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East Asia and the United Nations

Regional Cooperation for Global Issues

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East Asia and the United Nations

Regional Cooperation for Global Issues

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Preface

This book results from the 9th *Japan-Korea Seminar on the United Nations System* held at Waseda University Graduate School of Asia-Pacific Studies in Tokyo on 11-12 December 2009, at which drafts of the chapters were first presented.

This 9th annual Japan-Korea seminar, with the theme entitled “East Asia and the United Nations: Regional Cooperation for Global Issues,” was the result of a joint initiative taken by two co-organizers: the Japan Association for United Nations Studies (JAUNS) and the Korean Academic Council on the United Nations System (KACUNS). In preparation of the seminar, Professor Akio Watanabe, President of the JAUNS, consulted with Professor Jin-Hyun Paik, President of the KACUNS, who was extremely supportive in organizing the Korean delegation to Tokyo. Professor Takeo Uchida, Director of External Relations of the JAUNS, was also very helpful throughout the preparation process.

The two-day seminar saw a coming together of varying perspectives and a cross-fertilization of ideas across different academic disciplines on several global issues that East Asia faces, including the following:

1. Peace and security in East Asia
2. Global human rights regime and human rights in East Asia
3. Human migration in East Asia
4. Sustainable development in East Asia
5. The possibility of an East Asian Community

In the light of the discussions that took place, some of the drafts presented at the seminar were later revised to be included in this edited volume for publication.

We are grateful to Waseda University Global COE Program “Global Institute for Asian Regional Integration (GIARI),” Waseda Institute for Asia-Pacific Studies (WIAPS), and Waseda University International Affairs Division for financial and other support that made this seminar possible. Finally, I owe a debt of gratitude to Assistant Professor Miki Honda who was instrumental in arranging the logistical organization for this seminar and formatting the papers for publication.

March 2010

Yasushi Katsuma
Secretary-General
Japan Association for United Nations Studies

The Role of UN Sanctions against the DPRK in the Search for Peace and Security in East Asia: Focusing on the Implementation of UN Resolution 1874

Miki Honda, Ph.D.¹

Introduction

On April 5, 2009, the Democratic People's Republic of Korea (DPRK) launched a variant of the Taepodong-2 missile, followed by Scud and No-dong missile tests on July 4, 2009. Between the two missile tests, it also conducted a second nuclear test on May 25. Moreover, on November 10, 2009, North Korea violated the Northern Limit Line (NLL), a maritime borderline drawn up by the United Nations Command in 1953 to separate the North and the South, and a naval clash ensued between North and South Korea.

Although North Korea's nuclear and missile tests and the NLL violations must be strongly condemned, its recent actions suggest that the country has started to prepare for future negotiations by strengthening its bargaining position. North Korea put three major diplomatic cards on the table – nuclear, missile, and peace agreements – in order to have bilateral talks with the U.S.

The recent situation may remind international society of the year 1994 when the DPRK broke off the US-DPRK Agreed Framework. This required the United States to make arrangements for the provision of light water reactors and heavy fuel oil to North Korea in exchange for the halting and eventual dismantling of its graphite-moderated reactors and related processing facilities.

This time President Barack Obama has said that he aims to “break the pattern” in dealing with North Korea in which the regime in Pyongyang alternates between provocation and negotiation.² The U.S. has no intention of easing sanctions on North Korea to try to bring Pyongyang back to the Six-Party Talks on denuclearization, and will not meet directly with North Korea unless it commits to returning to the table. The ultimate goal remains the complete and verifiable denuclearization of

¹ Assistant Professor, Global Institute for Asian Regional Integration, Waseda University.

² U.S. President Barack Obama and his counterpart South Korean President Lee Myung-Bak agreed on November 19, 2009, at the bilateral summit held in Seoul to join forces and push the ‘grand bargain’ strategy in dealing with North Korea. 19 Nov. 2009, Bloomberg.com at <http://www.bloomberg.com>

the Korean Peninsula. The U.S. has always put priority on multilateral talks, avoiding bilateral talks with North Korea. This position is shared by all of the other main players who are fully engaged in the North's nuclear issues.

Immediately after the second nuclear test on May 25, 2009, the United Nations Security Council (UNSC) unanimously adopted wider sanctions against the DPRK, condemning it in the strongest terms. The June 12 Resolution 1874 demands that the DPRK immediately comply fully with its obligations under relevant Security Council resolutions, in particular resolution 1718 of October 14, 2006. Resolution 1874 (2009) banned all weapons exports from North Korea and most arms imports into the reclusive Communist state. It also called upon all states to inspect, with their national authority and legislation and consistent with international law, all cargo to and from the DPRK into their territory, including seaports and airports, as well as calling upon all states to implement their obligations pursuant to Resolution 1718 (2006).

Despite these severe sanctions, the DPRK can still maintain a low-growth economy. This is partly because of the non-fulfillment of resolutions by UN member states.

In this paper, I will overview the current situation regarding the implementation of UN Resolution 1874 (2009) by the major participating states. I will focus on implementation and current actions among the members of the Six-Party Talks: the United States, South Korea, Japan, Russia and China; these are the countries that are all strongly affected by the nuclear issues of the North. I will also make a modest attempt at analyzing whether the resolutions are an effective way of improving the situation in North Korea.

1. Reactions of the International Community

A Security Council Committee pursuant to Resolution 1718 (2006) was established on 14 October 2006 to oversee the relevant sanction measures and to undertake the tasks set out in paragraph 12 of that same resolution. Additional functions were entrusted by the Security Council to the Sanctions Committee in Resolution 1874 (2009). Through Resolutions 1718 (2006) and 1874

(2009), the Council imposed certain measures relating to the DPRK.³ These measures included:

- An arms embargo (which also encompasses a ban on related financial transactions, technical training, or services), with the exception of the provision by states to the DPRK of small arms and light weapons and their related material, on which states are required to notify the Committee in advance.
- An embargo on nuclear and ballistic missiles and other programs related to weapons of mass destruction.
- A ban on the export of luxury goods to the DPRK.
- Individual-targeted sanctions – namely, a travel ban and/or an assets freeze on designated persons and entities.
- Inspection of all cargo to and from the DPRK.

In Resolution 1874 (2009), the Council provided for the creation of a ‘Panel of Experts’ for an initial period of one year to carry out certain tasks under the direction of the Committee. Both resolutions 1718 (2006) and 1874 (2009) call upon all member states to submit reports on the implementation of the relevant provisions of the resolutions. The Panel, an organization created to observe the implementation of resolutions by member states, asked member countries to submit an interim report on implementation to the Council no later than 90 days after the adoption of Resolution 1874 (2009), and a final report to the Council no later than 30 days prior to the termination of its mandate.

Regarding Resolution 1718 (2006), out of 192 UN members, 73 states and the European Union (EU), or just one third of the total, had submitted an interim report by May 2007. And for Resolution 1874 (2009), the number of states that had submitted their reports as of August 2009 amounted to only 38.

I will give a brief overview of these reports on Resolution 1874 (2009) submitted by the U.S., South Korea, Japan, China, and Russia, and summarize their recent actions and measures to implement Resolution 1874 (2009).

³ S/RES/1718, 14 October 2006. S/RES/1874, 12 June 2009.

United States⁴

The United States, the leading advocate of sanctions against North Korea, immediately enforced the resolution after its adoption. In fact, in early June 2009, the U.S. pursued the North Korean cargo ship, the Kangnam, suspecting it of carrying items related to weapons of mass destruction, forcing it to return to North Korea by the end of the month. It was widely assumed that the Kangnam was headed to Myanmar/Burma via Singapore to exchange weapons for food. However, during this incident, Myanmar's central government made it clear that it would actively support the international community's efforts by denying entry to the ship into Myanmar.

Playing an omni-directional role in pressuring North Korea, the U.S. carried out sanctions against North Korea that were unrelated to the resolution. In fact, there have been calls, mainly from the U.S. Congress, to re-designate North Korea as a state sponsor of terrorism.

The Obama Administration announced on June 30, 2009, new sanctions on companies involved in suspected missile proliferation by North Korea and purchases of equipment that could be used in a nuclear weapons program.⁵

The Treasury and State Department said they had targeted Iran's 'Hong Kong Electronics' and North Korea's 'Namchongang Trading Corporation' under an executive order that would freeze their U.S. assets and ban U.S. firms from dealing with them. These moves aimed to further isolate such companies from the U.S. financial and commercial system, and to influence other countries' banks and corporations that may now cease doing business with North Korea at the risk of alienating the U.S.

South Korea⁶

South Korea's ultimate hope is to achieve unification with North Korea. One possible way forward is to realize the policy of Lee Myung-Bak's administration, 'Vision 3000: Denuclearization and

⁴ The U.S. report submitted to the Council is S/AC.49/2009/21, 9 July 2009, which is available at <http://www.un.org/sc/committees/1718/mstatesreports.shtml>

⁵ CNN, 30 June 2009.

⁶ The report submitted to the Council by South Korea is S/AC.49/2009/13, 27 July 2009, which is available at <http://www.un.org/sc/committees/1718/mstatesreports.shtml>

Openness.’ This aims to promote financial assistance to the North by raising the North’s average income from the present US \$500 to US \$3,000 within ten years, and to completely denuclearize the North.

According to the foreign policy and national security vision the administration announced, relations with North Korea should be driven not by ideology or politics but by earnest dialogue and cooperation. The North Korean nuclear issue is a serious detriment not only to global nuclear non-proliferation but also to peace on the Korean Peninsula. The key to the problem lies in changing the perceptions of North Korea. North Korea needs to realize as soon as possible that the only way to ensure its own survival while serving the interests of all Koreans is to completely abandon its nuclear weapons in an internationally verifiable manner.

To realize the denuclearization of the North, South Korea seeks to ensure real progress in the resolution of the North Korean nuclear issue through international cooperation within the framework of a multilateral security system.

South Korea’s Foreign Minister, Yu Myung-Hwan, has often stated that South Korea’s stance is ‘hard-and-fast.’ The Minister has also said that the U.S. and South Korea are apparently determined to maintain sanctions against the North until it denuclearizes. They believe that their mistake in the past has been their piecemeal approach to negotiations that immediately rewarded the North for every small, reversible step. Yu Myung-Hwan recently told the National Assembly’s Foreign Affairs, Trade, and Unification Committee, ‘Even if its talks with the North resume, the U.S. will maintain UN Security Council sanctions unless the North takes tangible measures toward denuclearization.’⁷

Japan⁸

Resolution 1874 (2009) is of great significance as it embodies the international community’s strong condemnation of and profound concerns over nuclear testing. Japan has emphasized the extreme importance of its early and full implementation and the need for member states to coordinate their

⁷ *The China Post*, 8 October 2009.

⁸ The report submitted by Japan to the Council is S/AC.49/2009/7 which is available at <http://www.un.org/sc/committees/1718/mstatesreports.shtml>

measures to the greatest extent possible, so that the resolution can be implemented effectively.

The Japanese government has long maintained measures to prevent any imports or exports to the DPRK of all arms and related material. It also prevents financial transactions and technical training as stipulated in paragraphs 9 and 10 of Resolution 1874 (2009). This is based on Japan's general policy of not allowing any arms exports, and through its ban on all imports and exports to the DPRK under the Foreign Exchange and Foreign Trade Act (introduced on 14 October 2006, and 18 June 2009, respectively).

Japan has introduced measures, also based on the Foreign Exchange and Foreign Trade Act, to prevent the provision of financial services or the transfer of any financial or other assets or resources that could contribute to the DPRK's nuclear-related, ballistic missile-related, or other weapons of mass destruction-related programs. Japan has also implemented a total ban on the entry of DPRK vessels to Japanese ports based on the Act on Special Measures concerning the Prohibition of Entry of Specified Ships into Ports. In addition, the Act on Navigation of Foreign Ships through the Territorial Sea and Internal Waters does not allow foreign vessels to anchor or move through Japanese territorial waters save for humanitarian purposes.

Concerning the inspection of foreign ships, Japanese envoy Yukio Takasu proposed that the resolution not permit the use of force, even during inspections of suspicious North Korean cargo, and that inspections must be carried out on the basis of cooperation and consent and the only recourse would be to report refusals to the Security Council.⁹ The resolution did speak of a 'required' inspection if a ship refused to be inspected. However, the ship's flag country could then send the vessel to any port it chose, where the local authorities would carry out the cargo inspection. This weakened the inspection regime.

Japan continues to observe the strict implementation of its ban on the entry of all DPRK nationals into Japan based on the Act on Immigration Control and Refugee Recognition. Since 16 June 2009, Japan has denied entry to foreign sailors and re-entry into Japan of foreign residents who have violated the trade and financial measures against the DPRK.

⁹ *Reuters*, 12 June 2009.

Russia and China

After North Korea's nuclear test and its missile launches, China and Russia – the North's closest allies on the Security Council – initially signaled that they would oppose any new sanctions on North Korea, pointing out that Pyongyang maintained that the rockets carried satellites and not warheads.

China's Foreign Minister Yang Jiechi said, "All sides ought to look at the big picture. They should avoid taking actions that may exacerbate the situation further." Russian Foreign Minister Sergi Lavrov also called on the international community to demonstrate a balanced approach and to use caution.¹⁰

However, Russia and China, which in the past have used their status as veto-wielding permanent UN Security Council members to soften Western-backed sanctions against North Korea, have this time supported the new sanctions after expressing unusually strong concern over North Korea's nuclear test and missile launches.

Russia¹¹

The report submitted by the Russian Federation to the Sanctions Committee was just half a page in length. In it Russia showed its intention to implement Resolution 1874 (2009), however no specific measures were mentioned, just as in the report for Resolution 1718 (2006). Russia's reluctance to implement sanction measures was apparent. It was only in May 2007, about seven months after Resolution 1718 (2006) had been adopted, that Russia announced President Putin's decree to join the sanctions regime.¹²

This time, with regard to the implementation of Resolution 1874 (2009), Russia seems to want to back sanctions against North Korea.¹³ Russia has renewed its support for UN sanctions designed to halt North Korea's efforts to expand its nuclear arsenal. Moscow has sometimes positioned itself in opposition to Washington on international issues and was reluctant to back tough new controls

¹⁰ *The Australian*, 7 April 2009.

¹¹ The report submitted to the Council by Russia is S/AC.49/2009/6 which is available at <http://www.un.org/sc/committees/1718/mstatesreports.shtml>

¹² *Nikkei Shimbun*, 31 May 2007.

¹³ *Reuters*, 4 August 2009.

against North Korea, but it has condemned Pyongyang's continual defiance of successive UN resolutions.

According to the report Russia submitted to the Sanctions Committee on 24 July 2009,¹⁴ Russia is working to revise and expand the list of entities, individuals, and goods to which the measures envisaged in Resolution 1718 (2006) were to be applied; for example, in addition to the original eight entities, including North Korea's General Bureau of Atomic Energy, five North Korean individuals are now on the UN sanctions list.

Russia believes that the measures contained in the resolution should not have any adverse humanitarian consequences for the civilian population of the DPRK. Russia commented in the report that the procedures to revise and expand the list were included in a draft presidential decree on the implementation of Resolution 1874 (2009); however, more detailed information as to whether Russia is fully implementing the UN sanctions has not yet been heard.

China¹⁵

In late July, 2009, Chinese authorities confiscated quantities of the strategic metal, vanadium, which North Korea was trying to smuggle through Dangong. Also in late July, a Chinese steel company that was collaborating with a North Korean company on a business project in North Korea abruptly requested the suspension of construction. And on July 27 and 28, 2009, at a meeting held in Washington to discuss economic strategies, the Chinese government threatened North Korea by encouraging the U.S. to strictly enforce Resolution 1874 (2009). In response to the demands of the international community, China, which used to fully support North Korea, appeared to have changed its position.

However, in mid-October, 2009, Chinese premier Wen Jiabao visited the North to sign a number of commercial pacts.¹⁶ Xinhua, the official Chinese news agency, did not release many details about the deals, merely stating that the two communist states had signed a series of agreements on

¹⁴ S/AC.49/2009/6, 24 July 2009.

¹⁵ The report submitted to the Council by China is S/AC.49/2003/23 which is available at <http://www.un.org/sc/committees/1718/mstatesreports.shtml>

¹⁶ *The Wall Street Journal*, 15 October 2009.

cooperation and announced that a new highway bridge over the Yalu River would be built. However, reports from South Korean newspapers indicated that Beijing, as part of a comprehensive economic package, had also agreed to provide financial assistance to Kim's destitute state. Chinese grants to the North totaled at least \$200 million.

Resolution 1874 (2009), unanimously adopted on June 12, forbids many, if not most, commercial contacts with North Korea. Paragraph 19 calls on U.N. member states ~~not~~ to enter into new commitments for grants, financial assistance, or concessional loans to the DPRK, except for humanitarian and developmental purposes directly addressing the needs of the civilian population, or the promotion of denuclearization.” Paragraph 20 calls on members ~~not~~ to provide public financial support for trade with the DPRK where such financial support could contribute to the DPRK's nuclear-related or ballistic missile-related or other WMD-related programs or activities.”

Other nations

Other governments, including India and Hong Kong, also put forth sincere efforts to enforce the UN sanctions. On August 7, after six hours of pursuit off the coast of India, the Indian Coast Guard apprehended the North Korean vessel, Musan, for docking without permission. In order to enforce Resolution 1874 (2009), the Hong Kong government prepared to enact a new bill. This was in addition to investigating two North Korean companies involved with a North Korean investment fund called the Choson Fund, to determine whether or not they were in violation of Hong Kong laws in relation to Resolution 1874 (2009).

The European Union (EU)¹⁷ also agreed to observe Resolution 1874 (2009). On July 27 at a conference of foreign ministers of EU nations, the 27 countries agreed that the EU would observe Resolution 1874 (2009) and strengthen sanctions against North Korea. At the conference, the foreign ministers clearly stated that the EU would strengthen its inspections of North Korean cargo ships. They also listed items banned from export, people who would be prohibited from entering the EU, and North Korean assets that would be frozen.

¹⁷ European Union (EU) submitted the report pursuant to Resolution 1718 to the Council on 13 November 2006 (S/AC.49/2006/7), but it has not submitted the report pursuant to Resolution 1874 as of 1 December 2009.

2. Economic impact on the DPRK

Overall, Resolution 1874 (2009) has been enforced relatively effectively by the international community. Still, an examination of the growth rates on both sides of the demilitarized zone over the last year shows that the regime in Pyongyang managed to deliver better growth than South Korea.

According to statistics released in late June, 2009, by the Bank of Korea, the basket-case economy in the North registered growth of 3.7% in 2008 after two consecutive years of contraction.¹⁸ That is better than the 2.2% posted last year by South Korea, which, like other export-dependent Asian countries, was hurt by the recession in the U.S., Japan, and Europe.

The surprise is underscored by the tiny size of the North Korean economy, which is easily swayed by such factors as weather and outside assistance. Just over two-thirds of the 3.7% growth came from the agricultural sector, which is heavily dictated by the weather. As it managed to escape from major floods and drought, North Korea's agricultural output increased by 10.9% in 2008 after falling by 12.1% in the previous year. Its 2008 manufacturing production also grew by 2.5%, compared to a gain of a mere 0.8% in 2007, thanks to supplies of heavy oil from the U.S. and its allies as a result of Pyongyang's agreement last year to begin dismantling its nuclear facilities.

But North Korea's nuclear test in May and the missile tests in April and July have led to a suspension of outside help and the imposition of economic sanctions by the U.N. This will lead to a poor performance in the manufacturing sector, which will almost certainly face an acute shortage of oil and electricity this year.

Pyongyang cannot count on the agricultural industry for any major contribution to economic growth in 2009, either. Even if North Korea manages to maintain the 2008 grain output of 4.3 million tons, which will be difficult to achieve unless last year's exceptionally good weather is repeated, this will not help the economy grow as it starts from a high base.

¹⁸ "GDP of North Korea in 2008," released on 28 June 2008 by the Bank of Korea.

3. UN sanctions and violators

North Korea

The economy of North Korea is being damaged gradually as a result of the UN economic sanctions but it can still maintain some growth. Why? According to a UN report by the Security Council Panel, which was established in June to assess the effectiveness of UN sanctions, this is partly because the DPRK violates UN sanctions by selling weapons to nations in Africa, Asia, and Latin America, and by hiding financial transactions that support its missile and nuclear programs.

The UNSC Panel claimed in its report that the DPRK continues to evade UN sanctions. According to the report, which has not yet been publicly released but was reported by Bloomberg, North Korea is likely to have used correspondent accounts in foreign banks, informal transfer mechanisms, cash couriers, and other well-known techniques that can be used for money laundering or other surreptitious transactions.¹⁹

The report said that arms sales banned by the UN have increasingly become one of the country's principal sources of obtaining foreign exchange. North Korea has used reputable shipping entities, false descriptions of goods, and multiple transfers to hide arms smuggling. The report also pointed out that the DPRK has established a highly sophisticated international network for the acquisition, marketing, and sales of arms and military equipment.

The report raised the case of the seizure of a substantial cargo of weapons from North Korea, apparently referring to arms seized in August by the United Arab Emirates from an Australian-owned ship. The report also said that despite the UN embargo the North continued to import luxury goods intended for its leadership. It noted that in July, Italy blocked the sale of two yachts that police said were destined for North Korean leader Kim Jong-Il.

The panel, which began work in September, said it would work on recommendations to the Security Council for further firms and individuals to be put on the sanctions list as well as recommend goods imported by North Korea that should be banned. It also promised a more exact definition of small arms as well as luxury goods.

¹⁹ *Bloomberg*, 18 November 2009. *Reuters*, 18 November 2009.

China

In a bid to ensure the resolution remains strong and to achieve the full effect of economic sanctions, cooperation with China is especially crucial because China accounts for over 70% of North Korea's foreign trade. China's trade with the state has soared since Pyongyang's October 2006 nuclear test, thereby helping the impoverished regime survive the tightening sanctions. In 2008, China's trade with the North increased 41.3% from the year before to \$2.79 billion. This jump helped account for the previously mentioned 3.7% expansion in North Korea's economy in 2008 as the country pulled out of a downturn especially evident in the two preceding years.

According to Reuters, in the first eight months of 2009, trade was down slightly by 6.2%.²⁰ It would seem that it is futile working through the UN if permanent Security Council members are allowed to violate its resolutions. The resolution urges but does not require member states and institutions to prohibit new grants or loans to North Korea, except for humanitarian or development aid.

Victor Cha, a former deputy American nuclear negotiator with North Korea, said that China's package of assistance in mid-October leads to the repetition of a failed negotiating pattern with North Korea. Cha said at a forum in Seoul on the nuclear standoff that, "We end up in the same cycle, in which they get some assistance to come back to talks. There is some negotiation that leads to some interim steps. There is another crisis, another provocation, and the cycle starts all over again."²¹ China's new contract with the North can strengthen the country's economy, bolster the regime, and allow it to keep its weapons programs. Averting that kind of cycle seems to have been the rationale behind paragraphs 19 and 20 of the Security Council's strictly worded resolution in the first place.

International society does not officially criticize China's assistance for the North because they believe that China's strong ties with the North can be used as a diplomatic channel in case the North escalates aggressions. Thus, they have kept the Beijing channel open in order to persuade the

²⁰ *The Wall Street Journal*, 15 October 2009.

²¹ *Associated Press*, 16 October 2009.

North at a potentially critical moment.

4. Are UN resolutions effective?

To be sure, the actions of China undermine the effectiveness of UN resolutions. If China was so inclined, it could have used its extraordinary leverage to much better effect on the implementation of the resolutions. China accounted for about 73% of the North's total international trade last year, and Beijing has provided an estimated 90% of North Korea's oil, 80% of its consumer goods and 45% of its food.²² Without China, the North would not have had the ability to fund either its expensive nuclear weapons or missile programs.

Therefore, can we conclude that the UN resolutions are ineffective? Not exactly. As North Korea has often cited, it considers any sanctions or pressure applied against its rocket launches as a ~~de~~claration of war." This comment can be regarded as the most decisive evidence of the effectiveness of sanctions.

The ultimate objective of sanctions is to denuclearize and to change the policy of the DPRK; however, this cannot be achieved only with UN sanctions. Through diplomatic channels such as bilateral talks between the U.S. and the DPRK, multilateral discussions through the Six-Party Talks, and UN resolutions, the objectives can be achieved step by step from one level to the next. The UN resolutions can continue to send a strong message that sanctions will not be lifted until the North complies fully with its obligations under Resolutions 1718 (2006) and 1874 (2009). Even if some nations closest to the North lift sanctions, the UN itself should not lift them so easily. It is important for the UN to show its resolute presence and to watch the North's political movements to send a powerful message to the North.

