidence, risks for victims
<i>Ad hoc Tribunal</i>	Specific focus, pre-2002 cases	Establishment (SC – veto, GA – legal basis), difficulties and risks as with the ICC

Black – recommended

Brown – not recommended



## Helping Victims of HR Violations?

Mechanisms	Advantages	Obstacles / Risks
<i>Non-Refoulement</i>	Protection of people outside the DPRK	Unwillingness of relevant states
<i>Reparation</i>	Immediate help to victims mainly outside the DPRK	Difficulties to verify the story, financial burden
<i>Information</i>	Access to alternative information	Operational difficulties, risks for inhabitants
<i>Material Help</i>	Improving standard of living, saving lives	Access to inhabitants, risk of misuse for other purposes



## Improving the Situation?

Mechanisms	Advantages	Obstacles / Risks
<i>Dialogue with the DPRK</i>	Diplomatic tool	Low efficiency on core issues
<i>Dialogue with other countries</i>	Diplomatic tool	Unwillingness to address certain issues
<i>UN Mechanisms (UPR, panel of experts)</i>	Diplomatic tool, some engagement by the DPRK in the past (UPR)	Limited efficiency on core issues
<i>Targeted Sanctions</i>	Focus on those responsible for crimes	Low efficiency, negative impact on inhabitants
<i>UN Intervention</i>	Regime change	Veto, (nuclear) war, suffering of inhabitants



## What Can be Done?

### General Recommendations

- ✦ To consider the impact of any accountability measure on the inhabitants of the DPRK
- ✦ To focus primarily on initiatives aimed at helping victims and improving the general situation
- ✦ To combine *soft* and *hard* tools (dialogue, targeted sanctions, referral to the ICC for its symbolic value, victim-oriented measures)
- ✦ To cooperate with other actors, especially those from the region (China, RoK, Japan, Russia)



## Outline

- DPRK's key arguments
- EU-DPRK engagement mechanisms
- Maximising influence from economic engagement
- Maximising influence from political engagement
- Main recommendations



## **DPRK's key arguments**

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- The nuclear deterrent is necessary for the DPRK to defend itself from US and ROK aggressions and in the absence of dialogue
- The human rights situation is a by-product of the DPRK remaining at war and having to ensure the country's stability
- Economic sanctions are one of the tools used to wage war against the DPRK
- Economic reform is designed to improve, not overhaul, the existing socialist system

## **EU-DPRK engagement mechanisms**

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- Aid and assistance
- EU-funded projects
- Political dialogue
- Education and research programmes
- Human rights dialogue (interrupted at the time of this presentation)

## Maximising influence from economic engagement (1)

- If the DPRK *continues with its current behaviour*, the EU can maximise influence through economic engagement in three ways
  - In the short and medium term, by continuing to strictly link aid and assistance to humanitarian and developmental goals but also expanding those goals
  - In the short and medium term as well, by continuing to coordinate aid and assistance provision with international partners through institutionalised mechanisms – particularly in the context of international non-proliferation efforts
  - In the long term, by making further aid and assistance provision, further EU-funded projects and possible trade restrictions removal conditional on non-proliferation

## Maximising influence from economic engagement (2)

- If the DPRK *returns to a pro-engagement policy*, the EU can maximise influence through economic engagement in five ways
  - In the short term, by linking more holistic aid and a wider set of EU-funded projects to a gradual reduction in the proliferation of WMD and nuclear technology
  - In the short term as well, by promoting expertise- and capacity-building among DPRK government officials and civil society through EU-funded projects
  - In the short and medium term, by linking sanction and trade restriction removal to DPRK reciprocity in a step-by-step process
  - In the medium term, by pressing for an improvement in workers' rights and raising awareness about human rights more generally and also in relation to specific groups during implementation of EU-funded projects
  - In the medium term as well, by strengthening the DPRK government's factions promoting opening up and cooperation during implementation of EU-funded projects, as well as local and regional governments and civil society

