Policy Forum 04-39A: The North Korean Human Rights Act and other Congressional Agendas

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The North Korean Human Rights Act and other Congressional Agendas

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By Karin J. Lee

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I. Introduction

The following is a paper by Karin J. Lee, Senior Associate at the East Asia Policy Education Project at the Friends Committee on National Legislation Education Fund. Mrs. Lee writes: "Congress should certainly be commended for raising human rights concerns about North Korea. There are, however, other practical actions that would ultimately enable the U.S. to address human rights more effectively and also address security and other concerns. It's up to Congress to widen the agenda."

The views expressed in this article are those of the author and do not necessarily reflect the official policy or position of the Nautilus Institute. Readers should note that Nautilus seeks a diversity of views and opinions on contentious topics in order to identify common ground.

II. Essay by Karin J. Lee

"The North Korean Human Rights Act and other Congressional Agendas"
by Karin J. Lee

HR 4011, the North Korean Human Rights Act of 2004, passed the Senate on September 28, 2004, after a lengthy amendment process. The amended version of the bill passed the House on October 4 without further changes. It will now be sent to the president to be signed into law.

While the bill is still recognizable as kin to its predecessor, S. 1903, the North Korean Freedom Act of 2003, the Human Rights Act is a great improvement. The new bill focuses more effectively on human rights, the result of the dedicated work of staff on the House International Relations Committee and Senate Foreign Relations Committee. However, concerns for the safety of refugees persist. In addition, Congress has more work to do: it needs to strengthen efforts to improve dialogue on US-North Korean security issues. Doing so would not only advance the United States government's security agenda, it would also create a better chance of improving human rights.

Differences between the Freedom Act and Human Rights Act

Most of the changes between the earlier Freedom Act and the Human Rights Act involve deletions. For example, gone are many of the Freedom Act's provisions that would have needlessly endangered North Koreans hiding in China. One section in the Freedom Act would have granted special expanded "S Visas" to North Koreans with information on North Korea's WMD (Weapon's of Mass Destruction) programs - raising the North Korean government's suspicion that any North Korean in China was a potential traitor. Promises of special treatment to "informants" would have practically guaranteed that U.S. intelligence offices would be flooded with false information. Gone as well is the Freedom Act's heavy-handed and undiplomatic criticism of long-term ally South Korea and China, the new-found partner in negotiations with North Korea.

The Freedom Act would have prohibited bilateral humanitarian aid to North Korea until it had reached human rights standards that are unachievable in the near term. This would have eliminated potentially critical humanitarian assistance in violation of tenets captured in President Reagan's famous declaration that "a hungry child knows no politics." It also would have denied bilateral non-humanitarian aid, tying the President's hands in any attempt to negotiate a security agreement with North Korea. The Human Rights Act transformed those prohibitions into "sense of Congress" statements that convey Congress' opinion without establishing a legal barrier to the provision of aid.

Perhaps most importantly the Human Rights Act eschews the Freedom Act's association with the

goal of regime change, an association that grew from congressional hearings that dangerously politicized the plight of refugees by linking the concept of refugee "exodus" with North Korea's collapse. In contrast, as stated in the House Committee Report on the Human Rights Act (Report 108-478), H.R. 4011 is motivated by a genuine desire for improvements in human rights, refugee protection, and humanitarian transparency. It is not a pretext for a hidden strategy to provoke regime collapse or to seek collateral advantage in ongoing strategic negotiations. While the legislation highlights numerous egregious abuses, the Committee remains willing to recognize progress in the future, and hopes for such an opportunity. Indeed, credible and substantial improvements in the human rights practices and openness of the Government of North Korea would help to build substantial goodwill with the United States.

North Korea Human Rights Act Highlights. . . .

With all that has been eliminated, what remains? The North Korean Human Rights Act focuses much more narrowly and successfully on raising North Korean human rights and humanitarian concerns. Reflecting the enduring concern the American people hold regarding human rights, the bill sends a message to North Korea that the United States Congress is deeply disturbed by reports of human rights abuses in North Korea. The bill requests that "[T]he human rights of North Koreans should remain a key element in future negotiations between the United States, North Korea, and other concerned parties in Northeast Asia." The legislation calls for greater transparency in the provision of food aid, but does not impede humanitarian assistance or activities in North Korea. It names actions that would improve North Korean human rights. It authorizes but does not appropriate a total of $24 million annually for the next four years for programs that promote human rights and democracy, freedom of information, and assistance to North Koreans outside of North Korea. { 1 } It pressures the U.S. State Department to facilitate applications by North Korean citizens seeking protection as refugees.