Clearly, the UN must find a way to make the resolutions more effective. One reason behind the non-fulfillment of the resolutions is because of the member states' domestic laws, but it is mostly because of the lack of penal provisions related to those who fail to implement or who violate a resolution. Resolutions are implemented under Article 41 of Chapter VII of the UN Charter, which

²² *The Wall Street Journal*, *ibid.*

excludes the use of force, thereby lacking the authority for mandatory enforcement.

The same can be said of the report submission to the Council. In fact, the resolution says that "... all Member States are called upon to take, in accordance with their national authorities and legislation, and consistent with international law, cooperative action including through inspection of cargo to and from the DPRK, as necessary." Using the words "call upon," implementation is left to each nation's discretion. Therefore, in accordance with its economic, political, cultural, social, historical, and geographical relations with North Korea, the level of implementation differs in each member country.

Here I must propose an important question; what can the UN resolutions do in order to avoid such violations? One measure that the UN can take is to name and shame a violator and to send a strong signal that such violations cannot be allowed by the international community. The Panel of Experts of the North Korean sanction regime can carefully apply this "naming and shaming strategy." The strategy was quite successful in the Angola (UNITA) sanction regime.²³ The Panel of Experts tabled a detailed report that identified sanctions violators and set out a number of recommendations for action. The strategy initially was strongly opposed by some UN member states, which perceived their own interests to be affected indirectly, but the strategy soon came to be accepted. The panel made the violators' names public in the reports and shamed them. As a result, some states, which had given military assistance to UNITA, abandoned their support of the rebel force and joined the sanction regime. This strategy is extended to other sanction regimes such as in the case of the Revolutionary United Front (RUF) rebel force in Sierra Leone and in the case of Liberia.

Conclusion: The way forward for peace and security in East Asia

North Korean leaders are always bold in taking negative, hostile actions but extremely cautious in

²³ The UNSC imposed sanctions on Angola (UNITA: União Nacional para a Independência Total de Angola) from 1993 (Res. 864) to 2002 (Res. 1448). The Angola sanction regime was successful from when Canadian ambassador Robert Fowler was assigned as a chairman of the Sanction Committee in 1999. David J.R. Angell, "The Angola Sanctions Committee," David M. Malone (ed), *The UN Security Council: from the Cold War to the 21st Century*.

taking positive, conciliatory steps. They risked war in the nuclear crisis of 1994 and they failed to take up the offer made by the Clinton administration to normalize relations in 2000. They agreed to disable part of their nuclear program but did not go any further.

The Obama administration has recently become the latest target of North Korean brinkmanship diplomacy. It seems that the DPRK's behavior has been quite rational as its actions remind of the 1990s when relations between the North and the U.S. gained ground. By strengthening the three political cards of nuclear issues, missile issues, and peace arrangements, the North has tried to negotiate in a tough manner. By salvaging its relationship with the U.S., the North aims to maintain order and gain financial support.

If, in a bid to pull the U.S. to the negotiation table, the DPRK conducts one more nuclear test or launches another missile, tensions in East Asia will run higher than ever and the Security Council will have to take even more coercive measures against the North. But there are few measures left for the Council; the unfulfilled sanctions proposals of the Clinton administration were quite similar to the measures of Resolution 1718 (2006). These proposals included the discontinuation of assistance and the contraction of diplomatic relations with the DPRK.

Calling for UN members to stop economic and development aid and for a reduction in diplomatic ties with the North are possible further measures; however, the international community needs to think about other options because such crucial ones could lead to a repeat of the tragedy of the Iraqi sanction regime which severely hurt innocent civilians.

Until now, North Korea has used every possible tool in its brinkmanship diplomacy and will probably keep playing the same game. What will make a difference this time is the strong determination of the Obama administration and the member states of the Six-Party Talks. The U.S. has repeatedly stressed that the visit is "not for negotiation, but efforts to pave the way for DPRK's return to the six-party talks."²⁴ South Korean Foreign Minister Yu Myung-Hwan said his country would not accept any peace treaty adopted between Washington and Pyongyang.²⁵ The bilateral talks between the U.S. and the North are ~~a~~ part of the multilateral talks. The nuclear issues of the

²⁴ U.S. Secretary of State Hillary Clinton speaking during a news conference at the APEC Summit in Singapore November 11, 2009.

²⁵ 2 December 2009 at www.xinhuanet.com

North should be always discussed among the six states, South Korea believes.

U.S. special envoy for North Korea Stephan Bosworth visited Pyongyang for a U.S. – DPRK bilateral meeting from Dec. 8, 2009. Considering that the trip marks the first U.S. – DPRK dialogue since the inauguration of the Obama administration, it was highly unlikely that this trip alone would be enough to bring the DPRK back to the multilateral negotiation table. At the press conference after the visit to the North, Bosworth said that the visit and the conversations in Pyongyang were very useful and he was able to exchange views in a candid and business-like fashion. The envoy also said that North Korea had told him UN sanctions must be lifted.²⁶

While the envoy failed to secure a firm commitment from North Korea on resuming the Six-Party Talks he said he was assured that the North Koreans wanted to return to the table for what could lead to its nuclear disarmament. In fact, North Korea called for an end to hostile relations with the U.S. in a New Year's message and said it was committed to making the Korean peninsula nuclear-free through negotiations²⁷.

Japan, another key player in the Talks, has another important concern with the North – the abduction issue. The North has utilized the position of keeping Japan in the dark about the truth of the abduction and maintaining a level of ambiguity. This has been in North Korea's interest, especially because it has seemed to work. As long as the abduction issue remains unsolved, all Japan can do is to comply with the UN resolutions to the best of its ability, and to develop domestic laws to make way for the full implementation of the resolutions.

The way forward for the international community seems to be strenuous engagement, including an option to normalize U.S. – DPRK relations, and sometimes combined with counter proliferation and defensive efforts, as has always been done.

²⁶ AP, 16 Dec. 2009.

²⁷ AP, 2 January 2010.

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Peace and Security in East Asia: Why Democracy Slept?

Sung-Hack Kang¹

Every thousand pages published on the causes of wars there is less than one page directly on the causes of peace. And yet the causes of war and peace, logically, should dovetail into one another. A valid diagnosis of war will be reflected in a valid diagnosis of peace.

---Geoffrey Blainey---

Prologue

In general, maritime hegemonic powers are threatening because of what they do; continental land powers are threatening because of what they are and security in East Asia is in danger. Unless the political leaders of the East Asian countries change their national security policy, the precarious but long peace in the region (my discussion shall be mostly confined to North East Asia) that has been ensured since the end of the Korean War will disappear sooner or later. There are, broadly speaking, two main sources of looming danger that East Asia is facing willy-nilly: underlying (remote) sources and precipitating (immediate) sources of danger.²

1. Underlying Sources of Danger: Rising China.

The rapid growth of China's GNP (gross national power) over the last three decades is already changing the Gestalt of East Asia (the Asia-Pacific region). International history teaches us that the emergence of a new great power is at least initially a destabilizing factor in the international system, whether it is bipolar, multipolar, or unipolar. A rising power tends to be a revisionist power, desirous of greater prestige and political influence commensurate with its newly enhanced gross national power in international society. China ultimately turned out to be a winner in World War II,

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² It should be clear that I am employing here the mode of analysis initiated by Thucydides, the Greek historian, in his analysis of the Peloponnesian war, when "history" meant not a simple sequential narration of events but an "inquiry" into human affairs.

subsequently transforming itself into a revolutionary, revisionist, communist state by the time of the late 1960s, when it confronted the Soviet threat. Since then it seems to have become a moderate communist state. Further, it began to concentrate on building growth in national power since Deng Xiaoping's reform of China in 1978 and is now referred to as 'the Rising China,' meaning a potential superpower in the near future.

The new power and subsequent new sense of confidence and recovered pride of contemporary Chinese has changed their perception of themselves, of their national interests, of their proper international standing, and of how they expect to be treated by others. The new Chinese gross national power has revived the old feeling of their so-called Middle Kingdom syndrome, a deeply rooted belief that China is the center of the world. China has gained a new set of far-flung global economic interests. It needs modern military forces to protect them and has been spending increasing amounts of its growing wealth on strengthening its military power, including aerospace capability. Although China faces no immediate external military threat and is stronger than at any time in the modern era, it has shifted its strategic doctrine away from defending the homeland against foreign invasion toward a strategy of projecting its military power overseas.

Recovered pride in China's growing international status has become one of the great sources of political legitimacy for the ruling oligarchy of the Chinese Communist Party. Popular nationalism has grown dramatically, sometimes aimed at Japan and at other times at the US. Therefore, what began as China's desire to restore its national pride and honor has become intermingled with the larger question of its historical ambitions. As China grows more and more powerful, it will become less and less tolerant of any obstacle in its way toward its self-conceived, historical, and rightful status of hegemony in East Asia, to say nothing of Chinese unification.

While many countries have territorial issues with their neighbors, in the case of China this tends to take on greater significance when the claimant is already a giant. More to the point is China's role in competition with the US for influence and power in the western Pacific from Japan to Australia and from the Philippines to Myanmar. Here the US has been the long stabilizing force. China is the first great power to mount a challenge to the US in the 21st century, creating a stage for hegemonic competition.

2. Precipitating Sources of Danger: North Korea's Nuclear Gamble.

It goes without saying that the most pressing, specific, and immediate source of danger in East Asia at the moment is North Korea's blind, ambitious nuclear gamble. To understand the true nature of the Kim Jong-Il regime's frightening nuclear gamble, it might be useful to recollect how Hitler's German regime drove first Europe and then the whole Western world to disaster in the 1930s.

In October 1933, Germany withdrew from the League of Nations Disarmament Conference, (North Korea withdrew from the NPT) and Goering was already secretly building the Luftwaffe, the German air force (Kim Jong-Il was developing nuclear weapons). The allies knew about this in 1934, but they made no effective protest. (The world and the UN knew about Kim's nuclear project, but no effective countermeasure was taken.) In 1935, German rearmament became common knowledge. On March 16, conscription was introduced in Germany and the plans for an army of over half a million men were announced. Goering proudly unveiled the Luftwaffe. On March 7, 1936, in the midst of the Italo-Ethiopian War, which had been caused by Italy's all-out invasion of Ethiopia four days previously, Hitler deliberately sent a small contingent of soldiers into the demilitarized Rhineland to test the Allies' reaction. This was a blatant breach of the Treaty of Versailles and of the Locarno Pact. But as Hitler expected, the Allies did nothing. The League of Nations did nothing positive to uphold the Treaties of Versailles. We know the rest of the history only too well.

As with Hitler's successful rearmament gamble of the 1930s, Kim Jong-Il had secretly prepared North Korea's nuclear armament during the 1990s and accelerated the process of nuclear development in the midst of the Iraq War, during the early 2000s. In the end, he successfully revealed the ultimate possession of nuclear weapons on October 9, 2006. Since then Kim Jong-Il has continued to show more and more defiant behavior toward the international community's NPT regime, threatening peace and security in East Asia.

Nevertheless, the UN, the US, the most directly affected country, South Korea, and most peace-loving countries, including Japan, have all, in a sense, slept (nay, overslept) for the last two

decades while the Kim regime was developing nuclear weapons. In the case of South Korea, if anything, it contributed to Kim's nuclear development at least partially through the appeasement policy of the governments of the former two Presidents. As a consequence, South Koreans are now driven up against a wall and it may be said that they will now have to face the writing on that wall.

3. A Hedging Strategy is not the Right Answer.

Already military weakness, the lack of political will, and confusion over foreign and defense policy in the democratic countries of East Asia have allowed, (nay, encouraged) the development of these dreadful weapons of mass destruction by a hostile state that challenges the interests and security of the democratic states and their allies. Without American support, the countries of democracy and human rights in East Asia would cry out in vain for protection against the forces of repression, which persist and will intensify in this region from which American power will have to be disengaged due to the popular mood, the lack of will of its political leaders, and out of risk-avoiding military strategies in the coming years. Even if China is not strong enough to balance the US at the present, even if it tends to be less strident than other countries in criticizing American foreign policy internationally, it may eventually be forced into a confrontation. There is also no immediate reason why the US should be unduly concerned at the rise of China itself. Structurally speaking, the US is likely to remain the Number One power (the only superpower) until the mid-twenty-first century. Despite the politico-military predicament in Iraq and Afghanistan, it would be wrong to think that the US is dangerously over-extended. It is still spending only 3.5 percent of its GDP on the military, compared with 35 percent in the Second World War.

However, it is a mark of its coming to terms with the post-modern age of pacifism that the US has also come to the conclusion that it cannot contain a rising China. Instead it is seeking to hedge against China's rise. Hedging has been a feature of market economies. Hedging strategies are extremely varied. Given the wide diversity, we may not expect to find that the US has a coherent foreign policy and security strategy. US policy could be best described as hedging plus engagement. The US and China have sharply contrasting world views, competing geostrategic interests and

opposing political systems. The differences are real. They cannot be papered over with joint communiqués, any more than eliminated simply by narrowing differences on specific policy issues. China is not perceived to be a revolutionary power like the past Soviet Union. It is seen more as a late-comer in the Great Power game, which is seeking to establish its position in a world that has been ordered strategically by earlier rival powers. What the US wants to do is to fold China into the existing security architecture. Its intention is to create an interest in stability to encourage a rising China to become a responsible stakeholder in the present international system. If China is more interested in securing a greater voice in the management of the current international system, rather than challenging its fundamental operating principles and procedures, then containment may not be necessary. Stakeholders may not be allies, but they do have common interests.

The point about hedging, however, is that while it can avoid risks it cannot eliminate them. Companies and countries are very different. When they fail to compete, companies often go out of business, but countries rarely do so. Unlike the market, security is subjective. National security is only as secure as the people and leaders of a nation feel themselves to be. China's actual integration into the existing security architecture has so far proved shallow and self-serving. China is a long way from becoming a democratic cosmopolitan state willing to acknowledge, let alone accept, any reduction of its sovereignty. China wants to return to the good old days and to have its own hegemonic position, at least in East Asia, as most Chinese believe to have been the case for several thousand years. The Chinese do not believe that they have a claim to a new historic international or regional position, but that they simply want to recover their rightful lost one. Therefore, their claim is believed not to be compromised. This is a quite unique claim in modern international history, incomparable with other historical rising powers. American engagement is thus likely to turn out to be no more than pseudo-engagement, and its hedging strategy a simple holding operation. Hedging and engagement is not by itself an appeasement policy, but in the light of avoiding all the risks out of immediate fear, in due course it might ultimately lead to the same difficult situations as appeasement policy would.

4. The UN is Impotent, as Expected.

On October 9, 2006, North Korea crossed the threshold of “nuclearization” and became a *de facto* nuclear-armed state (or rouge state). In its wake, the UN Security Council condemned North Korea via UNSC Resolution 1718. That was all. Little action followed. North Korea conducted a second nuclear test, in contravention of the UN Resolution, on May 25, 2009. In response to South Korea’s decision, following the second test, that it will fully join the US-led PSI (Proliferation Security Initiative), North Korea declared that it would no longer be bound by the 1953 armistice agreement that had suspended the Korean War. The Korean peninsula is now in a “state of war.”

The danger is real, but it is also a social construction. We are inclined to compare one danger with another which throws it into perspective. But precautionary measures are bound to be highly divisive. The precautions which one person may think reasonable may appear unreasonable to others. The problem lies in ourselves, not in the world we are trying to analyze. The precautionary principle cannot be a unifying principle for the use of military force. It cannot unite countries under the looming danger of North Korea’s increasing weapons of mass destruction.

On June 12, The UN Security Council adopted Resolution 1874, seeking financial sanctions as well as an overall arms embargo on North Korea. But this is implemented under Article 41 of Chapter VII of the UN Charter, which excludes the use of force, thereby lacking the authority for mandatory enforcement, just as in the case of Resolution 1718 and others adopted after North Korea’s nuclear and ballistic missiles tests in the past. As in the past, China is lukewarm to the implementation of Resolution 1874. A new approach to North Korea’s unequivocal nuclear ambitions is urgently needed, but the UN has proved again that it is impotent when great powers cannot reach unanimous decisions. The UN has now revealed its Panglossian attitude, but this is quite understandable, since the UN was not intended to solve conflicts among the great power UNSC permanent members when it was founded sixty-four years ago.

5. Wake Up, Peoples of Democratic Countries!

America today is not isolationist, just as England was not in the 1930s. Far-reaching national

interests around the globe, economic, political, and emotional, prevent domestically-oriented political leadership from simply turning inward and forsaking the outer world. Yet, America is not seriously committed to shaping the international environment, a task that only it can perform. American leaders proclaimed a powerful commitment to global engagement, saying over and over again that American interests required its participation in the world and even the use of force to shape it. But when crises demanded decisive action, they almost invariably hesitated to adopt military options, and sought peaceful resolutions to crises, preferring economic leverage and negotiated settlements to the effective and necessary use of armed might. For democratic Americans, it is not enough to win a victory. The victory must come at almost no cost. There is no reason to believe that the American people will not accept casualties, even larger casualties, in a war they understand and support. Nevertheless, America's political leaders refuse to take the risk, even when the cause requires some risk of losses. The situation in North Korea is the most alarming of all in East Asia (or the Asia-Pacific region). In 1994, the threat posed by the North Korean development of dangerous nuclear weapons led not to a confrontation with the US-South Korea alliance, but to a bribe to North Korea's tyrant. The North Koreans have repeatedly demanded and received further bribes simply to keep their part of the bargain ever since 1994. Evidence has continued to mount that the North Korean tyrant is not keeping his side of the bargain. The US and South Korea have given the North Koreans every incentive to threaten the lives of South Koreans through the weakness of their military forces in South Korea and their patent inability to reinforce them before North Korea has struck. The declaration of victory without combat in 1994 may have deceived many Americans and South Koreans, but it surely did not fool North Koreans. They have not learned that the development of weapons of mass destruction and the means to deliver them will not be tolerated.

America may not want to be the world's policeman, but it is the lesson of the past century that the world requires a police force to preserve the peace. If the US is not to take a leading part in such a constabulary, who will? The threat from North Korea has only been delayed. America should look realistically to its position in the world. It must strengthen its alliance system by demonstrating the willingness to bear its inescapable responsibilities. It must make the necessary

commitment and be ready physically and morally to meet these responsibilities. Should it falter and delay, the price of failure will be higher, as it was for Britain while she slept.

6. But, Alas!

However, American military action against North Korea is not likely to occur. It could not be localized geopolitically. The so-called collateral damage of South Koreans would be too great to be accepted. China would not condone the simple destruction of North Korea, as has been proved by its entry into the Korean War roughly sixty years ago. Unlike Iraq, North Korea is a small, poor country without any valuable natural resources such as petroleum. But above all, the US will recoil from another expensive and politically risky war while the results of the wars against Afghanistan and Iraq are reassessed by the American people. In war, numbers still matter. No commander has ever wanted to suffer more casualties than strictly necessary, but in the last century it was still possible to replace losses. The production lines allowed this: conscription, trading depots and formations and reserves in the case of soldiers, and industrial assembly lines in the case of the weapons which they used. Most of these production lines have been shut down. Today American forces are unable to replace losses, and as a result have become excessively risk-averse. It is expensive to acquire, move and prepare new men and equipment, and political leaders, uncertain of the people's support for their venture, wish to keep the costs to men and material within what is politically sustainable in the circumstances. Therefore, if anything could be done in East Asia, the US will be more than willing to shift the very dangerous and expensive burden of neutralizing North Korea's WMD threat to peace and security in East Asia to East Asian countries, thereby accelerating a new and serious arms race in the region. The US is no longer in the business of building a New World Order, but muddles through in the age of risk. The contemporary age of risk did not come into being overnight. It was foregrounded in the age that preceded it, especially in the growing recognition that the world was becoming so complex that everything has consequences, many of which could not been foreseen. Americans have become increasingly self-reflexive and as a result increasingly risk-averse.

In sum, the US is not likely to act as the world's policeman on the Korean peninsula in the coming years, as it did in the last century. Rather it will act, ironically in the name of peace and security for the region, like an Iago who speaks aside, "Everyway makes my gain." This is the very reason why East Asia will be more and more in danger year by year, though maybe not day by day. Asian peoples can live peacefully with each other through accommodation on one occasion or another. But they are unlikely to be at peace for a long time, because doing too little, or "under-balancing," is as fatal as doing too much. As Carl von Clausewitz warned:

"The fact that slaughter is a horrifying spectacle must make us take war more seriously, but not provide an excuse for gradually blunting our swords in the name of humanity. Sooner or later someone will come along with a sharp sword and hack off our arms."

Human Rights Regime and East Asia: Major Issues and Assessments

Heung-Soon Park¹

Introduction

Human right has emerged as a great concern of global issues, along with development, peace and security, and environments in international community. One of the tremendous gains in international society since the middle of the 20th century has been widespread acceptance of the human rights norms and their institutionalization. Thus international community has dealt with unprecedented expansion of norms and institutions, mechanism, applied to a variety of human rights issues from abuses in political and civil rights, to women's rights, to cruelty of war crimes and crime against humanity in internal conflicts. Human rights concern has expanded with the notion of "human security" in lieu of national security in the era of global governance.

The global human rights regime as a universal network and system plays a central role in the protection and promotion of human rights. The global regime has been formulated and developed by the collaboration among the United Nations (UN), major states and Non-governmental Organizations (NGOs), as well as influential individuals. Especially the UN human rights bodies are prominent creators, shapers and implementers of norms and programs in the field of human rights worldwide.

However, human rights are often complicated and politically sensitive issue for most state actors and their representatives, as in many cases the states are abusers and protectors of human rights. In East Asia as well, human rights issue has been a controversial issue, especially with regard to political repression, economic problems or internal strife in some regions and countries.

The East Asian region as a whole, covering Northeast Asia of Japan, Korea, and China, and Southeast Asia, including most of the ASEAN, has lately risen as an affluent economic region and area of peace and prosperity, with rapid economic and social development over the decades. Many

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of these countries also have steadily improved political environments, by introducing more pluralistic society as well as political democracy and market economy. However, compared to Europe and other regions, the East Asian region is also a place where political and economic rivalry is strong, combined with historical legacy of hostilities. Moreover, for various reasons, such nations as North Korea, China, Myanmar, East Timor, and Cambodia, have had problems of serious violations of human rights. These nations have been the targets of international criticism and actions in the policy and practices of human rights, from the global human rights regime. However, they defend their poor human rights records with the repudiation that state sovereignty is more important than popular sovereignty or human rights are essentially matters within the domestic jurisdiction.

In light of increasing importance of human rights, and particularly in the atmosphere of calling for the formation of an East Asian community, it will be meaningful to examine human rights regime in the context of East Asia. For the benefit of peace and stability in the region, there are several questions to answer. Specifically, what is the current status of human rights regime in international community? What are the main characteristics of human rights regime in East Asia if any, or the limitations and potentials of human rights issues as a regional agenda? What kind of issues for some countries indeed have been the subjects of human rights agenda in East Asia? How those human rights issues have been handled internationally and regionally? And, what are the implications of these evaluations upon the East Asian nations, particularly on Korea?

Therefore the main focus of this paper is to examine the role of human rights regime in the context of major human rights in East Asia. Thus this study, first, describes the basic structure and mechanism, and actors of the global human rights regime, second, examines some selected human rights issues with regard to several East Asian nations, and third, makes assessment on the role and contribution of the human rights regime, and lastly finds implications for Korea and the development of human rights regime in the East Asian region.

1. Global Human Rights Regime: Structure and Mechanism

The global human rights regime is consisted of basic principles, rules, decision-making mechanisms and actors in the area of human rights issues. As principles of international human rights and human rights law, we may identify universality, democratic legitimacy, justice, protection, legality, respecting and ensuring the protection of human rights, equality and non-discrimination, and remedy.² As adopted in a set of bill of rights,³ human rights vision usually contains three parts: a declaration of moral principles, treaties and conventions that would contain legally binding obligations, and measures of implementation.