## Maximising influence from political engagement (1)

- If the DPRK *continues with its current behaviour*, the EU can maximise influence through political engagement in three ways
  - In the short and medium term, by continuing to discuss its human rights and non-proliferation concerns through the regular political dialogue
  - In the short and medium term as well, by continuing to coordinate with international partners the message(s) to be conveyed through the regular political dialogue, particularly on human rights and non-proliferation
  - In the medium term, by building trust and familiarity with DPRK government officials through education and research programmes and the regular political dialogue

## Maximising influence from political engagement (2)

- If the DPRK *returns to a pro-engagement policy*, the EU can maximise influence through political engagement in four ways
  - In the short term, by discussing DPRK concerns and showing that there is no diplomatic isolation of the DPRK through the regular political dialogue and education and research programmes
  - In the short term as well, by re-emphasising the need for the DPRK to discuss, and indeed discussing, issues of concern to its counterparts through the regular political dialogue
  - In the short term as well, by supporting and facilitating people-to-people links through education and research programmes
  - In the medium term, by building trust and familiarity with DPRK government officials and pressing for access to civil society through the regular political dialogue and education programmes

### **Main recommendations for the EU (1)**

- Continue to use the regular political dialogue to engage the DPRK, which allows for discussion of human rights and non-proliferation but also DPRK concerns
- Continue to use aid and assistance and EU-funded projects to engage the DPRK, but greater involvement from EU and DPRK civil society through institutionalised mechanisms should be sought
- Continue to coordinate its actions with international partners, but there should be a willingness not to discontinue the regular political dialogue and EU-funded projects even if international partners do so with their own

### **Main recommendations for the European Parliament (2)**

- Continue to press for inter-parliamentary meetings with the Supreme People's Assembly and Working Group visits, as well as continue to discuss DPRK matters in other inter-parliamentary settings
- More actively pursue a more holistic policy towards the DPRK, placing human rights and non-proliferation within a wider context
- Strengthen coordination with international partners and EU civil society through institutionalised mechanisms when implementing the above actions

## BIOGRAPHICAL SUMMARIES OF THE SPEAKERS

**Dr. Veronika Bílková** is the head of the Centre for International Law at the Institute of International Relations in Prague and Associate Professor in international law at the Faculty of Law of the Charles University in Prague. She is an expert in international law and international human rights law. She is also a Member of the Council of Europe (CoE) Venice Commission on behalf of the Czech Republic. Dr. Veronika Bílková has written on international human rights law enforcement, legal tools against terrorism, international sanctions, etc. She has dealt with North Korea specifically in one of her recent studies titled 'Responsibilities to protect - crossing Euro-Asia'. She may be contacted at [bilkova@iir.cz](mailto:bilkova@iir.cz).

**Dr. Ramón Pacheco Pardo** is a Senior Lecturer in International Relations at King's College London. His main areas of research and teaching include EU-East Asia relations and East Asian international relations and political economy – with particular interest on the Korean Peninsula. Dr Pacheco Pardo has published and presented widely on these topics for policy, academic and general audiences. He is also a regular media contributor on East Asia and EU foreign policy and economics, as well as on EU-East Asia relations. Dr. Pacheco Pardo has been conducting research on North Korea and EU-Korean Peninsula affairs for over ten years. A key area of interest lies in the nexus between North Korea's nuclear programme and international efforts to halt Weapons of Mass Destruction (WMD) proliferation, North Korea's economic reform and integration in regional and global economic networks, and efforts to improve the lives of North Korean citizens. For his research, Dr. Pacheco Pardo has interviewed and held discussions with North Korean officials and refugees and analysed the country's media. He has also interviewed European, East Asian and American officials. As a result of his expertise on EU-East Asia relations and East Asian affairs, Dr. Pacheco Pardo is a member of the Council for Security Cooperation in the Asia Pacific EU (CSCAP EU), an EU group involved in Track Two diplomacy in the Asia Pacific. Dr. Pacheco Pardo is fluent in English, French, Spanish and Korean and has made over 40 trips to Northeast Asia for research, teaching, invited talks and conferences. He may be contacted at [ramon.pacheco@kcl.ac.uk](mailto:ramon.pacheco@kcl.ac.uk).

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