The bill also encourages discussion of North Korean human rights within a regional framework. The U.S. approach on behalf of the North Korean people will be made more effective when it is done in concert with South Korean and European Union allies, as well as with other regional players such as China and Russia. It asks the president to appoint a special envoy on North Korean human rights, thereby ensuring that discussions of human rights and security can each proceed along separate tracks when such dialogue is impossible on a single track.

. . . And Cautions

Unfortunately, passage of a bill in the United States cannot guarantee improved humanitarian conditions for North Koreans. Over the summer the potential negative impact of publicity was demonstrated when two plane loads of North Korean refugees who had been hiding in a Southeast Asian country were brought to South Korea. The publicity jeopardized the underground railroads that had brought those refugees thousands of miles from Northeast China. One hundred refugees in transit were returned to China; it is rumored that they were forcibly returned to North Korea, where their fate is unknown.

Similarly, on September 28, 44 North Korean asylum seekers breached security at the Canadian Embassy in Beijing in an effort to win protection. If such publicized embassies entries in Beijing increase, it could trigger a fairly prompt backlash at the border, as took place in the 2002 embassy stormings.

Consideration of such risks must be a factor as the bill is implemented. The refugee provisions in the bill are fairly modest. However, according to reports from individuals working with refugees in China, some North Koreans in hiding mistakenly believe that passage of the bill means they will easily win entry to the United States. Unfortunately U.S. law cannot guarantee that China will allow North Koreans hiding in China to exit the country. The legislation may even temporarily make China less cooperative. In addition, the bill's passage also cannot guarantee that the overwhelmed Department of Homeland Security, functioning in a post-September 11, 2004 world, will be able to process a significant number of asylum or resettlement requests from North Korea in the near future. Furthermore, the refugee provisions are not intended to apply to North Koreans now legally resettled in South Korea, despite rumors to that effect.

Such misperceptions have the potential to be very harmful. For example, in some cases ill-informed smugglers might tempt North Koreans into dangerous situations that end in their deportation. Unfortunately, there is also the risk that the Chinese government could clamp down on the border, closing off a critical avenue to food and relative safety. While such outcomes are only a possibility, it is urgently important that the refugee grapevine and underground railroad transmit the message that passage of the bill does not mean that the U.S. has opened wide its doors to all North Koreans who apply to come to the United States.

Despite the drafters' sincere humanitarian intentions, the actual impact of the bill on refugee admissions is likely to be minor, especially in the next few years. The refugee provisions should be seen as a message from Congress to the State Department (re-enforcing several sense of Congress provisions addressing this topic in the past few years). While the bill effectively raises the issue as one of concern in the international arena, and will probably result in the acceptance of some refugees to the United States, South Korea will remain the primary and best destination for North Koreans in the years to come. Indeed, the bill acknowledges that the "[P]rincipal responsibility for North Korean refugee resettlement naturally falls to the Government of South Korea."

Creating the Environment for a Human Rights Dialogue

Passage of the bill also does not guarantee discussions between the U.S. and North Korea on human rights issues. Unfortunately, the bill is passing in the absence of a U.S.-North Korean working relationship, especially as dialogue on security issues has come to a virtual standstill. In contrast, the European Union offered diplomatic recognition to North Korea with human rights as part of the package. There was a recent breakthrough in such dialogue during British Foreign Office Minister Bill Rammell's visit to Pyongyang in September. According to The Independent, after close questioning regarding findings in "The Hidden Gulag: Exposing North Korea's Prison Camps," a report by human rights expert David Hawk, Vice-Foreign Minister Choe Su Hon agreed to discuss individual human rights cases. The British raised four cases of concern. Mr. Choe also gave "preliminary approval" for a return visit by UK human rights expert Jon Benjamin, who accompanied Mr. Rammell on his trip. In addition, Mr. Choe agreed to meet again with Mr. Rammell to discuss "international scrutiny of North Korea's human rights record." However, The Independent reported that Choe insisted that visits from international human rights experts are contingent on "more trust and confidence."

In fact, trust and confidence are necessary ingredients for advancing any of the U.S. agendas in North Korea. In the current diplomatic vacuum, US efforts to spur improvements of North Korean human rights can only be attempted through outside pressure. Pressure is only one of many tools, and is often ineffective, particularly when used alone. Change is dependent on increasing, not decreasing contact, and increasing information flow through inviting North Koreans to interact with

rest of the world. Not only does the United States government want North Korea to understand U.S. expectations, the United States government also needs to understand North Korean perspectives. Tom Malinowski, the Washington Advocacy Director of Human Rights Watch, recommends the normalization of relations as an early step, not a late one.{ 2 } In order for a human rights dialogue to be effective, Congress should learn more about what is happening on the ground in North Korea. It should organize staff delegations to visit Pyongyang. It should encourage exchanges on a wide range of issues so that conversations can run along many lines and with many people.