In this regard, there are over several dozens of important international conventions and treaties in the area of human rights over time. Among them the most fundamental ones are commonly considered International Bill of Rights, which include 1948 Universal Declaration of Human Rights, the International Covenant on Social, Economic, and Cultural Rights (1966, "Covenant A") and the International Covenant on Civil and Political Rights (1966, "Covenant B"), and others.⁴

The actors in human rights include the United Nations system and other international governmental organizations, NGO (Non-governmental Organizations), and multinational corporations, as well as states.⁵ For the promotion and protection of human rights, the UN system as a whole plays an important role, as what is called "Charter-based" bodies. Therefore, under the UN Charter, especially the General Assembly (GA) and the Economic and Social Council

² Bertrand G. Ramcharan, 2007, (Human Rights) "Norms and Machinery," Thomas Weiss and Sam Daws, eds. 2007 *The Oxford Handbook on the United Nations* (Oxford: Oxford Univ. Press) p.439

³ So-called Three Generations of Rights are referred by the first generation (political and civil rights), the second one (economic, social, and cultural rights), and the third one (collective rights, such as minorities, women, as well as a safe environment, peace, development)

⁴ Others include Optional Protocol to the International Covenant on Civil and Political Rights; Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

⁵ Major sources of discussion on the basics of international human rights include: Rhona K. M. Smith, 2007, *International Human Rights*, 3rd ed., (New York: Oxford Univ. Press; Julie A. Mertus, 2007, *The United Nations and Human Rights* (New York: Routledge); David P. Forsythe, 2000. *Human Rights in International Relations* (New York: Cambridge Univ. Press); Jack Donnelly, 1998, *International Human Rights*, 2nd ed. (New York: Westview Press); Jack Donnelly, 1989. *Universal Human Rights in Theory and Practice* (Ithaca, NY: Cornell Univ. Press)

(ECOSOC), have broad mandates to deal with human rights matters. The UN Charter envisaged that the ECOSOC would set up functional commissions for the promotion of human rights. Here, the main machinery of human rights includes the Commission on Human Rights (CHR) established in 1947, which was then in 2006 replaced by a new organ of the Human Rights Council (HRC). The Commission over the years has established and operated numerous working groups and the Sub-Commission on the Promotion and Protection of Human Rights in 1999 to carry out its vital functions. It has also entrusted designated special rapporteurs, experts, and representatives to examine and publicly report on specific human rights situations, either Country Mandates or Thematic Mandates.⁶

In 1967, the ECOSOC passed Resolution 1235, authorizing the Commission to make a thorough study of situations which reveals considerable pattern of human rights violations. This mandate was further developed in 1970 with the adoption of ECOSOC Resolution 1503, which created a confidential procedure in which states and other bodies could submit human rights abuses to the Commission. Through these resolutions, the Commission gained an authority to engage in public debate about serious human rights violations in particular countries, and to have private discussions with states accused of such violations.

The newly-launched the HRC (Human Rights Council) has been considered to be an improvement over the CHR, in composition, authority and functions. The Council basically inherited the Commission's system of special procedures, expert advice and compliant procedures. However, unlike the Commission which was under the ECOSOC, the HRC has elevated to become a sub-organ of the General Assembly. The authority of the HRC, however, remains advisory and recommendatory, though the number of the members changed to 47 from 53 in the CHR.⁷

⁶ <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

⁷ The Council members would be directly and individually by secret ballot by the majority of the membership of the General Assembly. The GA, by a two-thirds majority of the members present and voting, may suspend rights of membership in the Council that commits gross and systematic violations of human rights. It is emphasized that the universal and non-discriminatory criteria for the HRC membership: contribution to the promotion and protection of human rights and voluntary commitment for human rights. Access to the Council is not limited to members alone. There is a

Other important human rights mechanism is "treaty-based" bodies, established under the main international conventions. Each of these treaties has established a committee of experts to monitor implementation of the treaty provisions by its state parties. They include 8 committees as *CCPR* (International Covenant on Civil and Political Rights, 1966), *CSECR* (International Covenant on Economic, Social and Cultural Rights, 1966), *CERD* (International Convention on the Elimination of All Forms of Racial Discrimination, 1965), *CEDAW* (Convention on the Elimination of All Forms of Discrimination against Women, 1979), *CAT* (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984) *CRC* (Convention on the Rights of the Child, 1989), *CMW* (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990) and *CRPD* (Convention on the Rights of Persons with Disabilities). Some of the treaties are supplemented by optional protocols dealing with specific concerns.⁸

These committees respectively have certain rules and regulations for their operations: review reports from state parties to their particular convention; engage in a dialogue with governments, make country-specific or general recommendations; react to situations of concern, and consider individual or group petitions.

Beyond the ECOSOC and the General Assembly, the tremendous growth of the human rights movements over the decades has resulted in the creation of further UN bodies and agencies. Among these, the Office of the High Commissioner for Human Rights (OHCHR) has served as a central organ of the UN human rights system since 1993, in the aftermath of the World Conference on Human Rights in Vienna. The High Commissioner would act as "the United Nations official with principal responsibility for the UN human rights activities under the direction and authority of the Secretary-General."

provision for participation of non-members of the HRC, the specialized agencies, other intergovernmental organizations and national human rights institutions, as well as NGOs as observers.

⁸ <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

It should be also noted that the UN Security Council play increasingly expanding role in the global human rights regime. The Security Council as the primary organ of the UN has an exclusive authority in the "maintenance of international peace and security." In fact the Security Council is free to define what constitute a "threat to" or "breach of" international peace and security. The concept of international security has been expanded in the post-cold war environments. International security now includes the dimensions of not merely military or state security, but the notion of comprehensive security or "human security". Accordingly, the UN has expanded the concept of "international peace and security", to include not only traditional security such as regional or internal conflicts, but also human security such as human rights, AIDS, environments, and refugees. Accordingly, the Security Council has expanded the scope and nature of the function and activities.⁹

Thus the Security Council has repeatedly dealt with such issues as "ethnic cleansing", genocide, and crimes against humanity, for instances, in the former Yugoslavia, Rwanda, Sierra Leone, and East Timor. Subsequently, the UN SC either directly intervened in "peace-enforcing" under Chapter VII of the Charter, or helped establish to set up international tribunals, including the ICTY (International Criminal Tribunal for the Former Yugoslavia), and ICTR (International Criminal Tribunal for Rwanda).¹⁰

As part of enforcing international justice in serious human rights violations, the idea of establishing a permanent criminal court was realized in July 1998, when the UN member states signed the Rome Statute of the International Criminal Court (ICC). The ICC has a jurisdiction to prosecute the "most serious crimes of concern to the international community," such as genocide, crimes against humanity, war crimes, since the statute entered into force on July 1, 2002.

⁹ The concept of "maintenance of international peace and security" is a general clause, which makes it possible to interpret and apply it with flexibility. In fact, the Security Council suggested in its Summit meeting of 1992 the notion of Human Security as part of international peace and security. In February 2000, the Council dealt with the AIDS epidemic in Africa as an issue of danger to international peace and security.

¹⁰ Joanna Weschler, "Human Rights" in David M. Marlone, 2004. *The UN Security Council: From the Cold War to the 21st Century* (New York: Lynne Rienner) pp.55-68

Jurisdiction under the Rome Statute is automatic: a state party to the treaty accepts the court's jurisdiction over all crimes within its scope. However, the ICC is not a substitute for national systems, but may only act where national systems do not themselves investigate or prosecute, or where they are "unable" or "unwilling" to do so adequately, as defined in the statute.

Private actors, such as NGOs and Civil society actors, also play an increasingly important role in the global human rights regime.¹¹ They embrace almost every aspects of human rights regime: thus they do research, outreach education, advocacy, and norm promotion, agenda setting, lobbying governments and intergovernmental organizations, implementing programs, and delivering services, and humanitarian assistance, monitoring implementations, and direct action.

Some NGOs are also presented on official delegations for human rights discussions. The best known international human rights NGOs include Amnesty International (AI), Human Rights Watch (HRW), and International Commission of Jurists. NGOs, within and along side with the UN system, became an active contributor, with such position as "Consultative Status" in the ECOSOC under the Article 71 of the UN Charter.

Of course, states are probably the most important actor in the human rights field. In fact, states set standards and monitor violations, but states are also the primary violators and the target of enforcement efforts. Thus, states become a party in human rights issues, positively or negatively. In the protection and promotion of human rights, especially some states, like many Northern European states, have been active participants and implementers in human rights norms and principles. On the other hand, many other states, including several East Asian states, have been subject of UN resolutions of mandate on human rights.

2. East Asia and Major Human Rights Issues

2-1. East Asia's View and Positions on Human Rights

¹¹ David P. Forsythe, 2000, *ibid*, pp.163-190

Regional human rights systems have emerged over the years, drawing inspiration from the human rights provisions of the UN Charter and the Universal Declaration of Human Rights. They were further stimulated by a variety of historical and political factors in each region. Examples of the regional systems include four major ones: the Council of Europe, the Organization of American States (OAS), the Organization of African Unity (OAU) or AU (African Unity) and the Arab League.¹²

Why there are several regional human rights regimes, besides the global regime? And, what are the advantages of having regional human rights regime, as now existed? In short, the regional system will be easier to make consensus in norm-setting, accessibility, and implementation.¹³ Specifically, the regional arrangements, with fewer states, are easier to draft and administer texts on human rights, to make a geographical, linguistic access for implementation, or to enforce the decisions of the regional bodies.

Thus, for example, the European human rights system, which had been developed with the creation of the Council of Europe, adopted the European Convention on Human Rights (ECHR) in 1950. Furthermore the European system was the first to create both an international court, the European Court of Human Rights, and a procedure for individual complaints. It also has the European Commissioner on Human Rights,

In inter-American system, the OAS Charter proclaimed the "fundamental rights of the individual" as a founding principle, with the earlier adoption of 1948 American Declaration on the Rights and Duties of Man. In 1959, the OAS created a seven-member Inter-American Commission on Human Rights, which expanded its power subsequently to include the power to receive complaints from victims. The American Convention of Human Rights, signed in 1969, and entered into effect in 1978, created also Inter-American Court of Human Rights.

For Africa, the African Charter on Human and Peoples' Rights (African Charter) was adopted in 1981. The Charter differs from others in its inclusion of "people's rights". The African Charter (or

¹² thers include CIS (Commonwealth of Independent States) of 12 former Soviet republics (with Convention on Human Rights and Fundamental Freedoms, 1995)

¹³ Rhona K. M. Smith, *ibid.* op.81-82

Banjul Charter) establishes the African Commission on Human and Peoples' Rights. In June 1998, the OAU adopted a Protocol to the Banjul Charter, approving the creation of an African human rights court. Meanwhile, the League of Arab States approved an Arab Charter on Human Rights in September 1994. The Arab Charter requires periodic reporting by states and implies that Arab League Human Rights Committee may request a report. However, the Charter specifies yet no other promotion or protection functions for the committee.

In contrast to these developments, however, East Asia as a whole has not developed a regional human rights system. Despite the efforts by NGOs and the United Nations, East Asia, or Asia-Pacific region remains the only area without regional human rights regime or system in the world. In 1993, more than a hundred Asia-Pacific NGOs adopted an Asia Pacific Declaration of Human Rights supporting the creation of a regional system. In 1997, some Asian NGOs adopted Asian Human Rights Charter. In East Asia, the ASEAN possesses a human rights commission, and the APEC forum has the Human Resources Developing working group. Nonetheless, the calls for the establishment of a regional human rights regime were not realized yet. At a 1996 UN-sponsored workshop, in fact, the thirty participating governments concluded that "it was premature, at the current stage, to discuss specific arrangements relating to the setting up of a formal human rights mechanism in the Asian and Pacific region".

There are several reasons and backgrounds why East Asian, or the Asia-Pacific region, has not developed or could not develop a human rights regime. First of all, in spite of some solidarity and increasing interactions, most of the nations in the region do not share a common identity as "Asian-ness". There is a far greater diversity of language, culture, legal systems, religious traditions, and history, compared to other regions of the world.

Second, many of Asian nations have "strong" governments, claiming state sovereignty as a sacred principle of international relations. Regardless of whether authoritarian, socialist, or liberal democracy, Asian nations have a tendency to preserve their sovereign prerogatives against other nations, as well as vis-a-vis civil society.

Third, the governments in the region are often reluctant to criticize other governments for human rights violations. Many have been unwilling to ratify human rights instruments, fearing their own human rights policies and records. Fourth, China, as a dominant regional power, as well as a permanent member in UN Security Council, exercises considerable, mostly negative, influence over the discussion of human rights issues. Despite economic success with open economy, as well as improving living standards, China as a whole maintains authoritarian regime with one party system, not allowing further political freedom and democracy.

Lastly, there are fundamentally serious philosophical differences of opinion on the issue of human rights between the East and the West. In principle, Asian nations tend to cherish "Asian value", which in general includes such elements as belief in strong government, obedience to authority, and respect for the community.¹⁴ Thus the debates in this regard have progressed in two specific aspects, especially with the notion of "Asian Value." The first debate concerns the subject matter and definition of human rights: whether focusing upon the political rights of the individual or the socio-economic rights of the collective group. The second debate has to do with the question of whether human rights is a relative or universal concept.¹⁵

On the first question, the Western nations in general insisted that the individual is the most important component of any political system and an individual rights must be protected from encroached by the state. China, Malaysia and many Asian states reject this notion of human rights, arguing that collective rights had to come first. On the second question, the west in general advocates the universality of human rights, applicable to all peoples, in all states, religions and culture. But, many Asian states have argued that human rights is relative, taking into consideration of different culture, history, and traditions. They have criticized that the West was unjustifiably using the notion of universality interfering in the domestic affairs with its own interpretation of human rights. Accordingly, East Asia, in spite of a generally high standard of human rights, still

¹⁴ For a critical analysis of the notion of Asian values, Jack Donnelly, *International Human Rights* *ibid.*, pp.131-135

¹⁵ or discussion of the debates on individual rights vs. collective rights, and universalism vs. relativism in human rights, see Jack Donnelly, *ibid.*, pp.32-35

lags behind in developing stronger human rights regime or governance, comparing to other regions of the world.

2-2. Major Human Rights Issues in East Asia

East Asia, like other regions of the world, has a variety of human rights issues in national, or regional context. The issues range from North Korean prison camps and refugees to China's repression on separatist movement, to Myanmar's military rule, to the remnants of the serious human rights violations in East Timor and Cambodia.

1) North Korea

Human rights violations in North Korea (DPRK) have been widely known over a period of several decades. In maintaining totalitarian regime under the current political leadership of Kim Jong-il, human rights have been seriously suppressed in Korea. Such words as political prison camps, detention center, arrest without warranty, and trial without legal procedures, are symbols of pervasive human rights abuses in North Korea. It is obviously clear by many indications that the North Korean socialist regime has not strictly observed the basic human rights of its own people, as stipulated in the international norms, such as ICCPR, or ICESCR. General and specific information on the North Korean human rights problems have been periodically reported by the testimony of many North Korean defectors (refugees), NGOs reports, and press reports, as well as annual White Paper on North Korea's Human Rights by a few institutions.¹⁶

Over the last several years, the international community has expressed its concern on the human rights issues in North Korea. As many as over estimated 200,000 defectors fled from North Korea in part as a result of serious food shortages, and in part to avoid political oppression. For South Korea (ROK), North Korean human rights issues are much more than simply refugee issues. Generally speaking the issues have wide range of dimensions: South Korean prisoners of war still

¹⁶ There are several resources on human rights situation in North Korea, for example, *Investigative Report on Prison Camps in North Korea 2009* (Korean Human Rights Commission), *White Paper on Human Rights in North Korea 2009* (Korean Institute for National Unification)

held in North Korea, prisoners in political prison camps, North Korean defectors crossing into China, South Koreans kidnapped to North Korea, the separated families during the Korean war, and general human rights conditions of the North Korean people.

However, South Korea's resolve to improve North Korean human rights through various means have been not so strong and effective. Over ten years, under President Kim Dae-jung and President Roh Moo-hyun governments, North Korea's human rights issues were often sidelined, under the "Sunshine policy" or an engagement policy of detente. The Korean government policy under President Kim and Roh was that the main concern should be focused upon supporting "the right to subsistence" of the North Korean people. Thus Korean government took the position that in light of severe food crisis and economic hardship among the North Koreans, the assistance for economic development and elevation of standard of living should take priority over the overall improvement in political and civil rights.

The 'soft' approach on North Korean issues raised a dilemma for South Korean people and NGOs on human rights, as they were divided on the government policy and positions on human rights. Still many Koreans called for a "two track" approach, both "sticks and carrots", combined political and diplomatic pressure with economic and humanitarian assistance, in dealing with North Korea. Furthermore, they wanted to "internationalize" the issues for putting stronger pressure on North Korea by international support.

Therefore, since 2003, the UN has been addressing North Korea as a country of foremost concern in the area of human rights. The UN CHR in 2004 session appointed a special rapporteur on North Korean human rights situations.¹⁷ The UN General Assembly also adopted resolutions on North Korea, first one in December 2005, expressing serious concern at continuing resorts of systematic, widespread and grave violations of human rights in North Korea. Since then the UN as a whole continuously adopted resolutions every year, among others, calling for drastic improvement of human rights conditions, and for observing the international norms North Korea

¹⁷ Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea has been Mr. Vitit Muntarbhorn (Thailand) since 2004.

has committed. For instance, in his report to the Human Rights Council in 2009, Dr. Vitit Muntarbhorn, the special rapporteur, stated that various critical challenges need to be urgently addressed:

"The miasma ensuing from the broad range of egregious human rights violations in the Democratic People's Republic of Korea requires urgent attention at all levels, from national to international. Of particular concern are the pervasive transgressions in relation to the right to food and other basic necessities, personal security, fundamental freedoms, and asylum and migration issues. Specific groups face great vulnerability. The tragedy of the country is that those at the top seek to survive at the expense and to the detriment of the majority of the population, and are behind the environment leading to these transgressions, with entrenched impunity. It is thus important that the challenge of human rights in the country be addressed more from the angle of how to prevent violations, protect human rights more effectively, ensure more efficacious provision of assistance, and enable more people's participation in relation to an omnipotent State and those who personify it."¹⁸

The United States and European Union collectively or respectively, have made considerable efforts in adopting the resolutions, or calling for direct measures on the part of North Korea. The US Congress passed "*North Korean Human Rights Act 2004*" (HR 4011),¹⁹ and the US Administration appointed a special envoy on North Korean human rights. Moreover, the active role of NGOs, notably protestant human rights groups in America, as well as various groups in Korea, contributed to draw international attention to the issues. In Korea, under the more conservative government under President Lee Myung-bak, inaugurated in January 2008, North Korean human

¹⁸ "Human Rights Situations that require the Council's Attention: Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea", 2009, *The General Assembly*, A/HRC/10/18

¹⁹ On September 23, 2008, the U.S. Congress extended the Act for four more years. *The North Korean Human Rights Reauthorization Act of 2008* (HR 5834) was signed by President Bush on October 7, 2008. There were some revisions in this newest iteration of the Act, including elevating the post of U.S. special envoy on North Korean human rights to full ambassador.

rights issues became a more salient issue, and recognized as an important policy agenda in inter-Korean relations.

North Korea's representatives challenged the special rapporteur's reports, or the UN resolutions, saying that they did not accept the role of rapporteur or the existence of human rights abuses. DPRK often rebuffed the rapporteur's reports or the resolutions as part of a propaganda plot fabricated by hostile forces. North Korean government rejected the UN resolutions, criticizing them as an unjust interference in to the integrity of North Korean sovereignty and attempt to instigate dissatisfaction among the North Korean people. Thus the special rapporteur on North Korea never had a chance to enter North Korean for on-site visit or verification of North Korean prisons.²⁰

2) China

Despite its spectacular economic growth and booming industry in recent years, serious concerns have been periodically raised on human rights situation in China.²¹ Four specific issues are notable among others.

First, in general, China (PRC) has been known for implementing a harsh system of state control over many aspects of life in the country and little tolerance for dissents among its people. Individuals who attempt to speak out against the system are routinely detained and prosecuted on state charges. Often serious concerns arise about the cases of arbitrary detention of human rights activists. Other serious human rights issues include such violations as torture and mistreatment of detainees, and numerous abuses of the people and groups considered to be advocating secession. China has been criticized for suppressing religious activities such as Falun Gong as well.

²⁰ Special Representatives, on the right to freedom of opinion and expression (2002), on freedom of religion or belief (1999), on the right to food (2003/2009), and on the Democratic People's Republic of Korea (2004/2005/2006/2007/2009) each requested the visit to North Korea, but was refused. See, <http://www2.ohchr.org/english/bodies/chr/special/countryvisitsa-e.htm#dprk>

²¹ For an excellent analysis of China's human rights policy and practices, see Ann Kent, 1999 *China, the United Nations, and Human Rights* (Philadelphia, PA: Univ. of Pennsylvania Press)

Second, China has been dealing with separatist or independent movements very harshly, especially in Tibet and Uighur. On the issue of Tibet, China took over Tibet in 1950, and claimed it historically as part of China. Since then China has made efforts to re-create Tibet in its own image, by force, if necessary. Under the 1951 "Seventeen Point Agreement" between China and representatives of the Tibetan Government, which incorporated Tibet into China, China guaranteed no alteration of Tibetan political, cultural, and religious systems and institutions. The failure of China to adhere to or uphold the Seventeen Point Agreement, and the imposition of so-called democratic reform, led to the March 1959 uprising in Lhasa. A Tibetan uprising for independence at Lhasa in 1959 was crushed by the Chinese military forces. An estimated 87,000 Tibetans were killed, arrested, or deported to labor camps, and flight to exile. It is estimated by one account that since 1950 as many as 1.2 million Tibetans have been killed, and more than 6,000 religious sites were destroyed.

In 1959 and thereafter several times, the International Commission of Jurists examined the Chinese policy in Tibet, violations of human rights in Tibet, and the position of Tibet in international law. The Commission found that "the PRC had committed 'acts of genocide.....in Tibet....an attempt to destroy the Tibetans as a religious group' and that Tibet was at least 'a de facto state' prior to 1951." The United Nations General Assembly adopted resolutions in 1959, 1961, and 1965 calling on China to ensure respect for fundamental human rights of the Tibetan people and for their distinctive cultural and religious life, and the right to self-determination.

The Chinese Government strictly controls access to and information about Tibet. Thus, it is difficult to determine accurately the scope of human rights abuses. However, according to credible reports, Chinese government authorities continued to commit serious human rights abuses in Tibet, including instances of torture, arbitrary arrest, detention without public trial, and lengthy detention of Tibetan nationalists for peacefully expressing their political or religious views.²²

²² In 2009, tight controls on religion and on other fundamental freedoms continued and intensified during the year, especially during sensitive anniversaries and occasions. These included the 40th anniversary of the 1959 Tibetan uprising against Chinese rule in March, the June visit of Gyaltzen Norbu, the boy recognized as the Panchen Lama by the Chinese Government, Dalai Lama's

The Chinese government has continued its campaign to discredit Dalai Lama, the Tibetan spiritual leader, and repeatedly described him as a separatist who was determined to split China.²³ The Chinese government maintained tight controls on religious practices and places of worship. Chinese government considers their independence movements as a formidable threat to its national unity and security. China considers the Tibetan issue as internal problems of China, not those that foreign countries could interfere with. Thus China harshly crushed an uprising in the Tibet capital Lhasa in March 2008, when hundreds of Tibetans marched thorough the streets of Lhasa protesting Chinese occupation there.²⁴

Third, another serious "separatist" issue is the human rights situation in the Xinjiang Uighur Region. Xinjiang, a largely Muslim area of over 20 million population, became a province of China in 1881, and remained one of Autonomous Regions since 1949. As it did with Tibet, China sent native Chinese to the area in order to gradually integrate it with China. As a result, the population balance drastically changed, for numerical parity. Much like Tibetans, the Uighurs in Xinjiang have struggled for religious and cultural survival in the face of massive influx of Chinese immigrants, as well as harsh repression of political dissent.²⁵

China has long claimed to be confronted with "religious extremist forces" and "violent" terrorists in Xinjiang. Especially since September 11, 2001, with the rise of fear of international terrorism,

birthday on July 6, the August National Minority Games, and the 50th anniversary of the founding of the Peoples' Republic of China on October 1.

"Tibet" (<http://www.globalsecurity.org/military/world/war/tibet.htm>)

²³ The Chinese government continued to insist that Gyaltzen Norbu, the boy it recognizes and enthroned in 1995 is the reincarnation of the Panchen Lama. The Panchen Lama is Tibetan Buddhism's second highest figure, after the Dalai Lama.

²⁴ In the past China has not hesitated to crush major protests in Tibet or to jail disobedient monks. President Hu Jintao, who is also the general secretary of the Communist Party, served as party boss in Tibet during a violent crackdown in 1989. "Violence in Tibet as Monks Clash With the Police." *New York Times* (March 15, 2009)

²⁵ Uighurs are the largest ethnic group in Xinjiang but are a minority in Urumqi, where Han Chinese make up more than 70 percent of the population of two million or so. The Chinese government has encouraged Han migration to the city and other parts of Xinjiang, fueling resentment among the Uighurs. Urumqi is a deeply segregated city, with Han Chinese there rarely venturing into the Uighur quarter.

the Chinese government has cracked down the Muslim Uighur community, which was labeled as supporting terrorism. According to the Human Rights Watch, "China has used these claims to justify ruthless repression in Xinjiang against religious activities, personnel and individual believers in what as "campaigns to rectify social order."²⁶ The U.N. High Commissioner for Human Rights, Mary Robinson in a meeting with the Chinese leaders, stressed that the war on terrorism "must not infringe on the human rights of China's Muslims."²⁷

Additionally, China has drawn criticism from a number of Uighurs and human rights advocates because it "'consistently fails'" to live up to its own constitutional provisions governing autonomous regions. For example, Amnesty International cites several instances of Uighurs being detained "'merely for being relatives or friends of political prisoners or fugitives,'" or they say Uighurs could be detained and held without charge for a number of months. Chinese officials deny these allegations and insists that "China strictly distinguishes the separatists from the rest of the 10 million Chinese Muslims in the Xinjiang region."

A huge demonstration in Urumqi, the capital of Xinjiang province, in July 2009 brought again the issue of harsh treatment of Uighurs. The riot was the largest ethnic clash in China since the Tibetan uprising of March 2008, and perhaps the biggest protest in Xinjiang in years.²⁸ At least 197 people were killed and 1,721 wounded, according to the government, and most of the dead were considered the Han people. Tensions between Uighurs and Han have remained high since the rioting in China's worst ethnic violence in decades. Like the Tibetan unrest, it highlighted the

²⁶ Dewardric L. McNeal, 2001, "China's Relations with Central Asian States and Problems with Terrorism" *CRS Report for Congress* (December 17) op.cit.

²⁷ "U.N. Voices Concern Over Rise in Alleged Abuse of Chinese Muslims," *Los Angeles Times* (November 10, 2001)

²⁸ The violent demonstrations were initially a reaction to a June 26 incident at a factory in Guangdong province, where two Uighur workers were beaten to death by Han Chinese colleagues. The Uighur protesters were very angry about the security forces who did not take any actions on the Chinese.

deep-seated frustrations felt by some ethnic minorities in western China over the policies of the Communist Party. The Chinese government blamed separatist groups for instigating the protests.²⁹

And the fourth issue regarding human rights is a problem related to North Korean defectors (refugees), who entered or stranded into China. There are estimated 50,000 to 300,000 North Koreans who escaped or voluntarily crossed to China, for mainly economic reasons, like food shortages in North Korea. In many cases, they are considered refugees either economic or political, who involuntarily left their hometown for searching their basic needs.

However, it is well known that North Korean refugees, often living in hiding in China are subject to various human rights abuses, such as illegal trafficking, sexual exploitation, arbitrary arrest and detention. On the North Korean defectors, China has generally taken the position that they are not refugees but "illegal aliens" who unlawfully entered the country, though China has not made public about its policies and positions. Thus China both arrests and punishes them or forcibly repatriates them to North Korea. Although China is a party to the 1951 UN Convention relating to the Status of Refugees and its 1967 protocols, China not only practices *refoulement*, (or repatriation) but also refuses to allow North Korean access to asylum procedures or to allow the UNHCR (UN High Commissioner for Refugees) access to them. And it is also believed that China also repatriate or let the North Korean agents to capture the North Koreans on the basis of special agreement on border between North Korea and China. Those returned to North Korea face interrogation, mistreatment, torture, and long-term imprisonment, or execution.

On the policy and practices regarding the matters of North Korean refugees, as well as Uighur and Tibet, China has been strongly criticized by international community and NGOs, both Korean and international. They called for the Chinese government stopping treating and punishing them as illegal aliens.

China has defended its policy and positions on Tibet and Uighur as only "internal" problems of China, criticizing any hint of interference from outside. Moreover, having a seat in the UN Commission on Human Rights, and subsequently in the Human Rights Council, China has been

²⁹ "Riots in Western China Amid Ethnic Tension" *New York Times* (July 5, 2009)

hostile toward many UN human rights mechanisms in general. It still has not ratified the International Covenant on Civil and Political Rights and not allowed several of the mandate-holders to visit the country. In 2004, for example, China invited the special rapporteur on torture to conduct state visit, but at the last minute requested the visit to postpone indefinitely.

China's human rights record was a high profile issue in the UN forums over the years. The United States through the 1990s usually coordinated the leadership regarding the draft resolutions on China with other sponsors, such as Australia or the European Union. However, when a resolution in the UN CHR was introduced on it, China usually employs all the procedural tactics to prevent action on substantive vote: calling for motion not to take action-which, if adopted, prevents further consideration.³⁰ "No action" procedural motions were utilized almost every year since 1990, except in 1995. In the early 2000s, however, the US government efforts to take "China issue" in the UN were slowed down.

3) Myanmar

Today, Myanmar (Burma) is a troubled country, with crippling poverty, gross human rights violations, under a power-hungry and superstitious military ruler. The military government in Myanmar has taken reign over the people with authoritarian rules over two decades since 1988. The military regime has had considerable control over the life of its people, without guaranteeing their basic freedoms and human rights. There have been a few uprisings by students and Buddhist monks, demanding for democracy and political freedom, including the famous mass demonstrations in August 8, 1988 and in September 2007.

³⁰ For example, in the CHR in 2001, China's "no-action" motion was approved by a vote of 23-17 with 12 abstentions and one absent, Ten Asian members of the Commission supported China, while Japan opposed and Korea abstained. Ten African nations supported China, and four abstained as well. UNA_USA, 2002, *A Global Agenda: Issues before the 56th General Assembly of the United Nations* (Lanham,MD: Rowman & Littlefield) pp.160-163

However, the massive protests of "8888",³¹ initiated by students, were joined by a cross section of society, estimated 500,000 people, which included monks, government workers, and teachers. The protest, lasting over 6 weeks, was the largest mass movement since the 1948 independence struggle, and the people of Burma were standing up for democracy. The military, however, harshly crushed the movement, massacring 3,000 innocent civilians, systematically killing the spirit of the Burmese people. There were many arrests, and certain prominent leaders were also victimized.

As a symbol of democratic movement and a national leader, Aung San Suu Kyi was placed under house detention, without clear charges or trial. As of now, she remains under house arrest, and the Burmese military several times hinted that she would be released, but she was rearrested for extended detention.

In 1990, the military regime conducted its promised general elections, and Aung San Suu Kyi's party won a landslide victory. Despite her continuing detention, her National League for Democracy party won a landslide victory by securing 82% of the vote. However, the Burmese military refused to recognize the results of her victory and rather further clamped down on freedom.

The world saw again, in September 2007, the "Saffron" revolution taking place, by Buddhist monks who spearheaded the movement. This attracted massive world-wide support, and renewed sanctions from countries such as the United States. Through the internet, people all over the world were able to get first hand information of the struggle, as the military was unable to censor the channels.

However, by suppressing any further political protests, the government intentionally blocks any challenges to their regime rules. The authorities tightened its control over its society with stringent laws. For example, State Emergency Act can be quite widely applied, allowing the state to charge

³¹ This date is the anniversary of the 8888 uprising, which sparked off the worldwide movement for the freedom of the Burmese people from the oppressive military junta. There was rising discontent, and the lack of democratic systems only angered the Burmese people. Students at Rangoon University protested and, in retaliation, the military killed a student activist. This paved the way for the 8888 uprising, on August 8, 1988.

anyone accused of discussing confidential matters relating to the state. Another infamous act, the Electronics Act, prohibits sending information, including photo and videos, which the authorities think can be used to damage the state's image. It is known that the number of media workers in prison has dramatically increased since the junta's crackdown on demonstrations in September 2007. There are still more than 2,000 political prisoners languishing in the prisons.

The responses of the international community have been mostly slow and tedious. The international community has been telling the Junta for more than 20 years to release political prisoners and stop human rights abuse but without any appreciable success. Why is that so? One of the reasons is that there are several nations whose interests are at stake with the Burmese military regime. For example, France supports the French Oil giant Total, which is opposed to sanctions against the Burmese junta. France has been defending Total's interests, which fund the military. India also acts on similar lines, and does not support sanctions for the junta.

Most of East Asian countries have also taken ambiguous positions on the issue, fearing offending the Burmese regime. For example, China has taken lenient policy toward Myanmar, since it has economic interests at stake in natural resources like oil and natural gas. The ASEAN nations have taken "constructive engagement" policy as its official policy. Some of the strongest supporters of the "quiet diplomacy" have been the governments of Indonesia, Malaysia, Singapore and Thailand. Although more willing to publicly criticize the Burma's government, the ASEAN has not shown a greater willingness to impose economic sanction on its own member of the ASEAN. Malaysia, Singapore and Thailand are major trading partners with Burma, and may be reluctant to forswear the economic benefits of bilateral trade and investment.³² Indonesia's civilian

³² Thailand has had an ambivalent view of Burma, as its domestic unrest has had a more immediate adverse impact on Thailand. However, the new civilian government in Thailand decided to support Burma's admission to ASEAN and follow a policy of engagement. Under the Suharto regime, the Indonesian government shared some ideological views with Burma's military government that led to its support of Burma's ASEAN membership and closer relations. Malaysia at the time was concerned about both Chinese and US influence in the region, and found similar views among Burma's military rulers. The Singaporean government saw economic opportunity in closer relations with Burma, and for a time was a major supplier of equipment and arms for the

government may be more willing to consider economic pressure on Burma, in part because of its history of military rule and in part because of its concern about Burma's Muslim minority. A US Congressional report has said that ASEAN's policy of constructive engagement with military rulers in Burma has proven to be ineffective.³³

The US, along with European Union, imposed economic sanctions against the Burmese government in 2003, and at the same time tried to put pressure or use a "quiet diplomacy" to persuade the military regime.³⁴ President George W. Bush on 29 July 2008 renewed a ban on imports from Myanmar, aiming to keep Burma's gems from entering US markets via third-party countries.

The efforts by the UN have not produced any meaningful results. The UN Secretary General Ban Ki-Moon visited in the wake of the natural disaster in May 2008, and called the military regime to release the madame Suu kyi, but was refused.³⁵ In August, the UN special envoy to Burma, Mr Ibrahim Gambari, has failed to meet her during his trip to Burma. Tomos Ojea Quintana, the UN's new human rights rapporteur for Burma, in August, visited Rangoon, and met some political prisoners in Insein jail, but not any real high-ranking officials of the government or military. In the

Burmese military. "US Relations with the Association of Southeast Asian Nations" *The Congressional Research Service* (December 18, 2009)

³³ *The Congressional Research Service* (December 18, 2009), *ibid.*

³⁴ "The Burmese Freedom and Democracy Act" of the United States renewed a sanctions regime imposed since 2003 over the suppression of opposition leader Aung San Suu kyi's democracy movement. The gems trade is one of the most lucrative sources of profit for the Junta, The so-called Tom Lantos Block Burmese Jade Act is estimated to have deprived its ruling junta of hundreds of millions of dollars in annual revenue. "Bush signs law to ban gems trade" *AFP* (August 29, 2008)

³⁵ On 2 May 2008, cyclone Nargis struck Myanmar, leaving an estimated 140,000 people dead or missing, and an estimated 2.4 million people severely affected. In response to the cyclone, the Secretary-General visited Myanmar. Following the visit, a Tripartite Core Group coordination mechanism was set up between Myanmar, the United Nations and the ASEAN to facilitate an effective large-scale humanitarian response. On 25 May 2008, the Secretary-General visited Myanmar to co-chair a joint high-level pledging conference in Yangon with Myanmar and ASEAN. "Situation of human rights in Myanmar: Report of the Secretary-General" 2008, *The General Assembly* (A/63/356)

absence of stronger measures, the military junta has only disregarded the international attention without big difficulties.

In February 2008, the Government of Myanmar for the first time made public a time frame in its political "road map" process towards the establishment of a civilian and democratic government. They announced that a national referendum on a draft constitution would be held in May 2008, followed by multiparty elections in 2010. On 10 May 2008, Myanmar held a constitutional referendum as planned, except 47 townships where voting was postponed due to an humanitarian emergency by the cyclone. About two weeks later, the Government announced that the draft constitution had been formally adopted, with a reported 92.48 % approval and 98.12 % turnout of voters. Despite the announced plans to hold elections in 2010, however, there is no clear timeline for when the election will be held. Obviously, the junta wants to ensure victory in the election because it would be disastrous if it loses again, as it happened in May 1990.³⁶

4) East Timor

The tragedy of East Timor has its origins in the Indonesia's occupation of the island during the 24 years from 1975 to 1999. Indonesian armed forces and pro-Indonesian militia was reported to have killed an estimated 200,000 East Timorese and committed extensive brutality in the island against independent movements.

Especially in August 1999, almost 80% population of East Timor voted for independence in a referendum. But over 700,000 persons were displaced by widespread violence and destruction committed by pro-integrationist militias backed by Indonesian troops. The security forces allegedly committed numerous crimes, including church massacres, rapes and arbitrary arrests and killings against East Timorese.

³⁶ The reason for keeping a tight rein over the election date is purely tactical. The announcement will be made when the junta's handpicked cronies are ready to enter the race. The suspicion is that the election could be held late in the second half of 2010, toward the third quarter, when the contracts that international humanitarian and relief organizations have with the regime will end in June this year, and the representatives leave the country. "Burmese junta already manipulating upcoming poll," *Asianews Network* (Jan 7, 2010)

The international community made an urgent intervention in the East Timor crisis by organizing by the INTERFET (International Force East Timor), a multinational force, led by Australia under the UN mandate. The operation was successfully conducted, stopping brutality and bringing in stability in the area. Subsequently, the UN transformed it as peace-keeping operations, the UNTAET (UN Transitional Authority in East Timor) on October 25, 1999. There was an increasing pressure in international community to punish those offenses committed in the colonial period. The United Nations itself did proceed to make prosecutions in pursuing East Timor. The UNTAET created the Serious Crimes Panel in 2000 for the prosecution of serious criminal cases committed in the period between January 1 and October 25, 1999, through the District Court of Dili.³⁷

As a result, the UNTAET adopted the legislation, which gave the District Court an exclusive jurisdiction over the following offenses: genocide, war crimes, crimes against humanity, murder, sexual offenses, and torture. And, the creation and composition of Special Panels was elaborated as a "mixed" international court, with two international and one East Timorese judges, where as in cases of special gravity or importance three international and two local judges. Thus, in the East Timor Special Panels, the East Timor national court exercises its jurisdiction over the crimes mentioned, but they would be assisted by the UN.

By June 2000 more than 50 militia members were being held in UN custody for alleged crimes arising out of the transitional violence. In early December 2000, then UN Chief Prosecutor for East Timor, handed down the first indictments for crimes against humanity.

However, the functioning of the trials in East Timor have faced many hurdles, such as lack of access, and political will, as well as scarce resources in professionals, officials, and supporting staffs.³⁸ For example, with the international arrest warrants for those indicted and in submitting

³⁷ Heung-Soon Park, 2007, "The Role of the UN and International Courts," The Proceedings of the Seventh Japan-Korea Seminar on the United Nations System "Human Security and the Role of the United Nations," (December 14-15, The United Nations University, Tokyo) pp.268-270

³⁸ Tellingly, the only defendants the Tribunal was able to obtain custody of were relatively low-level militia leaders. Top-level officials and Indonesian military indictees were and still remain,

those warrants to the Interpol, 77 of the 165 arrest warrants issued are on record with Interpol. With regard to many of the highest-level commanders, the East Timor government has blocked submission of those warrants to Interpol. As part of its activities, the East Timor tribunal issued an arrest warrant in May 2004 for the former Indonesian military chief Wiranto. The indictment brought against Wiranto in February 2003 charged him "with command responsibility for murder, deportation and persecution committed in the context of a widespread and systematic attack on the civilian population in East Timor."³⁹

However, the Indonesian government is also reluctant to cooperate with the East Timor hybrid tribunal. Despite existence of an MOU between the UNTAET and Indonesia, signed in April 2000, Indonesia has not been cooperative in transferring the accused to the Special Panels. Indonesian government made clear that it does not consider the East Timor court to have jurisdiction over its nationals and it has no intention of arresting or extraditing those charged by the panel. The key high-level suspects in the militia, and government are in Indonesia. Indonesia also rejects the possibility of an international tribunal on the East Timor violence, insisting that it could itself investigate and bring to justice through its own judicial system. The East Timor government as well is opposed to the establishment of an international tribunal, saying it would rather forget the past and focus on its economic ties with Jakarta.⁴⁰

Indonesia indeed issued a decree stipulating the creation of its own *ad hoc* Human Rights Tribunals to prosecute human rights violations in East Timor occurred after August 30, 1999.

at large, mostly in Indonesia. The hybrid Serious Crimes Panel began hearing these cases in early 2001. David Cohen, "Seeking Justice on the Cheap: Is the East Timor Tribunal Really a Model for the Future?" 2002. *Analysis from the East-West Center*, No. 61 p.3

³⁹ "East Timor Judge Issues Arrest Warrant for Wiranto" *Reuters* (May 10, 2004)

⁴⁰ It became clear in May 2004 that the East Timor government was interested in pursuing a rapprochement with Wiranto, by then a presidential candidate, The Prosecutor General has increasingly been under pressure by the President and Foreign Minister of East Timor, who vocally opposed the Wiranto indictment, claiming that it harms East Timor's relationship with Indonesia, The strange events in the Wiranto case are indicative of a lack of political will on the part of the Timorese government to pursue prosecutions. "Unfulfilled Promises Achieving Justice for Crimes against Humanity in East Timor," 2004. *The Open Society Institute and the Coalition for International Justice* pp.34-45

These were created under an Indonesian law of 2000 that for the first time made military and civilian leaders accountable for human rights violations. Significant indictments of relatively high-ranking Indonesian and Timorese military and civilian leaders have been handed down. Rather than a serious attempt to convict those who orchestrated the killing in East Timor, however, the Jakarta trials seem more like political theater playing.

Thus the results of the Indonesian trial have not been promising. For example, in a trial that began March 19, 2002, four Indonesian military officers and one police official were accused of crimes against humanity. The indictment alleged their "command responsibility" for the Suai Church Massacre, in which as many as 200 people are believed to have been killed. However, all were acquitted.⁴¹ Domestically, they aim at whitewashing the role of the Indonesian army (TNI). Internationally, they pander to the United Nations, which has threatened Indonesia with a true international tribunal, and the United States, where Congress has an authority to resume military aid to Indonesia.

The UN expressed its concerns about these tribunals, especially with tribunal exclusion of the violence before the independence referendum in August 1999. Another concern arose from the fact that the Indonesian legislature passed a decree barring retroactive prosecution of war crimes and crimes against humanity for military officials accused of abuses in East Timor. The implication of these Indonesian actions is that the accused might be indicted or punished for lighter "ordinary" crimes rather than serious international crimes. Most of all, the domestic situations in Indonesia, from economic crisis and natural disasters to separatist movements seemed to make it more difficult to pursue justice on the accused within the Indonesian jurisdiction.

The UN deferred to the Indonesian government and has stayed discussion of creating an international *ad hoc* tribunal. However, it is unclear whether there is sufficient political resolve among the Security Council members to establish an international tribunal for Indonesia.

⁴¹ One conviction of East Timor Governor Abilio Soares, for "widespread and systematic" murder and persecution as crimes against humanity resulted in only a three-year sentence. This verdict left international observers puzzled, as under the Indonesian law governing the tribunals the minimum sentence for these crimes is 10 years. David Cohen, *ibid.* p.4

Thus, for example, Amnesty International, in August 2009, has asked the Security Council to establish a special East Timor tribunal to prosecute human rights violations during Indonesian rule and to investigate those responsible for the killings in 1999. Amnesty International also wants the tribunal to investigate abuses committed during Indonesia's occupation from 1975 to 1999.

5) Cambodia

Under the Khmer Rouge government led by Pol Pot, about 2 million people died in a "Killing Field" massacre from 1975 to 1979 in Cambodia. The human catastrophes was committed as part of political and indoctrinate campaign of social revolution by the warring factions in the Cold War environment. The Cambodians spent much of the two decades coming to terms with the legacy of violence.

By the middle of 1999, most of the top leaders of the Khmer Rouge were either dead or surrendered, while a new national parliamentary election was held. For example, Pol Pot, hiding over 18 years after the collapse of the regime, was arrested and put into life imprisonment in house arrest, but died of heart attack in April 1998. The issue of accountability for the crimes of the Khmer Rouge emerged as a nagging question. The question became all the more complex, as Hun Sen, the former Cambodian Communist Party leader, took power as the prime minister on a legitimate election.⁴²

Questions had been raised with regard to accountability of the crimes whether these individual should be prosecuted, and if so, on what procedures.⁴³ Specifically, if these Khmer leaders are to be prosecuted, who should be the main body for prosecution: the international community through an *ad hoc* tribunal, the current Cambodian government through special national courts, or a mixture of national and international court? The Cambodian government's position was that it would organize the court, while the UN was limited to playing a supporting role. The government insisted

⁴² UNA_USA, 1999, A Global Agenda: Issues before the 54th General Assembly of the United Nations (Lanham, MD: Rowman & Littlefield) pp.42-47, pp.278-280

⁴³ Heung-Soon Park, "The Role of the UN and International Courts," *ibid.* pp.266-270

that, for the sake of the Cambodian people, the trial must be held in Cambodia using Cambodian staff and judges together with foreign personnel.

Cambodia invited international participation in light of the weakness of the Cambodian legal system and the international nature of the crimes, and to help in meeting international standards of justice. An agreement with the UN was ultimately reached in June 2003 detailing how the international community will assist and participate in the Extraordinary Chambers. Cambodian Prime Minister Hun Sen voiced concerns that the UN tribunal would not help the reconciliation process that Cambodia was undertaking.

After dragging negotiations, the treaty between the UN and Cambodia was finally signed in March 2003. The Cambodian government tried to back out of the deal at the last minute, but in October 2004, the Cambodian Legislature ratified the agreement to create the Khmer Rouge Tribunal (KRT). The chamber of the KRT has been consisted of "mixed" international court, in which a majority of the judges is Cambodian, with three Cambodians and two internationals, but decision requires a super-majority so that at least one international judge will have to vote in favor of each decision. While Cambodian procedural law is to apply, the substantive law is international. The KRT has jurisdiction to prosecute senior Khmer Rouge Leaders for genocide, crimes against humanity, and war crimes, as defined international conventions, as well as homicide, torture and religious persecution, as defined by Cambodian law. By the early 2006, the Extraordinary Chambers in the Courts of Cambodia (ECCC) were formally established.⁴⁴

As the KRT comes to terms with its ugly past, the process remains very slow for exercising its prerogatives as many of the accused former leaders and perpetrators die away. The KRT in July 2007 charged the commandant of the main Khmer Rouge torture house with crimes against humanity, bringing the first charge in a long-delayed trial. The commandant, Kaing Guek Eav, 64, known as Duch, was the leader of the Tuol Sleng prison in Phnom Penh where at least 14,000 men, women and children were tortured and sent to killing fields. As of November 2009, the trial of

⁴⁴ For a full description and operation of the ECCC, refer to a UN website, <http://www.eccc.gov.kh/english/> In the meantime, UNAKRT (UN Assistance Khmer Rouge Trials) provides technical assistance to the ECCC, see http://www.unakrt-online.org/02_court.htm

Duch has been coming to end, and the prosecution, making its closing arguments, demanded a lengthy prison term, 40 year life-in-prison, for him.⁴⁵ Only four other defendants have been indicted and waiting for trials. It took about 13 years of negotiation to establish the special Khmer tribunal. But even after the operation of the tribunal, the trial processes have moved very slowly.

3. Assessment on the Human Rights Regime and Its Practices in East Asia.

As reviewed, human rights regime has grown exponentially in the late 20th century. With the end of the cold war, and in the wake of a series of human tragedy in the post-Cold War environments, human rights issues became an utmost global issue. However, the role of human rights regime, including the function of norm setting, promoting, monitoring, and enforcing, have been generally considered mixed results with successes and failures.

At a global level, most of all, the human right regime in spite of the limitations has a success story in some aspects. As reviewed, the global human rights regime, centered upon the UN system with complex but sophisticated mechanism, has established as a firm foundation serving for human dignity, peace and prosperity of international community. Such developments as evolving international norms, such as 'RtoP' (Responsibility to Protect),⁴⁶ and the newly created Human Rights Council and its UPR (Universal Periodic Review) system,⁴⁷ all together, indicate a greater potential for further progress of the human rights regime.