Other Agendas

Congress has spent the last two years refining its approach to North Korean human rights. Now it needs to expand its vision to address other urgent concerns, such as security, while continuing to pursue human rights improvements.

A human rights dialogue should not become a barrier to the security dialogue. David Hawk stated during a presentation at University of California at Berkeley on September 15, "I actually don't favor linkage on security issues. I think if security issues can be isolated, then you should trade security for security. I think that the U.S. should establish diplomatic relations with North Korea irrespective of all other considerations because that will enable the U.S. to have more conversations with North Korea and the North Korean people about human rights. If the North Koreans would trade with the Americans a security guarantee for their plutonium or enriched uranium [programs], the U.S. ought to take it and give them a peace treaty."{ 3 }

Congress should pressure the administration to honor its claim that an agreement can be brokered to end North Korea's nuclear weapons' program. Moreover, Congress needs to demonstrate that it is willing to pay the price. Yet Congress has been unwilling to push the Administration on security issues, and has even avoided opportunities to do so. In June 2004, Rep. Lynn Woolsey (CA) offered an amendment to the Department of Defense Appropriations Act of 2005 that would have increased Cooperative Threat Reduction (CTR) funding (commonly known as Nunn-Lugar funds) by $15 million. Woolsey suggested that "The extra $15 million for CTR could be used to engage Iran and North Korea. It would take the first steps toward working to demolish their nuclear weapons and infrastructure."{ 4 } However, the amendment was deemed unnecessary by Rep. Murtha (PA), ranking minority member of the House Defense Appropriations subcommittee and was withdrawn before consideration. No similar initiatives have been offered.

Congress has failed to prioritize the abolition of North Korea's nuclear program and must correct this omission as soon as possible. Although an agreement is not imminent, the preparations, financial and otherwise, should be made now. Congress needs to authorize funding for the dismantlement of North Korea's nuclear weapons program, contingent on a verifiable agreement to do so. Such a move would be greatly reassuring to all of our partners in the Six-Party talks, especially South Korea, which has been frustrated with the dominance of the human rights agenda in Congress and the potential chilling effect is has on negotiations with North Korea.

Congress needs to ask the administration to prepare for implementation of a dismantlement program. In the words of Former Assistant Secretary of Defense Ashton Carter, testifying before the Senate Foreign Relations Committee on July 15, 2004,

"The United States should begin program design for CVID [complete verifiable and irreversible disarmament] now. The program design should include technical objectives and milestones, supply and construction plans, estimated costs and a program management structure giving clear authority and accountability to a single U.S. official. This last point is important. Over the history of the Nunn-

Lugar program, its projects have been implemented by Defense, State, Energy and Commerce. These departments have developed expertise in these types of projects, and it would be imprudent not to exploit it for the North Korea program. But we cannot confront North Korea with the same bureaucratic chaos with which the states of the former Soviet Union still contend."{ 5 }

Congress should certainly be commended for raising human rights concerns about North Korea. There are, however, other practical actions that would ultimately enable the U.S. to address human rights more effectively and also address security and other concerns. It's up to Congress to widen the agenda.

1. Next year and in each of the three years following, Congress will decide how much to appropriate for these activities in the following fiscal year, from zero up to the total amount authorized in the bill. $20 million a year is authorized for aiding North Korean refugees outside of North Korea for FY 2005-2008, and $2 million annually is authorized for the other two categories.
2. Malinowski, Tom. "The North Korean Nuclear Calculus: Beyond the Six Power Talks." Oral Testimony before The Committee on Foreign Relations, United States Senate, 108th Congress. March 2, 2004.
3. Hawk, David, during "North Korean and Human Rights" forum held at University of California at Berkeley, September 15, 2004, as cited in Liem, Paul , "KA Students: Balanced Discussion on NK Human Rights," Minjok-Tongshin English Edition. Retrieved October 1, 2004 from http://www.minjok.com/english/index.php3?catagory=engl&code=25690
4. Rep. Lynn Woolsey. Congressional Record. Vol. No. 150. Pages H4703-H4704. June 22, 2004.
5. Carter, Ashton. "A Report on Latest Round of Six-Way Talks Regarding Nuclear Weapons in North Korea: 'Implementing a Denuclearization Agreement With North Korea.'" Written Testimony before The Committee on Foreign Relations, United States Senate. 108th Congress. July 15, 2004. (Available at http://foreign.senate.gov/testimony/2004/CarterTestimony040715.pdf .)

III. Nautilus Invites Your Responses

The Northeast Asia Peace and Security Network invites your responses to this essay. Please send responses to: napsnet-reply@nautilus.org . Responses will be considered for redistribution to the network only if they include the author's name, affiliation, and explicit consent.

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