The success of the regime can be attributed to several factors: first, the very nature of human rights as a legitimate claim of human being with innate desire for protection from abuse; second, the role of NGOs and civil society creating global human rights movement; third, early consensus of civil society and state actors on the normative content of human rights, in the UN Charter and

⁴⁵ "Last Khmer Rouge defendant charged with genocide," *Associated Press* (December 21, 2009)

⁴⁶ Ramesh Thakur, 2006 "Chapter 11, 'responsibility to protect'," *The United Nations, Peace and Security* (Cambridge, UK.; Cambridge Univ. Press) pp.244-263

⁴⁷ Jae-young Park, 2009, "Working and Assesment of the UPR Mechanism of the UN HRC," *Korean Journal of International Organizations*, Vol.4 No,1 pp.117-140

the Universal Declaration; fourth the evolving set of international institutions, such as the UN system, with a mandate to address human rights issues; and lastly the linking human right topic to other issue areas, such as peace and security, economic development, and environmental protection. In other words, in human rights issues the role of different actors of global governance have been intertwined and complimented each other. And the human rights issues also were effectively discussed and institutionalized as a key global agenda, with the progress of international society.

In other aspects, however, the human rights regime has seen failures and limitations. First, there are legal barriers working against human rights. For example, the legal restraints, widely accepted as a general rule, include traditional concepts of state sovereignty and non-interference of domestic jurisdiction, as well as the consent-based nature of many international obligations. Some political leaders or nations tend to invoke "cultural relativism," challenging universality of human rights, while endorsing normative instruments. Second, most states exhibit a reluctance to criticize others for human rights violations. States tend try to balance, and often subordinate, consideration of human rights issues to other national goals or issues, including trade, military and strategic policy, and foreign investment. And, third, human rights regime is limited by its own design. International human rights institutions and systems lack the real power, such as legal or binding power, to rectify or mend the situation, but exercise mostly moral power against the abusing state.

At a regional level, regarding the East Asian case, the human rights practices have also mixture of success and failures. The East Asian region has seen a general improvement of human rights over the years, as a result of steady elevation of economic and social standards. In addition, the political developments in many nations of the region, with trials and errors, have contributed to the promotion and protection of human rights in general.

However, the East Asian region has not only lacked a regional regime in terms of common perception and institutionalization, but also mostly lagged behind in terms of practices in human rights issues. Some of the worst human rights abuses have, and could, not been dealt effectively at the regional level, mainly due to a strong sense of state sovereignty, consideration of political and economic interests, and China factor. A poor record of human rights situation in East Asia, as

reviewed, has been demonstrated in "Freedom in the World 2010" annual report by Freedom House. Three nations, North Korea, Myanmar, and China plus Tibet, have been named among the ten "worst of the worst" category out of 194 countries and 14 territories around the world. On the East Asian human rights situation, the VOA commented:

"The U.S.-based human rights monitoring group, Freedom House says Asia still struggles with the basic issues of rule of law and freedom of expression.....Freedom House says that while Asia saw the most significant improvements in freedom last year, it still struggles with the basic issues of rule of law and freedom of expression. The group says situations in China, Tibet, North Korea and Burma are worrisome. In its latest annual survey, Freedom House says that Asia received a mixed rating in 2009, a year marked by political progress and repression."⁴⁸

The human rights issues in East Asia, briefly summarized, reflect diverse views and positions of the actors with regard to global human rights regime. There are positive and negative factors which might affect further development of human rights mechanism and its applications in the East Asian context. On the positive side, many East Asian nations have committed to further economic and social developments of the society, emboldened by the confidence and expertise they experienced with successes. The notion of "Asian Value" serves as a motivation for its own development model, distinct from the Western or other regions of the world. Many NGOs in East Asia, based upon rapidly growing civil society, have much engaged in the empowerment of its own, in partnership with the governments, the UN system and other intergovernmental organizations. In light of the active and potential role as a facilitator, educator, and mobilizer, NGOs will help to make further progress in human rights in East Asia.

On the negative side, heterogeneity in the political system, especially North Korea, and China, would be harmful to the general promotion of human rights not only in those nations, but also in East Asia as a whole. Asian value also may work negatively against the expansion and institutionalization of East Asian human rights regime. Opinions have been diverged, but many

⁴⁸ <http://voanews.com/english/news/human-rights/Report--Asia-Sees-Some-Significant-Progress-81235887.html>

Asian states have argued for the need to respect historical, cultural, and religious backgrounds in considering human rights issues. The notion of Asian value is utilized for the defense of their own political and social system and their own human rights record. Moreover, in the cases of North Korea, China, and Myanmar, such principles as state sovereignty, and non-interference into domestic affairs are main sources of negating the UN resolutions or the criticism by international community on human rights. In the absence of a regional human rights regime, there have been no meaningful, collective efforts to deal with the issues.

Even under the framework of global human rights regime, the human rights mechanism of sanctions, due to its own limitations, has not been effectively worked. Except basic resolutions with "naming and shaming" in the UN forum, the global regime, as well as many member states, are not willing to confront those abusive countries with stronger measures. Thus, for instance, China expressed its negative view over the authority and ability of the HRC in the country-specific resolutions.

But for Cambodia and East Timor, the global human rights regime made limited degree of achievement with peace-enforcing (East Timor) and peace-keeping (Cambodia). The global human rights mechanism was not effectively applied in the high days of on-going human rights abuses in both nations, when these countries were engulfed in severe internal strife. More immediate and direct measures, such as "humanitarian intervention" were not taken. The global regime only began its work in both countries, as part of post-conflict peace-building operations after the end of brutal human rights abuses there. The application of international criminal justice, with special tribunals, to the leaders of both countries on war crimes or crime against humanity, however, has contributed to a realization of the promotion of human rights. In this regard, the introduction of *transitional justice* in the Asian region would serve as a useful precedent of implementation of human rights norms and also have good implications for the international community.

An interesting development in this regard is the activities of NGO actors in dealing with North Korean issues. There have been rising interests in international community to charge responsibility against the North Korean leader Kim Jong-Il and other leading figures for human rights abuse in

North Korea. For example, several Korean human rights NGOs have just launched an international campaign to demand the indictment of the North Korean leaders on charges of crime against humanity under the statute of the ICC.⁴⁹ This move might cause controversy in its usefulness and effect, as well as jurisdiction and other legal questions. Even without some immediate tangible results, however, the campaign effort may contribute to revealing the miserable human rights situation in North Korea to the world, and also to rallying a political support of pressure on the North Korean leadership.

More fundamentally, one should remind that states are the most important actor in human right issues in East Asia, as well as in the global human rights regime. The governments could be the very sources of the problem, important agents of progress, or obstacle to progress in human rights. Human rights is an "important" factor in a national foreign policy. Therefore, many governments have participated in efforts to build international law and regimes to promote them; they figure out the utility of human rights issues over other goals; they respond to human rights abuses with diplomatic protests and economic sanctions; and they also take steps to improve human rights in their own societies. For the improvement of human rights and the establishment of East Asian human rights regime, various actors, such as the UN, NGOs, and major advanced states, should more closely cooperate to encourage other states and governments to take more positive views and measures on human rights issue as a key global issue of concern in international community.

Conclusion

Over the past 60 years, the UN, NGOs and states, have played an invaluable role in establishing respect for human rights as a central issue in international relations. A consensus has emerged that

⁴⁹ Under the Rome Statute, the International Criminal Court has jurisdiction over: 1. the crimes of genocide, crimes against humanity, if: 2. Committed on or after July 1, 2009, where: 3. (i) The crimes have been committed on the territory or by a national of one of the states parties, or (ii) a state submits voluntarily to the jurisdiction of the ICC, or (iii) the UN SC refers a situation to the ICC, ie. asking to investigate with a view to prosecution.

the global human rights regime evolved successfully to contribute to the promotion and protection of human rights, thus peace and prosperity of international society. However, there is also a recognition that massive crises involving widespread violations of human rights continue to occur around the world, and the global regime has certain limitations in dealing the issues properly and in time.

As discussed, East Asian nations, as a new and dynamic actor in international affairs, also have paid attention to the issue of human rights. In general, throughout the region, there have been gradual progresses in human rights, political and civil, as well as economic, social, and cultural. However, this is the region also where human rights abuses are notorious in several countries, with peculiar background and conditions. Some countries, notably North Korea and Myanmar, has been identified with the worst human rights practices and records, while China in spite of some improvement has been criticized for its poor human rights conditions as well. For those countries, the global regime has had limited impact upon the improvement of human rights. Both East Timor and Cambodia have made hard efforts to come to terms with its past, assisted by the United Nations. The global human rights regime continues to provide its services for criminal justice and other post-conflict peace-building operations, for reconciliation and peace in those nations.

Thus the human rights issues in East Asia have been mainly dealt in the global forums, including the Human Rights Council, the Security Council, and the General Assembly, as well as by some individual governments and NGOs. Even in its limitations and constraints, thus the global regime has made efforts contributing to the protection and promotion of human rights issues. The absence of a regional human rights mechanism in East Asia, the only region of the world, indicates a weak common understanding and sharing of human rights as a critical element of global issues and intra-regional agenda. In light of expanding notion of international security into human security, beyond state security, the international society expects the East Asian nations to further progress in the policy and practice in human rights as an important barometer of national prestige and influence.

The reviews and lessons from this analysis have several implications and suggestions for Korea and the development of an East Asian human rights regime. Most of all, Korea should make harder efforts to improve its human rights policy and instrument. Human rights records of Korea as a democratic, open, affluent society, are relatively in good standing, compared to other nations in the region. But, with its "pledges" for securing a rule of law and order in society, the Korean government should try to bridge the gap between such rhetoric and the reality on the ground. The government should make efforts to improve human rights conditions and records as pronounced.

Second, it is also important for the Korean government to establish human rights issues as a foreign policy agenda of key concerns in pursuing national interests. The government should be able to balance the values of human rights with other national interests such as economic, political, and economic goals. Having committed to become a full-fledged middle power nation, the Korean government should formulate certain principles and priorities on human rights issues, so as to be able to exercise its influence in international affairs, with more prestige. In this way, the Korean government could better shape and implement its foreign policies toward China, Myanmar, and other nations of human rights concern bilaterally and in the global forum multilaterally.

Third, the Korean government should take more active positions on the North Korea's human rights situations. North Korean human rights issue, including North Korean refugee issue, emerged as an urgent international agenda not only in international society but in the annual session of the UN HRC and the General Assembly. The Korean government, under the leadership of President Lee Myung-bak, began to change its positions, strengthening more active initiative on the issue. In light of enhanced function of the HRC, and growing concern on the North Korean human rights situation, Korea should take up the issues more aggressively, both using "sticks and carrots" on the North Korean regime for change.

Fourth, Korea should be able to play a more active role in the UN system as a faithful member. Korea has become a global model of economic success, drastically transforming from a poverty-ridden nation to a mature advanced economy. Korea, the 12th largest economy and financial contributor to the UN system, may also utilize the UN as a useful multilateral forum to

advance the protection and promotion of human rights agenda. Korea may also play a mediating role between the Western states and developing states in the discussion of human right issue both as an East Asian nation and as an advanced economy in the conduct of the UN work. It is important for Korea for the benefit of the UN system to equip with improved mechanism and instruments.

Fifth and last, Korea should take an initiative to move toward a gradual evolution of an East Asian human rights regime. It has been a fashionable topic these days among the East Asia nations and civil society leaders, to explore the possibility of the creation of an East Asian community in the model of the European community or the European Union (EU). Then human rights sector should be dealt accordingly in the processes of evolution of an East Asian community. Korea is in a unique and legitimate position, with its own past experience and future potential dynamism in international leadership. Moreover, the Korean government at present has committed to a "New Asian Policy", for seeking enhancing its relationship with the ASEAN and other Asian nations. Therefore, the Korean government representatives, in collaboration with NGOs and scholars, should began to study the possibility and furthermore to design the vision and strategy for the East Asian human rights regime in the region.

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China's "Floating" Population and Issues of Human Rights in a Globalizing Economy

Tomoko Ako, Ph.D.¹

Introduction

The transformation from a socialist planned economy to a socialist market economy that China has experienced in recent decades has made it possible for a variety of agencies to take a more dynamic part in economic activities. Chinese society has begun to emphasize efficiency in the market-oriented framework, and the state, which used to take regulatory and redistributive roles in the political system, has devolved authority as well as responsibilities to localities in accordance with the principles of the socialist market economy. Such reforms have surely yielded impressive development results. Nevertheless, the forces unleashed by economic liberalization and decentralization have also brought with them unexpected negative impacts. A particularly serious problem is the increase in inequality.

The reform to a socialist market economy, which is neither simply a market economy nor a planned economy, is fraught with ambiguous processes. The once highly centralized power structure has been dismantled in a short period of time, and mostly vested interests have been drawn into the political vacuum created from its demise. Rules for equal competition have not yet been established, thereby resulting in politically and economically weak organizations and people being pushed further to the periphery. While the central government has diminished its power to regulate the different interests of local governments and local people, the residential registration system (*hujī zhìdù*: 户籍制度) still divides urban and rural households unequally. Therefore, urban-rural disparity has expanded to an amazing extent, and is causing rural unrest and instability.

People with rural registration join the "floating population" (*liúdòng rénkou*: 流动人口) if they

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work in cities without acquiring urban registration. It is still almost impossible for rural registration holders to change their status to that of urban citizens. Lack of urban registration makes it extremely difficult for them to become integrated into the urban community and limits their opportunities for social mobility. These "rural" people face numerous obstacles when they live in a city: They are prevented from entering certain occupations and trades; they are denied work-related entitlements to housing, medical care, pensions, and social security; they are often forbidden to buy or build property and are thus relegated to "shantytowns" that have sprung up on the margins of large cities; they and their children are excluded from, or charged additionally to attend local schools. In short, they are treated as outsiders to the urban community.

Although they face a very inconvenient and difficult life in areas where they are not registered, many of them are likely to stay there for a long time because economic and educational conditions in their hometowns are much worse than the "floating" life. Urban local governments are apprehensive about overpopulation in the cities, and are also concerned about possible conflicts between migrants and urban citizens as the unemployment rate and crime rate have risen. Many rural local governments where migrants are registered face financial difficulties. Therefore, public services for the floating population have been neglected for many years, and the floating population is literally adrift.

This paper attempts to illuminate the sorts of problems migrant workers (the floating population) have faced, thereby revealing how their identities and values are formed, based on the fieldwork I have conducted in Hubei Province, Wenzhou City and Beijing City in recent years. The concluding section will also discuss issues of China's floating population in relation to a globalizing economy.

1. Why do young people leave their villages?

In March 2009, I visited Shayang County in Hubei Province. It had been announced a month earlier than that around 20 million migrant workers, twice as many as in previous years, had returned to

their hometowns before the Chinese New Year holidays in February. Most media reports analyzed the situation by saying that they had lost their livelihoods after being laid off by factories which had closed their doors due to the financial crisis. I also expected that this was the situation. Nevertheless, most of the workers in the county had already left for the cities to work. In brigade No.4 of Xinhe Village, where I have conducted a series of fieldwork studies in recent years, 79 people, 15 more than in September 2007, and 61 percent of the labor force population between 18 and 60 years of age, were no longer in the village. It was unlikely that they would find jobs on favorable terms in the recession-hit economy. So why did they not choose to stay in their hometowns, where they could rely on the assistance of kinship and the social network?

Those whom I interviewed in Xinhe Village revealed that many people left the village because they were not satisfied with life in a rural area or because they had some trouble with other people in the area.

For instance, the eldest son of Family X was divorced more than ten years ago, and was later married for the second time with his current wife. He has children by both his former wife and his current wife. The eldest son's family left the village because the son had gambled away the entire family fortune and had been persecuted by insistent creditors.

All the children of Family Y were divorced. The eldest son was working in Shenzhen City in Guangdong Province after his first marriage. He later met a woman who had been his teacher in high school. They remarried after obtaining divorces from their spouses at the time. The former high school teacher had achieved excellent results as a teacher and was set to be promoted from a township school to a city school. However, she chose to leave the area with the Y family's eldest son. Her former husband took charge of their daughter.

The eldest son of Family Z left his home without even giving a destination. His cousin later happened to see him in Shenzhen City and introduced him to a company. One year later, he disappeared again. He made only one phone call to his parents in eight years. His parents opened bank accounts for use by billing fraudsters and lost 5000 yuan. Their eldest daughter was

divorced and did not come home even during the Chinese New Year holidays in 2008.

All members of Family R have worked as migrant workers in Shenzhen City. They had previously run a grain-processing factory in the village. However, the householder became addicted to a form of gambling called Mark Six and lost a large amount of money. He continued to bet by converting his customers' grain into cash, all of which he lost in the end. A considerable number of people in the four neighborhood villages had left their grain with him. The eldest son of Family R, who had originally planned to hold his wedding party in the village, gave up the idea because they could not pay off the huge debt they owed to the villagers.

Drastic social transformation has diversified people's views on love and marriage. People have been forced to explore different ways of commitment to their families and local communities. Those who come and go between rural village and city have experienced difficulties in accommodating to the gap in the ways of thinking and values with their spouses and children who remained in rural area. Entertainment and social activities are scarce in this area and more and more people have become addicted to gambling. Two villagers who were deeply in debt for gambling committed suicide by drinking pesticide.

On the other hand, many people who have remained in the village have been able to lead more stable lives compared with several years ago, since it has been possible to expand their cultivated acreage by renting land usage rights owned by migrating families. They usually do not want to give up the rented land because they wish to maintain their economies of scale. There is very little arable land remaining unrented in the village and therefore there is little room for migrant workers to return to their hometown.

2. Complex identity of second generation migrant workers

According to a Chinese Academy of Social Science researcher, the characteristics of migrant workers can be summarized as in the following six points.

- (1) Irregular employment (Most workers do not sign a contract with their employers, and are forced to work on unfavorable terms. Most self-employed workers run unauthorized businesses and have become targets for police and neighborhood association crackdowns.)
- (2) Marginalization of residential areas (Most workers rent jerry buildings that urban residents have owned, build simple frame cabins by themselves, or live in dormitories provided by employers. In some cases, more than a dozen workers are squeezed into a flat without toilet or shower room.)
- (3) Isolation in life (Most workers have a monotonous and repetitive life without sufficient rest or leisure time. Many of them live apart from their families and are unable to have normal conjugal and family lives. Those who have children are very concerned about their education.)
- (4) Subject to discrimination (They are subject to discrimination and prejudice by urban citizens, and their circle of acquaintances is limited to friends from the same hometown, their kinship network and colleagues. There are some urban citizens who regard migrant workers as causing a degeneration of the social order and stealing jobs from urban citizens.)
- (5) Limited opportunities for job advancement (Opportunities for education, vocational training, and social security are not equal to those for urban citizens. Children of migrant workers have limited access to education.)
- (6) Inward-looking identity (Migrant workers have neither a sense of belonging to the city nor to the rural village. They feel unsteady and frustrated, and tend to lock themselves into a small and narrow sphere between their workplace and dormitory.)

It ought to be much better for migrant workers to return to their hometowns rather than stay in such poor working and living conditions. Nevertheless, many young migrant workers who left their villages right after they graduated from junior high school or senior high school, and have never

experienced farming, are used to the urban life and have a different mindset from the older generation.

Is the consciousness that “farming is boring” widely shared among migrant workers of the young generation? How do they actually perceive their present situation and the future? Together with Chinese researchers, I conducted a questionnaire survey for 600 migrant workers in 25 companies in Wenzhou City, Zhejiang Province. The results show that these migrants had forged very complex identities.

According to data presented by Wenzhou City Bureau of Statistics, at the end of 2007, 7.64 million people held city registrations, while 3.33 million migrant workers had only temporary registrations. Interestingly, more than three million city registration holders had also worked outside the city. Of course these were not unskilled labors, but white-collar employees or entrepreneurs. That is to say, those who did not hold city registrations supported the factories in the city, while those who held city registrations worked in other areas of China or the world. During Chinese New Year holidays, the city becomes full of large numbers of luxury imported cars carrying license plates from such areas as Beijing, Shanghai and Xinjiang. Successful entrepreneurs return home in their private cars to spend the holidays in their gorgeous mansions which they have purchased in the city.

Valid responses to the questionnaire were 578, of which 328 were male and 250 were female. The percentage of the age cohort below 19 years of age was 12 percent, 20 to 29 years of age was 53 percent, that of 30 to 39 years of age was 27 percent, and 40 to 49 years of age was 7 percent. Concerning educational level, the percentage of junior high school graduates was the highest at 45 percent, the percentage of senior high school graduates was 27 percent, the percentage of junior specialized school graduates was 12 percent and the percentage of vocational high school graduates was 7 percent. 30 percent of the respondents had been resident in the city for less than a year, 16 percent for 1 to 2 years, 12 percent for 2 to 3 years, 9 percent for 3 to 4 years, and 8 percent for 4 to 5 years. Monthly incomes varied in the following way: 1,000-1,499 yuan, 36 percent; 1,500-1,999

yuan, 20 percent; and 2,000-2,999 yuan, 19 percent. The respondents were from a variety of provinces including Anhui, Henan, Jiangxi, Hunan, Hubei, Zhejiang and Guizhou.

Analysis by age cohort revealed differences in the way respondents spent personal time. While about 20 percent of respondents in their teens and 20s replied that they used the Internet, those in their 30s and 40s answered that they watched television. While over 80 percent of the respondents in their 40s said that they never went to a Kentucky Fried Chicken or MacDonald's restaurant, more than 60 percent of respondents in their 20s and about 30 percent of those in their 30s answered "go sometimes." Menu prices at Kentucky Fried Chicken or MacDonald's restaurants are not cheap for migrant workers earning low salaries, being about two to three times more expensive than the "daily lunch special" at ordinary restaurants. However, they prefer to have meals with their boyfriends or girlfriends in a sanitary and comfortable space.

In this way, the younger generation yearn for the urban life style. Nevertheless, most of their friends are migrant workers and they have few friends who have urban citizenship (Graph 1).

Language skills are one of the important factors for becoming adjusted to a local community, since there are many local dialects in China. To the question, "Do you understand the local Wenzhou dialect?" about 50 percent of the respondents in their 20s replied, "Do not understand completely," and about 40 percent replied, "Understand a little." To the question, "Can you speak the local Wenzhou dialect?" about 70 percent replied, "Cannot speak at all," and about 30 percent replied, "Can speak a little." Low communication skills in the local dialect could be seen in respondents of all age cohorts.

It has been said that among Chinese dialects the Wenzhou dialect is one of the most difficult to learn. Moreover, most migrant workers are repeating mechanical work in closed spaces such as factories and dormitories. They therefore have very few points of contact with local citizens in daily life and it is no doubt difficult for them to learn the language well.

There was little difference in the view, "The city is the place where I realize my dream, not the hometown," among respondents in their 40s, while about 60 percent of those in their 20s and 30s

did not agree so much, or did not agree at all with this view (Graph 2). In fact, the younger generation did not have a dream for success in the urban city. Furthermore, there was not much difference among the respondents with respect to the idea, “I am not used to the life in my hometown after living in the city for a long time” (Graph 3).

Nevertheless, the percentage of the younger generation who replied “agree” and “relatively agree” to the question, “Will you go back to your hometown when you get old and cannot find a work in the city?” was much lower than those in their 40s (Graph 4). Further, about 20 percent of them answered, “I am thinking of making an effort to marry a man/woman in the city” and some even said “I have thought of getting married with a man/woman in the city, but failed”.

Here we can see the emotional upheaval of young migrant workers. Many of them did not agree with the views, “The city is the place where I realize my dream, not the hometown,” and “I am not used to the life in my hometown after living in the city for a long time.” However, some of them did not want to go back to their hometowns even though they could not find a job, and some even desired to get married with a man/woman in the city.

Some migrant workers whom we interviewed might have actually believed, “I cannot realize my dream in my hometown,” or “I am not used to rural life” in their hearts, even though they disagreed to these ideas when answering our questions. I had this kind of feeling when I was talking with some migrant workers at the site. A university teacher accompanying university students who were born into more favorable situations than the migrants repeatedly asked them questions about “農民工” (*nongmin gong*, migrant workers), a term having discriminative connotations. It would be quite understandable if the migrant workers had felt hurt or resentful toward us. Particularly those with great pride must have felt strongly that they did not want to be looked down upon.

However, the registration system stands inexorably in the way of migrant workers' consciousnesses even though they have a high sense of self-esteem. To the question, “Do you think you are a Wenzhou citizen?” about 70 percent of respondents in all age cohorts answered “no” (Graph 5). An average level apartment is amazingly expensive in the city even for ordinary citizens,

and is far beyond the migrant workers' purses. It is not surprising that migrant workers cannot confirm their identities as urban citizens if they are unable to speak the local dialect and do not have local friends in the community.

3. Harsh reality faced by stall-keepers

Most unskilled migrant workers are outside the mainstream of the urban community. Many of them can be easily fired when they become old or when the economy weakens. Those who cannot be employed by companies have no alternative but to operate businesses by themselves. Most of them do not have funds to open a store or a factory, and simply sell snacks, fruit, groceries, toys, clothes and electric devices at their stalls. Consumers in cities welcome stalls run by migrant workers because the goods they sell are relatively cheap. However, stall-keepers struggle in the highly competitive market, and at the same time, they have to keep watch for the city management committee and the residential committee, which attempt to monitor migrant workers, and even collect management fees and sanitation expenses. In some residential communities, regulations for authorizing business licenses for stall-keepers contain ambiguities and many stall-keepers have been disaffected by unreasonable demands from the city management committee and residential committee.

Among the stall-keepers I interviewed, a man in 30s said, "Gangs wandering around this area often try to bum money from us. We could rent a booth in the market for 2-3 yuan a month ago, but now it has risen to 50-100 yuan. Besides paying the rent, the city management committee people collect 20-30 yuan per month. I cannot accept this. They claimed that this was for sanitation of the city, but the environment of the market has not improved at all."

A 16 year-old girl who was selling snacks in Beijing after she dropped out from junior high school told me in a frightened tone of voice, "The city management committee staff try to turn us away whenever they see us. When I had just arrived in Beijing, I did not understand circumstances

and had all the goods for my livelihood confiscated. My father is handicapped. He helped me to pull the stall, and was hit by one of the people in the committee.

A lady in her 30s selling groceries talked about her experience with a tone of resignation, “In 2002, I was caught by one of the crime-prevention committee people. Of course, I stood my ground, but he beat me. Eventually, I was locked in a basement with barred windows and released the next day. In 2004, my eldest son, who was 13 years old at the time, was in Beijing during the summer vacation. He volunteered to sell bottles of water in order to earn his school expenses. As a result, he was detained by the city management committee members.”

Migrant workers start up their stall businesses on a shoestring. They head toward a goal such as opening their own company or shop in the future. However, the reality is extremely grim for them.

4. Lawless area without “citizens”

Areas with concentrations of migrant workers are called 城中村 (*chengzhong cun*, urban villages). In some urban villages, “citizens” who have formal urban registration rent their houses or land which is waiting for redevelopment to migrant workers. In other urban villages, those who are registered as citizens of rural areas located in the suburbs of cities and are included in the sites for city redevelopment, rent real estate to migrant workers. Most citizens in these areas have already stopped farming since their villages are now urbanized even though they are registered as “rural areas.”

The urban villages I visited were exactly “a vacuum without citizens.” Beijing City has put off the development of living environments in urban villages, and has left disposal of garbage and polluted water uncontrolled. Thus, many urban villages reek of rot.



Photo (1) Old lady collecting waste materials



Photo (2) Gully with polluted water

If local governments turn their back on migrant workers, migrant residents in urban villages naturally do not meet their social responsibilities. Illegal economic activities have prevailed. I saw many unauthorized clinics in urban villages. An obstetrician and gynecology clinic which I visited had only two rooms, in which some simple equipment was set up. The clinic's sign was simply placed beside the entrance and was portable, so that it could be moved whenever it was necessary to clear it away. Surveillance by birth control committees in the migrants' hometowns rarely reaches the cities, and it is reported that not a small number of migrant workers choose to terminate their pregnancies if the baby in the womb is female.



Photo (3) Unauthorized clinic



Photo (4) Market in an urban village

Migrant workers depend on unauthorized clinics since they do not have medical insurance.

Recently, the Chinese government has established a "Rural Cooperative Healthcare Insurance System," requiring members to pay only 30 percent of a medical bill when they see doctors in public hospitals in the townships where they are registered. However, the self-pay burden increases if they see doctors in hospitals at city or provincial levels.

Prices of commodities in urban villages are much cheaper than those in other areas of Beijing. For example, three yuan for a haircut and five yuan for one night's accommodation in a hostel. In an urban village, I once bought cooking oil for half the market price; it turned out to be fake. Most victims of contaminated food and medicine are peasants and migrant workers, who cannot afford goods of reliable quality. Ironically, there are also some migrant workers who are involved in malicious business, such as selling fake and contaminated products.

Children of migrant workers have limited access to education. According to data for 2007, presented by the Statistical Office of Beijing City, approximately 130,000 children of migrant workers studied in 297 private schools run by migrants themselves, and of which only 58 schools were authorized. Many unauthorized schools, known as "black schools" do not have sufficient funds to ensure the children's safety, and local governments have forced some schools to close down.

Beijing City Government has taken measures to allow migrant workers' children enter public schools in Beijing. However, the government usually requires a large number of documents in advance, such as (1) temporary residence certificate; (2) certification of residential address in Beijing; (3) guardian's proof of employment; (4) certification of lack of guardian in the registered area; and (5) registers of all family members. Some migrant workers have not taken the formal procedures to work in the city and it is difficult for them to submit all the required documents. Furthermore, even though the city government has established this policy, some public schools have refused to accept migrants' children due to limited space or a negative influence on local students. Some migrant children independently choose to go to schools for migrants because they find it hard to become accustomed to the atmosphere of urban public schools due to the differences

in language and culture. Some of them consider taking university entrance examinations. In China, there are regional variations in curricula, textbooks, and even enrolment limits and examination papers. Students are required to take university entrance examination in the area where they are registered. Therefore, migrant children who want to enter university need to prepare for entrance examinations by studying the textbooks used in their area of registration.

According to an estimation by Professor Yang Dongping of the Beijing Institute of Technology, migrant children in Beijing reached 375,000 in 2006. If 60 percent of them entered public schools, the city would need to build 285 new schools with an enrolment capacity of 500. Migrant workers have contributed to the city's development and the right to basic education should be extended to all children. Nevertheless, in order to inhibit excessive population inflow, it is unthinkable that the city will build large numbers of new schools for migrant children.

5. Issues of human rights in the context of a globalizing economy

As we have seen so far, reforms to liberalize economies have made it possible for rural registration holders to work in cities. However, the level of social security for migrant workers has been kept far lower than that for urban registration holders. Although the central government has recently moved further toward relaxing the issuance of urban registrations, or the privileges associated with it, in certain contexts and for migrants who meet particular criteria, the majority of rural-to-urban migrants still remain unable to transfer their registrations.

The Chinese registration system, which treats different citizens in different ways, is fraught with problems. Nevertheless, from a wider perspective, foreign companies securing cheap labor in China have also taken advantage of the system. That is to say, they have become indirectly engaged in adding to the discrimination against migrant workers.

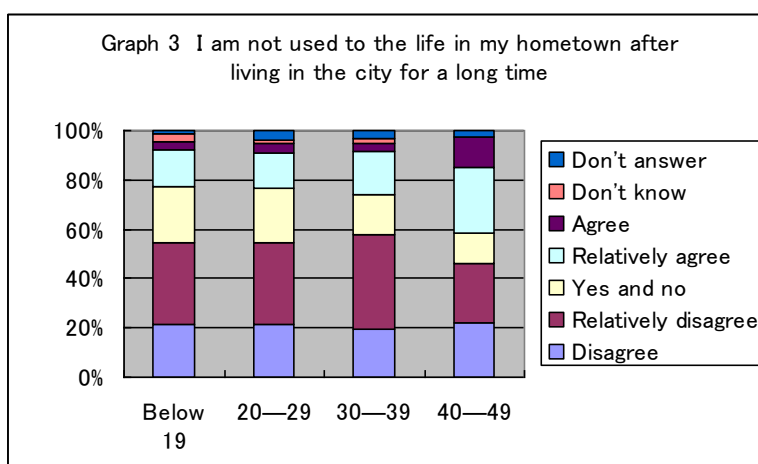
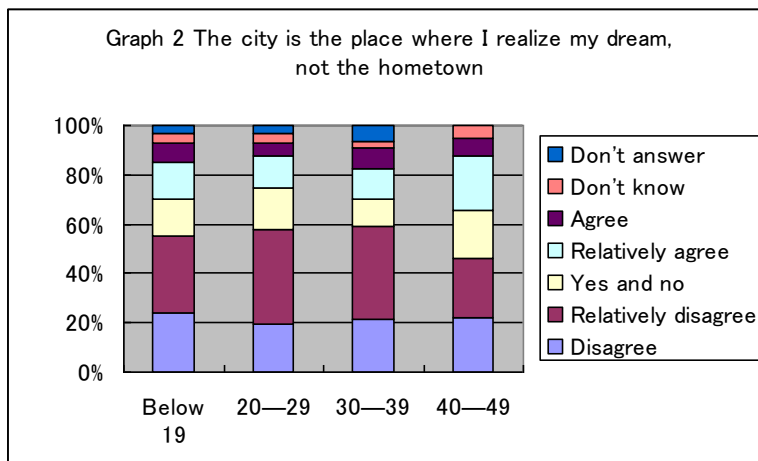
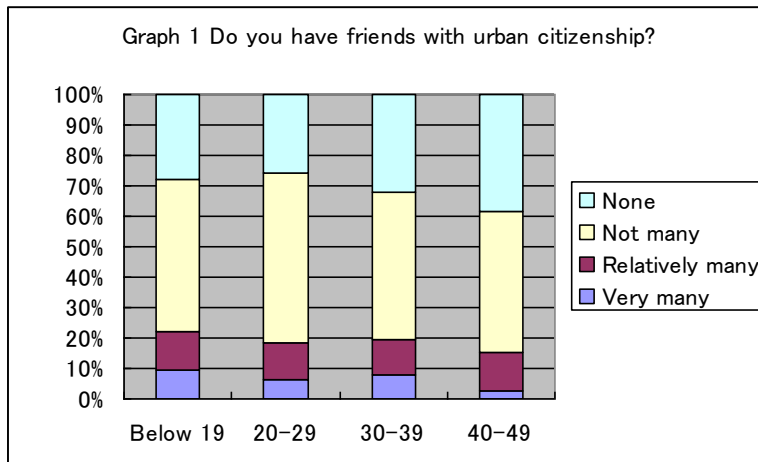
With the globalization of the world economy, more companies relocate their factories and promote outsourcing in order to cut costs. It has been almost impossible to visualize the flow of

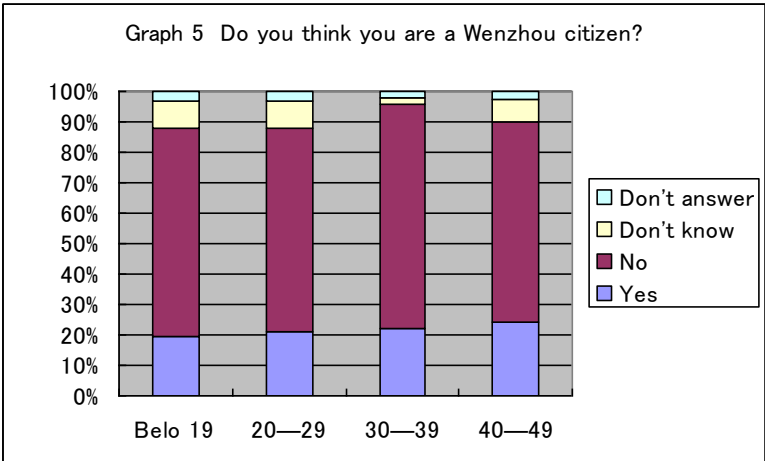
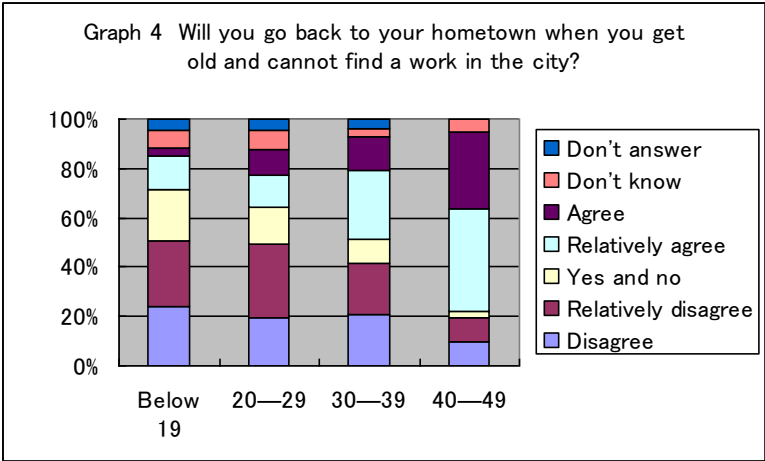
people, money and goods in each of the countries where foreign companies set up their factories. The so-called "floating population" is unable to forge an identity either as an urban citizen or a rural citizen, and has been unable to extricate itself from its unstable situation. Chinese society will face political uncertainty if the number of discontented migrant workers increases.

What, then, can we do? Needless to say, the Chinese government should make efforts to reform the social security and registration systems so that they are applied more equally. Particularly, the right to education should be equally guaranteed. The reform of the university entrance examination system is also necessary to enable all students from both rural and urban areas to have an equal opportunity to compete. Rather, preferential treatment should be applied to rural registration holders of Han ethnicity who are exempted from affirmative action programs for ethnic minority students.

Although it has been difficult for foreign companies to be directly involved in the process of policy making and implementation, they should be able to influence the Chinese government at second hand to improve working environments for their workers. They can also contribute to society through giving scholarships to poor students, implementing vocational training in collaboration with local governments, and so on. At the time of employing personnel, companies should not discriminate on the basis of registration. Furthermore, unskilled workers at the starting point should be allowed the possibility of promotion to higher positions and be eligible to apply for urban registration if they can successfully complete on-the-job training or continuing education programs, and pass technical tests which companies require. Skilled workers are valuable assets for companies. For those migrant workers who cannot see their family members in their hometowns, companies can provide a service for mental healthcare and provide subsidies for family support and home visits. A more human-centered employment system should be established both inside and outside our countries, and the collaboration of East Asian countries is indispensable for the further strengthening of ties in this region.

(Figures)





Japan's Fight against Trafficking in Persons, Especially Women and Children

Yasushi Katsuma, Ph.D.¹

Introduction

This paper will assess the situation of trafficking in persons in Japan, and discuss Japan's attempts to internalize global, legal and political agreements within the country through a new national policy and legislative reforms. On the implementation of the National Action Plan of Japan, three areas will be analyzed: Prosecution, Protection and Prevention. Additionally, the status of the promotion of international cooperation will be examined, as it is indispensable in combating this transnational problem in a globalized world. The actions taken by the United Nations and the United States will be summarized, and the role of the regional cooperation mechanism, the Bali Process, will be discussed.

1. The Magnitude of Human Trafficking in Japan

Japan is predominantly identified as a destination country, to which persons, especially women and children, are trafficked for the purposes of forced labour and commercial sexual exploitation. Nevertheless, Japan occasionally serves as a transit country for persons trafficked from Asia to North America.

Women and children from Asia, Latin America, Eastern Europe and Russia are trafficked to Japan mainly for the purpose of commercial sexual exploitation. In other cases, both male and female migrant workers from Asia are subject to conditions of forced labour upon arrival in Japan; they usually migrate willingly to Japan seeking work, but end up being subjected to debts that

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make them vulnerable to trafficking for exploitation.

The number of trafficked persons protected by the Japanese National Police Agency (NPA) reached 117 in 2005, the highest figure during the 2001-2008 period. The total number of trafficked persons protected by the Japanese NPA from 2001 to 2008 was 534. Needless to say, these official figures are just the tip of the iceberg, as they only represent the victims protected when the NPA arrested human trafficking offenders. Major countries or territories of origin include Thailand, the Philippines, Indonesia, Colombia, and Taiwan, comprising 500 of the total 534 victims protected during the 2001-2008 period.

2. International Legal Framework and Japan

On the need to combat trafficking in persons, the international community reached a global consensus in December 2000 when the participating States signed the *Trafficking in Persons Protocol* (*Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*). The *Trafficking in Persons Protocol*, or *Palermo Protocol*, is the first international legal instrument defining State responsibilities to prevent, suppress and punish trafficking in persons.

Article 3 of the *Trafficking in Persons Protocol* defines trafficking in persons as follows:

—...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

The *Trafficking in Persons Protocol* entered into force in December 2003. As of December 2009,

135 States are parties to the *Protocol*. Japan signed the *Protocol* in December 2002, and the Japanese national Diet approved the conclusion of the *Protocol* in June 2005. However, to be able to ratify the *Protocol*, Japan must first become a party to the *United Nations Convention against Transnational Organized Crime* that Japan already signed in December 2000 but has yet to ratify.

The 1989 *Convention on the Rights of the Child (CRC)*, almost universally ratified, provides the main reference for the situation of trafficking in children under the age of 18. In addition, the 2000 *Optional Protocol to the Convention on the Rights of the Child (CRC) on the Sale of Children, Child Prostitution and Child Pornography*, is particularly relevant in combating child trafficking for the purpose of commercial sexual exploitation. Article 10 of the *Optional Protocol* provides that States must ~~take~~ all necessary steps to strengthen international cooperation by multilateral, regional, and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.” As of December 2009, 135 States are parties to the *Optional Protocol*. Japan signed the *Optional Protocol* in May 2002, and ratified it in January 2005

3. Japanese Government Policy and Legislative Responses

Recognizing that trafficking in persons was becoming a major issue, in April 2004 the Government of Japan established the ~~Inter~~-Ministerial Liaison Committee of Relevant Ministries for Developing Measures against Human Trafficking” in the Prime Minister’s Office. The members of the Inter-Ministerial Liaison Committee are the Cabinet Secretariat, the Cabinet Office, the National Police Agency, the Ministry of Justice, the Ministry of Foreign Affairs, and the Ministry of Health, Labour and Welfare, with the latest addition of the Ministry of Education, Culture, Sports, Science and Technology in 2008.

3-1. National Action Plan

The “National Action Plan for Implementing Measures against Human Trafficking” (Government of Japan 2004) was adopted by the Inter-Ministerial Liaison Committee and then approved in the Cabinet Meeting on Anti-Crime Measures in December 2004. This comprehensive national policy has three pillars: prevention of human trafficking; prosecution and punishment of those who commit the crime; and protection of victims.

With a view to ratify the *Trafficking in Persons Protocol* in the future, the Government of Japan started reforming the domestic legal system in 2005, developing or amending the necessary laws.

3-2. Legal Reform in Japan

In order to newly establish the crime of trafficking in persons in Japan, the *Penal Code* was amended in June 2005. It now directly criminalizes (1) the buying or selling of persons, (2) kidnapping for the purpose of harming body or life, (3) transporting, transferring and harbouring victims of kidnapping, abduction, buying or selling, and (4) kidnapping, abduction and buying or selling with the aim of transfer overseas. It has raised the statutory penalty for trafficking in persons to up to 10-years imprisonment.

An amendment to the *Law for Punishment of Organized Crimes, Control of Crime Proceeds and Other Matters* was also made in June 2005, in order to designate trafficking in persons as a crime to be covered as predicate offenses for money laundering. In November of the same year, the *Law on Control and Improvement of Amusement Businesses* was amended in order to inhibit illicit work by requiring the owners of amusement and sex-related businesses to verify the immigration status of foreign employees at the time of their recruitment.

In addition, in order to give a special permission of residence to a trafficked victim for the purpose of protection, the *Immigration Control and Refugee Recognition Act* was amended in June 2005. It also facilitates the prosecution and punishment of traffickers for procuring, providing or possessing a fraudulent foreign passport for illegal entry into Japan.

In spite of the above legal reforms in Japan, as of January 2010 Japan has not yet ratified the

United Nations Convention against Transnational Organized Crime, nor its Trafficking in Persons Protocol.

3-3. Civil Society Advocacy

In Japan, there is a network of NGOs, academics and lawyers for the purpose of combating human trafficking. This NGO network, the ~~J~~apan Network against Trafficking in Persons (JNATIP),” tries to consolidate civil society efforts to combat human trafficking, and engage in joint advocacy for policy and legislative changes (JNATIP 2004; Yoshida 2007).

JNATIP was launched at an international workshop for the adoption of an anti-trafficking law in October 2003. In order to eliminate trafficking in persons in Japan, JNATIP advocates an independent anti-trafficking law for Japan.

4. Prosecution & Punishment of Human Trafficking in Japan

The National Police Agency (NPA) is responsible for the crackdown of human trafficking cases. Both the number of cases and the number of arrested persons reached a peak in 2005 when the *Penal Code* was amended.

Trafficking Cases Identified by NPA

Year	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	Total
Cases	64	44	51	79	81	72	40	36	467
Arrested Persons	40	28	41	58	83	78	41	33	402
Victims Protected	65	55	83	77	117	58	43	36	534

Source: National Police Agency (2009)

Among those who were arrested, Japanese offenders were mostly men, while foreign offenders

were predominantly women. In 2007, 15 out of 17 foreign offenders were women. Also in 2008, 15 out of 16 foreign offenders were women, almost all of whom were spouses of Japanese nationals.

After the *Penal Code* was amended in June 2005, the number of prosecutions for buying or selling persons was 34, as of December 2007. Among them, 24 offenders were actually convicted for the buying or selling of persons, and 16 of those were sentenced to imprisonment without suspension of execution of sentence. The most severe punishment was an imprisonment sentence of 5 years and 6 months, while the mildest was 2 years and 6 months.

5. Protection of Trafficked Victims

In order to help trafficked victims seek assistance at Japanese Immigration Offices or foreign embassies in Japan, the Government of Japan has produced a leaflet in 9 languages. The leaflet is widely distributed at international airports throughout Japan.

The NPA introduced an “Anonymous Reporting Project” in October 2007 allowing citizens to call toll-free (0120-924-839) a private organization entrusted by the NPA in order to provide information on human trafficking. From July 2009, in addition to the anonymous telephone line, citizens are now able send information to the organization through the Internet (<http://www.tokumei.or.jp>). This “Anonymous Reporting Project” is intended to identify cases that tend to remain underground. From October 2007 to October 2009, a total of 1,231 cases were reported, leading to 11 arrests.

5-1. Victims of Trafficking Protected by the National Police Agency (NPA)

As shown in the above table, 534 trafficked victims were protected by the NPA from 2001 to 2008. The major countries or territories of origin were Thailand (194), the Philippines (126), Indonesia (76), Colombia (58) and Taiwan (46), totalling 500. These are then followed by the Republic of Korea (10), China (9), Romania (4), Japan (3), Russia (2), Cambodia (2) and others.

In 2007, the majority of trafficked victims came from the Philippines, 22 out of the total of 43. However, in 2008, half of the victims came from Thailand (18), while there was a significant reduction in trafficked victims from the Philippines from 22 to 7. This change can be explained by a review of the criteria for the residence status of “~~entertainer~~” since March 2005, as will be explained below.

5-2. Victims of Trafficking Protected by Women’s Consulting Offices (WCO)

A Women’s Consulting Office (WCO) is a public shelter where victims of domestic violence can receive food, clothing and medical/psychological treatment. There are 47 WCOs throughout Japan. The Ministry of Health, Labour and Welfare started using WCOs for victims of domestic violence since the *Law for the Prevention of Spousal Violence and the Protection of Victims* was enacted in 2001. Now, WCOs also function to accommodate trafficked victims. From 2001 to 2006, a total of 186 trafficked victims were protected at WCOs, reaching a peak in 2005.

Victims Protected at WCOs

Fiscal Year	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	TOTAL
Victims Protected	1	2	6	24	117	36	186

In April 2005, the Ministry of Health, Labour and Welfare started subsidizing private shelters in order to respond to the overwhelming demand for shelters. In 2004, there were 50 private shelters commissioned by local governments in Japan. During the period of FY2005 and FY2006, the Ministry subsidized 54 trafficked victims out of 147.

5-3. Protection by NGOs

In Japan, trafficking in persons is not a new problem, and some civil society organizations have been trying to address the issue, although the Government of Japan has not paid attention to it until

recently. For example, the “House in Emergency of Love and Peace (HELP)” is a private shelter established in 1986 by the Japan Christian Women’s Organization (*Seifu-kai*). In addition to victims of trafficking, HELP is protecting more and more foreign women married to Japanese men, seeking protection from domestic violence (Takahashi 2004).

5-4. Recognition of Trafficked Persons as Victims

As discussed above, after the 2005 amendment of the *Immigration Control and Refugee Recognition Act*, a trafficked victim may be given a special permission of residence for the purpose of protection. A trafficked victim is also exempted from some of the landing refusal grounds and deportation grounds. The Immigration Bureau granted special permissions of residence to 47 trafficked victims in 2005 and 27 victims in 2006.

5-5. Repatriation Assistance to Victims

Repatriation assistance to victims of trafficking is provided by the International Organization for Migration (IOM). For IOM repatriation assistance, the Government of Japan funded US\$ 222,000 in 2005, US\$ 322,000 in 2006, and US\$ 300,000 in 2007. By the end of March 2008, 129 victims of trafficking had been assisted in their return to their home countries and then given support for social integration there.

6. Prevention of Trafficking in Persons in Japan

The residence status of “entertainer” had been frequently abused for the purpose of trafficking in persons. In order to prevent such abuse, several measures have been taken. As a consequence, the number of foreigners entering Japan with “entertainer” visas dropped from 135,000 in 2004 to 48,000 in 2006.

Since March 2005, the criteria of the landing permit have been reviewed. An amendment to the

Ministerial Ordinance of the Ministry of Justice in 2006 has strengthened the disqualification standard for the operators of inviting organizations. It has also required a minimum salary (JPY 200,000 per month) on their contracts with entertainers. In accordance with the revision of the ordinance, Japanese embassies and consulates-general abroad have also strengthened the regime for examining ~~entertainer~~ visa applications.

In spite of these efforts, according to newspaper reports in December 2009, an officer at the Japanese consulate-general in Manila and an officer at the Tokyo Regional Immigration Bureau have been investigated for alleged corruption in facilitating Filipino women to enter into Japan illegally (*The Asahi Newspaper* 1-5 December 2009).

7. Promotion of International Cooperation

All efforts to combat trafficking in persons need to be coordinated not only at the country level, but also at the regional and global levels. At the global level, the United Nations offers a forum for cooperation. At the regional level, the Bali Process provides a platform for cooperation, particularly for Asia-Pacific countries. In addition, the bilateral relationship with the United States has been very important for Japan.

7-1. United Nations

The United Nations Office on Drugs and Crime (UNODC) issued its *Global Report on Trafficking in Persons* in February 2009, based on data gathered from 155 countries (UNODC 2009). It is the first global assessment of the situation of human trafficking by the United Nations, while the United States has been publishing its *Trafficking in Persons (TIP) Report* since 2001, as described below, and its *TIP Report 2009*, which covers 175 countries, also provides a very comprehensive assessment of the situation (United States 2009).

The ~~Special~~ Rapporteur of the United Nations on Trafficking in Persons, Especially Women and

Children” was established in April 2004. The Special Rapporteur visits various countries of concern and reviews the situation of trafficking in persons, and then reports the results to the UN Human Rights Council. The current mandate holder is Ms. Joy Ngozi Ezeilo, who has produced reports to be submitted to the UN Human Rights Council and the General Assembly (Ezeilo 2009a; 2009b).

For policy guidance on combating human trafficking, UN High Commissioner for Human Rights (UNHCHR) issued the ~~Recommended~~ Principles and Guidelines on Human Rights and Human Trafficking” in 2002, providing a practical, rights-based approach to policy guidance on the prevention of trafficking and the protection of trafficked persons (UNHCHR 2002). As part of the Global Initiative to Fight Human Trafficking (UN.GIFT), the UNODC and the Inter-Parliamentary Union (IPU) jointly published *A Handbook for Parliamentarians* so that policymakers could be guided in taking concrete actions (UNODC & IPU 2009).

The Government of Japan accepted Ms. Ezeilo’s visit to the country from 12 to 17 July 2009. She raised some issues of immediate concern after her visit, including the following: (1) non-ratification of the *Trafficking in Persons Protocol*; (2) lack of comprehensive definition of trafficking in the national legislation; (3) inappropriate shelters for victims of trafficking; (4) abuses within the trainees and technical interns programs, among others (United Nations 2009).

Based on Ms. Ezeilo’s report on her visit to Japan, it is expected that the situation of human trafficking in Japan will be discussed at the UN Human Rights Council, leading to some formal UN recommendations for Japan.

7-2. Regional Cooperation in Asia-Pacific

The Bali Process is about regional cooperation among the governments of the Asia-Pacific region (43 countries), with the participation of 18 observer countries and 12 observer international organizations. The Process began in Bali in February 2002, and it has been supported with major funding from Japan, Australia, New Zealand and the United States.

The Bali Process, with its Regional Ministerial Conferences (February 2002, April 2003, April 2009), is providing a platform for regional cooperation to combat trafficking in persons and smuggling. Therefore, all bilateral cooperation efforts should be integrated into the regional process so that more effective implementation can be utilized to combat this transnational problem.

7-3. The United States and its TIP Report

The U.S. Department of State has been publishing its *Trafficking in Persons (TIP) Report* annually since 2001. In July 2004, *TIP Report 2004* was released, in which Japan was classified in the Tier 2 “Watch List” (United States 2004). The Report states, “The Government of Japan does not fully comply with the minimum standards for the elimination of trafficking... Japan lacks a comprehensive law against trafficking... Over the past year, the Japanese government offered victims of sexual slavery little in the way of legal advice, psychological or financial support. Generally, victims were deported as illegal aliens.”

This was a “wake-up call” to the Government of Japan. Consequently, Japan has since been taking concrete measures, based on its comprehensive national policy, to combat trafficking in persons in the country. As discussed above, “Japan’s Inter-Ministerial Liaison Committee of Relevant Ministries for Developing Measures against Human Trafficking” adopted the “National Action Plan for Implementing Measures against Human Trafficking” in December 2004.

Conclusion

Human trafficking is a serious problem in Japan, but its magnitude is still under-estimated due to the limited availability of data. The problem of human trafficking is not widely known among citizens in Japan yet. In this sense, the approval of the 2004 National Action Plan of Japan in the Cabinet Meeting on Anti-Crime Measures was more a response from Japan to the multilateral cooperation at the global and regional levels, as well as to the bilateral policy dialogues with the

United States. The civil society advocacy in Japan needs to be strengthened in order to promote public awareness and to encourage the Government so that further actions will be taken.

The National Action Plan, accompanied by its relevant legal reform, has been implemented in three areas: prosecution, protection and prevention, bringing about some positive changes. However, the current efforts have more emphasis on the prosecution and punishment of those who are responsible for trafficking in persons. On the other hand, the identification and protection of trafficked victims is still under-invested and needs to be strengthened, in partnership with local governments and civil society organizations.

For prevention, international cooperation is indispensable, as trafficking in persons is often a transnational problem. More efforts should be made to promote international cooperation at the global and regional levels. The demand in destination countries and the supply in sending countries are mostly intermediated by transnational organized crime groups with their local affiliates. Concerted efforts at the global and regional levels need to be focused on the fight against transnational organized crime that is increasingly funded by trafficking in persons, in addition to drug trafficking.

Acknowledgement

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**Human Migration in East Asia:
Human Trafficking of North Korean Women in China**

Yoojin Rhee, Ph.D.¹

Introduction: Situation

A non-traditional security challenge in the East Asian region today, particularly for Northeast Asia, is human trafficking, especially the trafficking of women across international borders. Human trafficking is one of the fastest growing criminal activities in the world, and results in serious breaches of human rights and harms the dignity of trafficked persons.² This paper will focus on the trafficking of North Korean women in China for forced marriage and sexual exploitation by taking advantage of their unstable status in China. In the discussion below, I look at the human trafficking of North Korean refugees as it relates to the human migration issue in East Asia. Unlike studies regarding North Korean refugees as a mainly human rights issue, I will approach this issue as a human trafficking issue, since China will be less offended by a human trafficking approach than by a human rights approach toward North Korean refugees residing in China. UNHCR and many NGOs have approached the North Korean issue as a human rights issue, which has caused China to react sensitively without showing improvements. Chinese authorities continue to limit access to North Korean refugees in China by the UN High Commissioner for Refugees (UNHCR). The lack of access to UNHCR assistance and the constant fear of forced repatriation by Chinese authorities have left North Korean refugees even more vulnerable to human traffickers.³

Furthermore, in the year leading up to the 2008 Beijing Summer Olympic Games, Chinese authorities stepped up efforts to locate and forcibly repatriate North Korean refugees in

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² Report submitted by the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo (20 February 2009) (A/HRC/10/16), p. 5.

³ U.S. Department of State, *Trafficking in Persons Report 2009, Country Narratives*, China

China—including trafficking victims—in violation of their commitments on the humane treatment of refugees under international law. China continues to treat North Korean trafficking victims solely as illegal economic migrants and reportedly deports a few hundred of them each month to North Korea, where they may face severe punishment.

Human trafficking in general

In general, experts caution that trafficking data is rough and hard to gauge because of its underground nature. The International Labor Organization (ILO) estimates that at least 2.45 million trafficking victims are currently toiling in exploitative conditions, and that another 1.2 million are trafficked annually, both across and within national borders. The US Department of State numbers are similar: between 600,000 and 800,000 women, men and children are trafficked across international borders each year—mostly for the purposes of commercial sexual exploitation. Of these, the majority—up to 80 per cent—are women and girls. Up to 50 per cent are children.

Trafficked women are usually forced into prostitution and sex tourism, commercial marriages and other “female” occupations such as domestic work, sweatshops and agricultural labor. Human trafficking is the third most lucrative illicit business in the world after arms and drug trafficking and is a major source of organized crime revenue. The industry generates an estimated US\$7 to \$12 billion annually—although real numbers are difficult to obtain. These numbers, however, reflect only profits from the initial sale of victims. The ILO estimates that once victims are in the destination country, traffickers net an additional US\$32 billion a year—half generated in industrialized countries and almost one third in Asia.⁴

Human trafficking in China

China is a destination country for women and children who are trafficked from Mongolia, Burma, North Korea, Russia, Vietnam, Ukraine, and Laos for sexual and labor exploitation. Most women

⁴ http://www.unfpa.org/swp/2006/english/chapter_3/index.html

and girls are trafficked from North Korea, Vietnam, Russia, and Burma. While there are no reliable estimates on the number of trafficking victims in China, the Vietnamese authorities reported that 167 Vietnamese women and children were rescued from traffickers in China.⁵

Human trafficking of North Koreans in China

Many North Koreans voluntarily migrate to work in China, but are later coerced into exploitative conditions. North Korean women are often sold into forced marriages with Chinese nationals, or forced to work in the highly exploitative sex industry, including as prostitutes in brothels and in internet sex businesses.

The most common form of trafficking involves North Korean women and girls subjected to involuntary servitude after willingly crossing the border into the People's Republic of China (PRC). Many of them are from North Hamgyong Province, one of the poorest provinces in the country, located near the Chinese border. Once in China, they are picked up by traffickers and sold as brides to PRC nationals, often of Korean ethnicity. In other cases, North Korean women and girls are lured out of North Korea to escape poor economic, social, and political conditions by the promise of food, jobs, and freedom, only to be forced into prostitution, marriage, or exploitative labor arrangements once in China.

North Koreans trafficked into or within the PRC are often passed from one trafficker to the next until they reach their ultimate destinations. In some cases, women and girls may be sold to traffickers by their families or acquaintances. Women sold as brides are sometimes re-abducted by the traffickers or are sold by husbands who no longer want them. In some cases, North Korean women are sold multiple times to different men by the same trafficker.⁶

1. China, regional groups, the UN's role and their work on human trafficking

⁵ <http://www.humantrafficking.org/countries/china/>

⁶ U.S. Department of State, *Trafficking in Persons Report 2009, Country Narratives*, North Korea.

1) China

China is a leading global source of international migration, with as many as 33 million ethnic Chinese living abroad. Rural-urban migration has caused some of this migration. China's economic growth has resulted in attempts by Beijing to attract skilled foreign workers and Chinese students who have been educated abroad. There is also more undocumented migration (largely from the DPRK and Viet Nam) and an increasing amount of international travel by Chinese citizens. The Chinese government is developing policies to further manage immigration and emigration, and is engaging more frequently in international dialogue regarding migration. These changes will improve the welfare of Chinese migrants.⁷

On December 13, 2007, the Government of China agreed upon the China National Plan of Action on Combating Trafficking in Women and Children (2008-2012). The Plan of Action has been developed in order to effectively prevent and severely combat the criminal activities of trafficking in women and children, actively provide assistance and give appropriate aftercare to rescued women and children, and finally, to earnestly safeguard the legal rights and interests of women and children.

2) The UN's work on human trafficking

UN work includes UN General Assembly resolutions, reports by the United Nations Secretary-General, the Working Group on Contemporary Forms of Slavery of the former Human Rights Commission, and the establishment and reports of the Special Rapporteurs of the Commission on Human Rights on the Trafficking of Persons, on the Rights of Migrant Workers, and on Violence Against Women.

UN Specialized Agencies

⁷ Van Arsdol, Maurice D., Jr., Stephen Lam, Brian Etkin and Glenn Guarin, "Population Trends and Migration Patterns in Northeast Asia," in Tsuneo Akaha and Anna Vassilieva eds., *Crossing National Borders: Human Migration Issues in Northeast Asia*, United Nations University Press, November 2005, p. 27.

The UNDP, in its 2009 Human Development Report on migration, asserts that trafficking is associated with restrictions on human freedom and violations of basic human rights. The UNDP also acknowledges that human trafficking not only adversely affects individuals but can also undermine respect for whole groups.

In his 2002 report *Strengthening of the United Nations: An Agenda for Further Change*, Kofi Annan, former Secretary-General of the United Nations, called for a comprehensive examination of the different dimensions of migration, as well as the causes of population movements and their impact on development.

UN Specialized agencies such as the United Nations Population Fund (UNFPA), the United Nations Inter-Agency Project on Human Trafficking (UNIAP), the International Organization for Migration (IOM) and UNHCR, amongst others, are continuously engaged in the work of preventing the trafficking of women and girls and assisting victims.

The United Nations Population Fund (UNFPA) participates actively in the United Nations Inter-Agency Project on Human Trafficking (UNIAP). The Fund undertakes many activities to help prevent the trafficking of women and girls and to assist victims. For example, the Reproductive Health Initiative for Youth in Asia (RHIYA), a partnership of the European Union and UNFPA, works in collaboration with NGOs in a number of high-risk impoverished areas in Nepal to keep girls safe from trafficking.⁸ UNFPA also published the 2006 edition of the State of the World Population focusing on women and international migration and showed how women can both benefit from migration and be subject to discrimination and abuse when migrating. The report examined the impact of female labor migration on source and destination countries and addressed, *inter alia*, issues of empowerment and risks, including human trafficking; and the social and economic implications of female migration, including disruption of families on the one hand and the benefits of remittances on the other.⁹

⁸ United Nations Populations Fund, "Policy and Programme work of UNFPA on International Migration," p. 1.

⁹ United Nations Population Fund, *State of the World Population 2006: A Passage of Hope-Women and International Migration* (New York: United Nations Population Fund, 2006)

UNGA and conferences

The UN has constantly worked on the human trafficking issue, especially trafficking in women. On 24 February 1995, the UN General Assembly (GA) adopted the Traffic in Women and Girls (A/RES/49/166). In November 2000, to stop human trafficking, the UNGA adopted the first legally binding resolution toward transnational organized crimes, the United Nations Convention against Transnational Organized Crime (A/RES/55/25). This resolution aims to act as an effective tool and as the necessary legal framework for international cooperation in response to criminal activities. At the same time, the GA adopted the UN Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. This UN Convention marked the first time the UN had declared human trafficking as an international crime.

On January 25, 2002, the Commission on Human Rights, under the Economic and Social Council, adopted the Report of the Secretary-General entitled Integration of the Human Rights of Women and the Gender Perspective: Traffic in Women and Girls (E/CN.4/2002/80). Two years later, in 2004, "Trafficking in Women and Girls: Report of the Secretary-General" (A/59/185) was adopted. In 2005, the General Assembly Resolution adopted the Report of the Third Committee on the Trafficking in Women and Girls (A/RES/59/166).

UN conferences have also included human trafficking issues. The World Conference on Human Rights adopted its Report of the World Conference on Human Rights (A/CONF.157/24 (Part 1)) in Vienna, Austria in June 1993. In 1994, the International Conference on Population and Development discussed the human trafficking issue, and in September 1995 in China, the Beijing Declaration and Platform for Action was adopted at the Fourth World Conference on Women (DPI/1766/Wom).

3) Regional coalition

In 2002, at *the Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime*, ministers from various countries acknowledged that trafficking was creating political, economic and social security challenges and called for measures to address the issue cooperatively and comprehensively. The Bali Process follow-up has worked on practical measures to help combat people smuggling, trafficking in persons and related transnational crimes in the Asia-Pacific region and beyond.¹⁰

Under the Bali process, the monitoring and implementation of related activities and initiatives in areas including the trafficking in persons are guided by a steering group composed of the governments of East Asia, the International Organization for Migration (IOM) and UNCHR.

2. Retrospect and Examination

What is the real problem? For the past few years, the issue of trafficked North Korean women has been raised. Now is the time for us to evaluate whether the situation has been improved or has become worse.

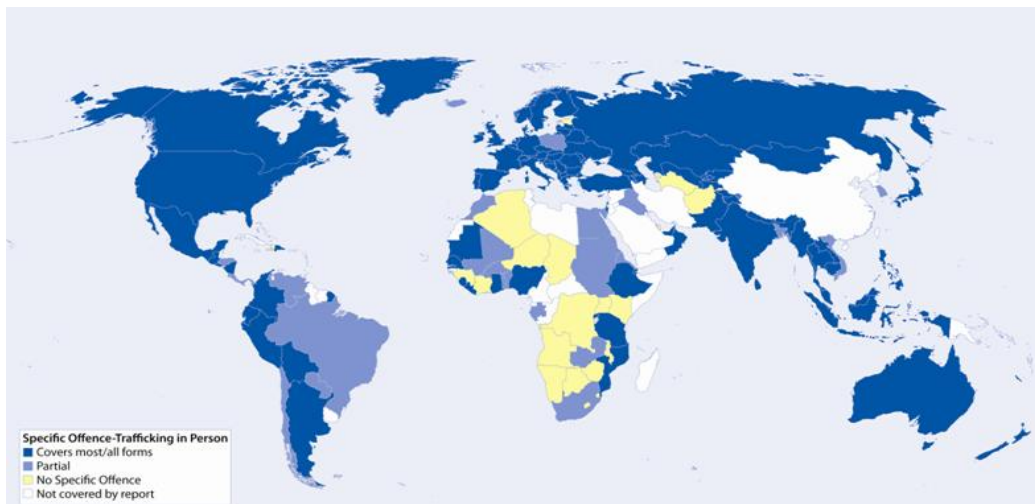
1) Lack of international awareness and cooperation in fighting human trafficking in general and in respect to North Korea

In the absence of systematic, reliable statistics on human trafficking, it is hard to know with any degree of precision whether the number of trafficking cases is increasing or decreasing or why these trends are occurring. Therefore, some governments indicate that trafficking is “huge and serious” while others believe that it is “declining.”

In the work of the specialized UN agencies, the North Korean human trafficking issue is not covered and is not receiving attention, and this lack of attention causes relevant work to be marginalized. To what degree is the North Korean issue taken up among the UN agencies with

¹⁰ <http://www.baliprocess.net/>

projects related to human trafficking? Chinese and North Korean cases were not covered by this year's *Global Report on the Trafficking in Persons* by the UN Office on Drugs and Crimes (UNODC).



Source: UN Office on Drugs and Crimes (UNODC), *Global Report on the Trafficking in Persons*

2) Active work on the North Korean women trafficking issue by UN treaty-based bodies

On February 2003, the Special Rapporteur on violence against women, Ms. Radhika Coomaraswamy criticized North Korea on the reservation to the Convention including the North Korean women trafficking issue in her report. The Special Rapporteur noted that there have been reports of trafficking in women and girls from North Korea, but that there is no specific law addressing trafficking. Furthermore, the Special Rapporteur said that North Korean women who try to leave the country are deceived by smugglers into thinking that they are being helped, but are often sold as brides or prostitutes in China, some women being sold by their families, and many enduring sexual and physical abuse.¹¹ Regarding the report, North Korea commented that the trafficking in women is prohibited by both law and practice, and most of the border-transgressors voluntarily return to their native places as the food situation gradually improves as a result of the

¹¹ *Report of the Special Rapporteur, Issues of concern 966* (27 Feb 2003) (E/CN.4/2003/75/Add.1)

active measures taken by the Government of the DPRK to increase agricultural production and generous assistance provided by international aid agencies.

3) The actual human trafficking situation of North Korean women in China is revealed and is being publicized

The 64-page report, *Lives for Sale: Personal Accounts of Women Fleeing North Korea to China*, published in April 2009, verifies the newly emerged fact that, contrary to stereotypes, most of the North Korean women in China are not trafficked into sexual slavery. More often they are trafficked into forced marriages. To find this result, the Committee for Human Rights in North Korea conducted in-depth interviews with 53 North Korean women defectors to China.¹²

Many of these women reported that they ended up in the hands of brokers who collect fees for peddling them to the “boarding houses” of China’s sex trade or sell them into forced marriages,” in which they have no legal standing and function as virtual slaves. “Lives for Sale” includes a price list of amounts paid in 2005 for such “wives,” with the price for a North Korean woman for life ranging from about 2000 Chinese Renminbi (then \$257) to upward of 8000 Renminbi (\$1,027).¹³

Further, according to victims interviewed in 2007 by RFA’s Korean service, North Korean women aged 17 to 40 are trafficked in China, and the men who buy them are Chinese nationals between the ages of 37 and 58.

North Korean women said they were being sold in China for between 2,000 Renminbi (US\$260) and 20,000 Renminbi (US\$2,600), depending on their age and appearance. The traffickers, mostly ethnic Korean Chinese citizens, operate a well-defined hierarchy and division of labor; there are ‘merchandise’ scouts, distributors, brokers, and transporters.¹⁴

¹² *Lives for Sale: Personal Accounts of Women Fleeing North Korea to China* (April 2009)

¹³ *Lives for Sale: Personal Accounts of Women Fleeing North Korea to China* (April 2009)

¹⁴ RFA’s Korean service, 2007

4) China's unwillingness to help North Koreans: China's internal matter

The illegal status of North Koreans in the PRC and other Southeast Asian countries increases their vulnerability to trafficking for purposes of forced labor and sexual exploitation.¹⁵ The Chinese government continues to treat North Korean trafficking victims as unlawful economic migrants, and routinely deports them back to horrendous conditions in North Korea.¹⁶

Despite being a party to the Refugee Convention and Protocol, China has not allowed UN agencies, in particular UNHCR, to have access to North Koreans who are residing in China because it views these individuals as economic migrants (rather than political refugees) who cross the border illegally, primarily in search of food.

In 1995, UNHCR established an office in Beijing under an agreement with China. During visits to northeast China in the late 1990s, UNHCR determined that some of the newly arrived North Koreans were refugees. But China saw the problem as an internal matter and subsequently prohibited UNHCR from all direct access to the border. The Chinese are suspicious of UNHCR's intentions and have prevented aid agencies from entering the region to monitor the situation and possibly set up refugee camps. Although it continues to push its case for access, UNHCR cannot provide assistance to the refugees in an open, transparent manner. First-hand information is not available to UNHCR, which relies heavily on those "working on the ground." UNHCR officials worked behind the scenes with Chinese officials to assist with the challenges posed by refugees and asylum seekers and believe this is the most productive way forward.¹⁷

5) China facing several dilemmas at once

The continuing influx of North Korean refugees is pushing Beijing to address the current situation in a more straightforward manner – but this will not be an easy matter. Beijing naturally wants to maintain its increasing economic ties with Seoul, now its third-largest trading partner. At the same

¹⁵ U.S. Department of State, *Trafficking in Persons Report 2009, Country Narratives, North Korea*

¹⁶ U.S. Department of State, *Trafficking in Persons Report 2009, Country Narratives, China*

¹⁷ Rhoda Margesson, Emma Chanlett-Avery & Andorra Bruno, "North Korean Refugees in China and Human Rights Issues: International Response and U.S. Policy Options," *CRS Report for Congress*, (September 26, 2007), pp. 14-15.

time, while Beijing wants to prove its respect for human rights to the international community, it does not wish to damage its alliance with Pyongyang, with which it shares a mutual security pact. China has enough social woes of its own, and does not need any additional, externally-imposed burdens. Under the circumstances, Beijing will not welcome another source of strain by having to deal with a massive influx of famished people from its neighboring country. Beijing is therefore faced with several dilemmas at once. China obviously wishes the North Korean refugee problem would simply go away, but the issue has grown too big to ignore.¹⁸

6) China's Initiative- sustainable and trustful?

Additional challenges facing the Chinese government include the enormous size of its trafficking problem, and the complicity in trafficking by some corrupt local government officials. Factors that continue to impede progress in anti-trafficking efforts include tight controls over civil society organizations, restricted access for foreign anti-trafficking organizations and the government's systemic lack of transparency.¹⁹

To this end, China has implemented the National Plan of Action on Combating Trafficking in Women and Children (2008-2012), in which China evaluates the situation by stating that remarkable achievements have been achieved under the leadership of various levels of the government, as well as through the concerted efforts of relevant agencies, various spheres of society, and practical and effective international cooperation.²⁰

However, there has been no specific research or evaluation to verify this claim. China lacks the resources necessary for carrying out on-going projects for the NPA.

7) Lack of coalition between Southeast Asia and Northeast Asia on Human Trafficking

¹⁸ Mikyung Kim, "Political Construction of Human Rights: With a Focus on North Korean Refugees in China," Paper presented at the annual meeting of the American Political Science Association, Aug 30, 2007.

¹⁹ U.S. Department of State, *Trafficking in Persons Report 2009, Country Narratives, China*

²⁰ China National Plan of Action on Combating Trafficking in Women and Children (2008-2012) Issued by the State Council of China, December 13, 2007, p. 2.

Until now, international society has focused on the human trafficking situation in Southeast and South Asia foremost among Asian countries.²¹ According to the United Nations Population Fund's, *State of the World Population 2006*, Southeast Asia and South Asia are home to the largest numbers of internationally trafficked persons, at an estimated 225,000 and 150,000 persons, respectively. In Asia, the largest numbers of women trafficked are said to be within or from these regions. The Greater Mekong region and Indonesia are major trafficking areas. Thailand, in addition to being a destination country, serves as a source and transit hub for other Asian countries, Australia, the United States and Western Europe. India and Pakistan are major destination countries for trafficked women and girls and are also transit points into the Middle East. In South Asia, child trafficking is of particular concern, considered to be "an extension of a serious child labour problem," which includes the exploitation of girls for domestic work.²²

3. Suggestions: The Roles of States, Regional Organizations, and the United Nations

1) The family/group approach toward North Korean human trafficking

The recently revealed characteristic that North Korean women trafficked into China are more often trafficked into forced marriages²³ differs from the conventional view held by international society regarding human trafficking identification. According to the 2009 UNDP Human Development Report (HDR), the most commonly identified form of human trafficking is sexual exploitation. The UNDP has stated that about 80 percent of cases in the UNODC database are sexual exploitation.²⁴

As a result of these forced marriages, the problem is escalating beyond the limited scope of a family problem for the trafficked person, into larger social issues as children of Chinese nationality are born to North Korean women married in China.

²¹ Migration in the Asia-Pacific region

²² United Nations Population Fund, *State of the World Population 2006: A Passage of Hope-Women and International Migration* (New York: United Nations Population Fund, 2006), Chapter 3.

²³ *Lives for Sale: Personal Accounts of Women Fleeing North Korea to China*, April 2009

²⁴ UNDP, *HDR 2009*, p. 66.

In the case of North Korean human trafficking, therefore, a family/group approach is more preferable than an individual approach. In this case, international society should see the issue as a family and social problem, not only as a personal problem for the trafficked North Korean women.

The real problem here lies within North Korea, the source community of the North Koreans fleeing to China. Although anti-trafficking initiatives have burgeoned in recent years, North Korea has not joined the international community's initiative. In other cases, interventions to reduce vulnerability in source communities, such as awareness campaigns and livelihood projects, have been undertaken. Assistance programs have also provided counseling, legal aid and support for return and re-integration. However, in the case of North Korea, repatriation from China means harsh penalties in a state replete with human instability and fear.

2) The UN's role

The UN may maintain its focus on encouraging and recommending China to focus their attention on strengthening the national legal framework for identification and protection of, and assistance to victims, as well as on the capacity building of relevant law enforcement officials through institutionalized training.

This UN work depends upon sound policies which could bring China to the table to cooperate with international society to fight the human trafficking of North Korean women. Moreover, to further international cooperation in fighting human trafficking worldwide as well as in China, bilateral and regional guidelines and procedures should be developed by states to facilitate cooperation between governments and stakeholders, including international organizations, in the identification and provision of direct assistance.

3) Human trafficking in China needs China's initiative and a regional coalition

The *Lives for Sale* report stated that China should help by ensuring that marriages between North Korean women and residents of China are consensual rather than coerced, and should legalize

children born to North Korean women married in China as Chinese nationals. Furthermore, the report called on Beijing to prosecute human traffickers and recommended that Beijing use its influence with North Korea to press Pyongyang to treat returning refugees humanely and allow thousands of North Koreans access to asylum screening by the U.N. High Commissioner for Refugees (UNHCR).

China may participate more actively in the Bali Process, in which it holds membership. That could facilitate a regional coalition regarding the human trafficking issue in China. Working multilaterally with international organizations such as the International Organization for Migration (IOM) and UNHCR in the Bali Process will facilitate China's interests and policies on the human trafficking issue.

4) Dividing the Southeast Asia problem and the Northeast Asia problem

To bring the trafficked North Korean women out from the behind the screen, their characteristics which distinguish them from other human trafficking issues should be made clear. Compared to many women in Southeast Asia who are trafficked into sexual slavery, North Korean women in China are more often trafficked into forced marriages, which results in the situation becoming more complex. These issues require longer-term policies in order to be resolved effectively.

Conclusion

This study suggests that the approach to North Korean nationals in China should be framed as a human trafficking issue rather than as a human rights issue. By pursuing the issue from a human trafficking approach, China will be more willing to accept requests from international society and less likely to be offended.

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Sustainable Development in East Asia: What Do the Numbers Say?

Intaek Han¹

1. Sustainable Development: Conceptual Evolution

The notion that balance needs to exist between environmental preservation and economic growth dates back to at least the 1960s and 1970s. The term ‘sustainable development,’ however, spread widely only after it was used by the World Commission on Environment and Development (WCED).² The commission was convened by the United Nations in 1983 in response to growing concerns about “the accelerating deterioration of the human environment and natural resources and the consequences of that deterioration for economic and social development.”³ When used by the Brundtland Commission in its 1987 report, sustainable development mainly referred to development that “meets the needs of the present without compromising the ability of future generations to meet their own needs” and placed emphasis on preserving the environment for future generations while pursuing economic development, consistent with earlier notions about balancing natural preservation and economic progress. While largely about the environment—or more accurately about balancing the environment and economic development during the initial years of its use—sustainable development as a concept subsequently grew in scope. In particular, in 1992, the United Nations Conference on Environment and Development, also known as the Earth Summit, was held in Rio de Janeiro, Brazil, where Agenda 21 was agreed on. Agenda 21 is remarkable in that it was a comprehensive program of action to be taken for sustainable development that was defined quite comprehensively. Specifically, it contained action plans for social welfare, economic development, and environmental preservation. Since then, sustainable development has been

¹ Senior Research Fellow, Jeju Peace Institute.

² The WCED is perhaps better known as the Brundtland Commission named after its chair Gro Harlem Brundtland.

³ http://en.wikipedia.org/wiki/Sustainable_development

understood to consist of three pillars, each of which stands on its own as well as in concert with the other pillars; it builds on ~~inter~~interdependent and mutually reinforcing pillars.”

However, with its scope now wider and more comprehensive, sustainable development as a goal has become more difficult to achieve. It will require either extraordinary effort or luck, or perhaps both, for a country to do well on all three pillars of sustainable development, especially in countries with a large population and limited natural resources like those in East Asia. More often than not, countries do well on one or two pillars but do poorly on the others.

2. Three Pillars of Sustainable Development in East Asia

East Asian countries, especially Japan, South Korea, and China, are legendary for their successful economic development. Few other historic precedents exist for such high economic growth rates over an extended period, like those commonly found in East Asian countries.

Has East Asia also made progress in the areas of social welfare and environmental protection? In other words, where does East Asia stand in terms of sustainable development, as opposed to conventional economic development? Also of importance, how do East Asian countries compare to each other on the three pillars of sustainable development?

These interesting and important questions often go unaddressed.⁴ The purpose of this short presentation is to take stock of East Asian countries' performances in three areas of sustainable development—environmental preservation, economic development, and social development—through some simple statistics. This will not be, and is not intended to be, a systematic and comprehensive review of sustainable development.⁵ Such reviews must be the task of projects larger in scope than this presentation.

⁴ I am not aware of any existing studies that have empirically compared and contrasted East Asian countries with non-East Asian countries and also with one another in terms of sustainable development in the Korean language. Such studies may exist in other languages.

⁵ The selection of statistics is dictated by data availability. Thus, the comparisons made in this presentation are not entirely scientific.

1) The “Environmental” Pillar

The Environmental Sustainability Index (ESI), compiled by the Yale Center for Environmental Law and Policy, Yale University, and the Center for International Earth Science Information Network, Columbia University, is intended to “measure” the ability of countries to protect the environment over the next several decades. To obtain this index, 76 data sets are integrated into 21 indicators, which are then compiled into a composite figure.⁶ The higher a country’s environmental sustainability index, the better its environmental conditions will be into the future.

In the 2005 survey, Finland (75.1), Norway (73.4), Sweden (71.7), Iceland (70.8), and Uruguay (71.8) are ranked as the top five countries (Note: ESI indices are in parentheses). Obviously, these countries are much different from East Asian countries in several important aspects; among them, they all have a low population density. Of the five countries ranked the lowest, two countries are from East Asia: North Korea (29.2) and Taiwan (32.7); the remaining three are Turkmenistan (33.1), Uzbekistan (34.4), and Iraq (33.6). It is hard to find a common denominator for the five lowest-ranking countries. In particular, North Korea and Taiwan have few things in common other than that they both have a high population density and are adjacent to China. In other words, these countries seem to have found themselves in their current state of environmental (in) sustainability for quite different reasons.

Among China, Japan, and South Korea (CJK hereafter), Japan has the highest ESI score (57.3) but ranks only 12th among OECD countries. South Korea is also an OECD country but scores only 43.0, ranking 29th among OECD countries. China has not done well either. It scores 38.6 and is ranked 104th among non-OECD countries. In other words, East Asian countries have performed only modestly (Japan), poorly (South Korea), or very poorly (China, North Korea, and Taiwan) in terms of environmental sustainability.

⁶ The exact process and rationale for calculating this index are beyond the scope of this presentation. We simply use this index to compare and contrast East Asian countries’ standing in sustainable development. For details of this index, visit <http://sedac.ciesin.columbia.edu/es/esi/> where links to the reports and underlying datasets are provided. This presentation is based on the 2005 Environmental Sustainability Index but the 2008 Environmental Sustainability Index is also available from http://www.yale.edu/epi/files/2008EPI_Text.pdf

One of the reasons that CJK score low in terms of the ESI may be that they have a high population density. The following table, from the *2005 Environmental Sustainability Index*, compares only high population density countries. Among such countries, Japan has done very well in environmental sustainability. South Korea, on the other hand, has done rather poorly, and China is somehow not included in the table, probably suggesting that though China has the largest population, its population density is not comparatively high due to its relatively large size.

High Population Density Countries: Countries and territories in which more than half the land area has a population density above 100 persons per square kilometre

Rank	Country	ESI	Rank	Country	ESI	Rank	Country	ESI
1	Japan	57.30	8	Poland	45.00	15	Philippines	42.30
2	Germany	56.90	9	Rwanda	44.80	16	Lebanon	40.50
3	Netherlands	53.70	10	Jamaica	44.70	17	Burundi	40.00
4	Italy	50.10	11	Belgium	44.40	18	Trinidad & Tobago	36.3
5	Sri Lanka	48.5	12	Bangladesh	44.10	19	Haiti	34.80
6	Nepal	47.70	13	El Salvador	43.80	20	Taiwan	32.70
7	India	45.20	14	South Korea	43.00	21	North Korea	29.20

Note: Countries identified using CIESIN's PLACE data set (CIESIN 2003)

Source: *2005 Environmental Sustainability Index*

How have CJK done in comparison with Southeast Asian countries? The following table, also from the *2005 Environmental Sustainability Index*, shows that only Japan ranks higher than ASEAN countries, while South Korea outranks only the Philippines and Viet Nam, and not even by a meaningful margin. China performs poorly, lagging behind the Philippines and Viet Nam by nearly 5 points. In short, East Asia, except for Japan, is doing more poorly than Southeast Asia.

ASEAN Member Countries: Association of Southeast Asian Nations member countries

Rank	Country	ESI	Rank	Country	ESI	Rank	Country	ESI
1	Malaysia	54.0	4	Cambodia	50.1	7	Philippines	42.3
2	Myanmar	52.8	5	Thailand	49.7	8	Viet Nam	42.3
3	Laos	52.4	6	Indonesia	48.8			

Source: *2005 Environmental Sustainability Index*

Lastly, how do CJK do when compared with Latin American countries? The following table from the *2005 Environmental Sustainability Index* shows that Latin American countries vary greatly in the ESI but on the whole, Latin America is doing better, if not significantly better, than East Asia. Again, one important reason for this may be the difference in population density.

OAS Member Countries: Organization of American States member countries

Rank	Country	ESI	Rank	Country	ESI	Rank	Country	ESI
1	Uruguay	71.8	9	Bolivia	59.5	17	Honduras	47.4
2	Canada	64.4	10	Colombia	58.9	18	Mexico	46.2
3	Guyana	62.9	11	Panama	57.7	19	Jamaica	44.7
4	Argentina	62.7	12	Chile	53.6	20	Guatemala	44.0
5	Brazil	62.2	13	United States	52.9	21	El Salvador	43.8
6	Peru	60.4	14	Cuba	52.3	22	Dominican Rep	43.7
7	Paraguay	59.7	15	Nicaragua	50.2	23	Trinidad & Tobago	36.3
8	Costa Rica	59.6	16	Venezuela	48.1	24	Haiti	34.8

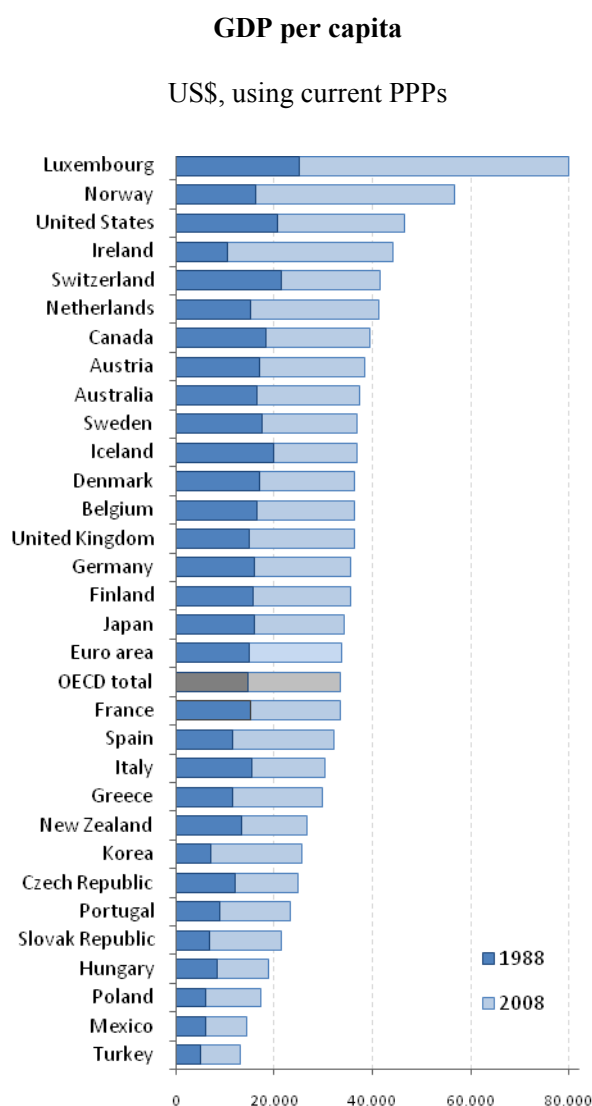
Source: *2005 Environmental Sustainability Index*

All in all, East Asia is not doing well in terms of environmental sustainability. This is disappointing but hardly surprising, as it is not the “environmental” pillar of sustainable development but rather the “economic” pillar that has given the region its fame, to which we now turn.

2) The “Economic” Pillar

That East Asian countries’ performances in environmental sustainability are not stellar is scarcely surprising. After all, East Asian countries have large populations relative to their land size. What’s more, most of them have already industrialized or are currently undergoing rapid industrialization, which is hardly conducive to environmental preservation.

How do East Asian countries do in the area where they are known to perform well—in other words, in terms of economic development? The following chart from the *OECD Factbook 2009* shows that two OECD countries from East Asia—Japan and South Korea—are indeed doing well in relation to other OECD countries even when income is measured in PPP. Luxembourg ranked the highest in 2008 with \$79,800 per head. The average income for the OECD was \$33,400 in 2008 (China is not included because it is not an OECD country.)

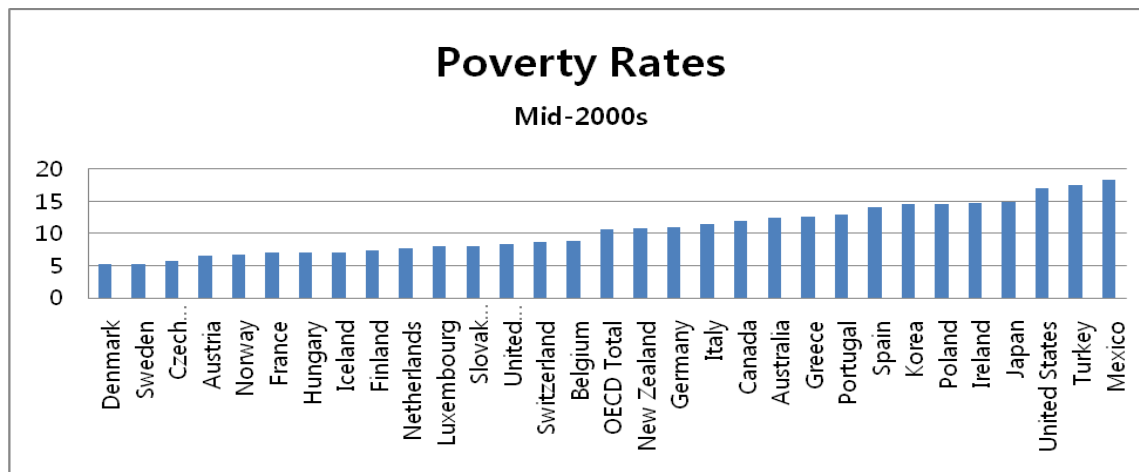


Source: *OECD Factbook 2009*

However, for high per-capita income to contribute to sustainable development envisioned comprehensively, income needs to be distributed in a more or less equitable manner. The following chart, based on *OECD StatExtracts* data, shows that both Japan and South Korea have poverty rates above the OECD average, at about 11% in the mid-2000s.⁷ Among the 30 OECD countries in the

⁷ The poverty rate is the ratio of the number of people who fall below the poverty line to the total population. In the *OECD Factbook 2009*, the poverty line is taken as half the median household income.

chart, Japan has the 4th highest poverty rate (14.9%) and South Korea the 7th highest (14.6%). This is a rather surprising finding, since Japan and South Korea are commonly assumed to have grown both rapidly and equitably. Recent income statistics, however, suggest that such assumptions need to be revisited.

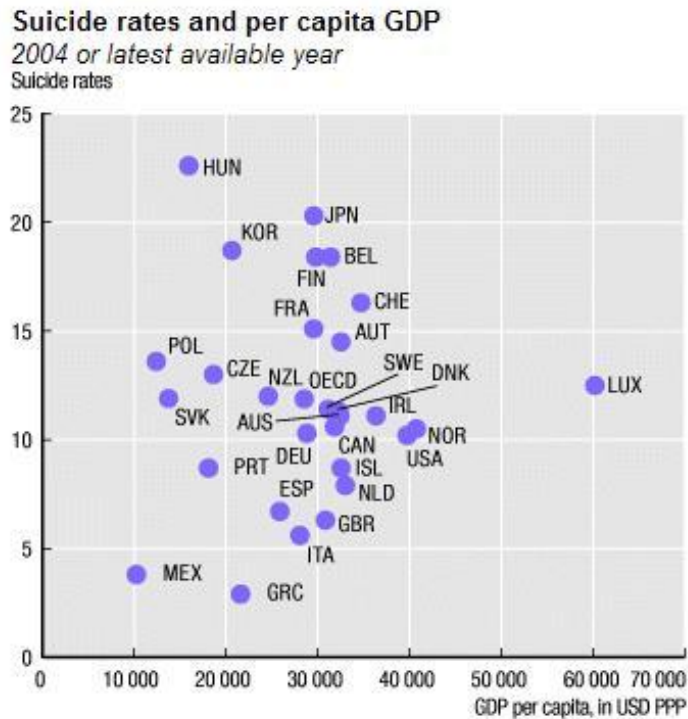


Source: *OECD StatExtracts*

3) The “Social” Pillar

Discussions of sustainable development presuppose the existence of future generations. Because the existence of future generations is taken as given, environmental preservation is called for. However, recent developments in Japan and South Korea, and to a lesser extent in China, challenge such a presumption. The following chart, also from the *OECD Factbook 2009*, shows us two things: firstly, suicide rates are very high in Japan and South Korea (in fact, only Hungary has a higher suicide rate than Japan or South Korea); secondly, economic development, measured as per-capita GDP, and suicide rates are positively correlated (although admittedly, correlation does not necessarily imply causation). Therefore, this chart may or may not suggest that suicide rates increase as the economy develops. What the chart unambiguously indicates is that suicide rates in Japan and South Korea are far higher than other countries at similar levels of per-capita income. South Korea is similar to the Czech Republic and Greece in terms of per-capita GDP but its suicide

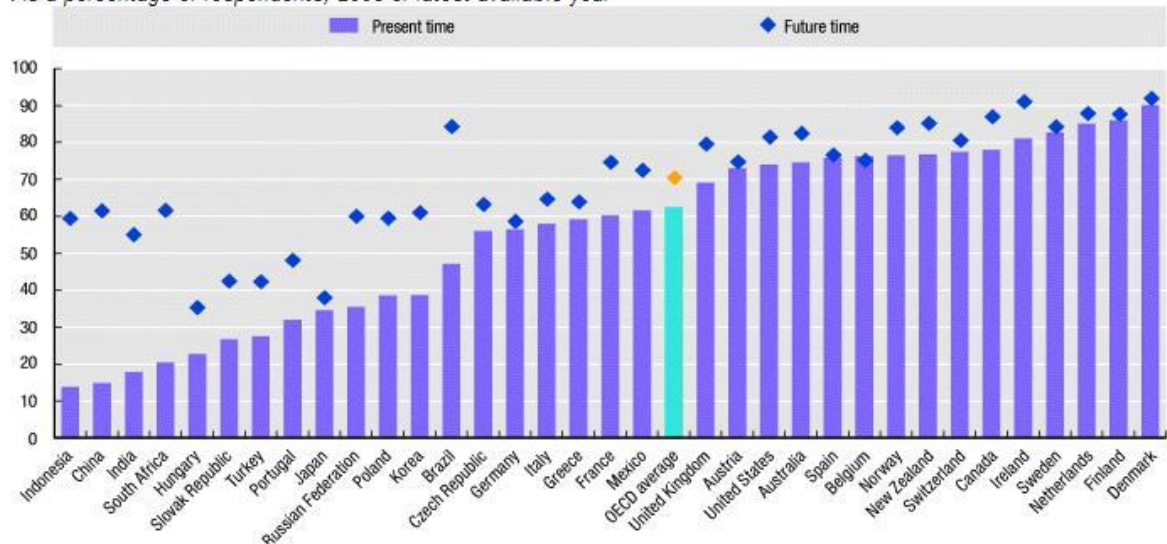
rate is far higher than that of the Czech Republic or Greece. Likewise, Japan shows similarities to Belgium, Finland, France, and Great Britain in terms of per-capita GDP, but it has the highest suicide rate among the five.



Source: *OECD Factbook 2009*

Suicides are detrimental to social stability and the negative impact on social development; however it may be defined, is clear. The important question becomes: Why do people commit suicide? One of the immediate causes must be dissatisfaction with life (the more fundamental question of why people feel dissatisfied is not addressed here). The following chart shows that persons in China, Japan, and South Korea are unhappy with their lives.

People reporting high evaluation of their life as a whole
 As a percentage of respondents, 2008 or latest available year

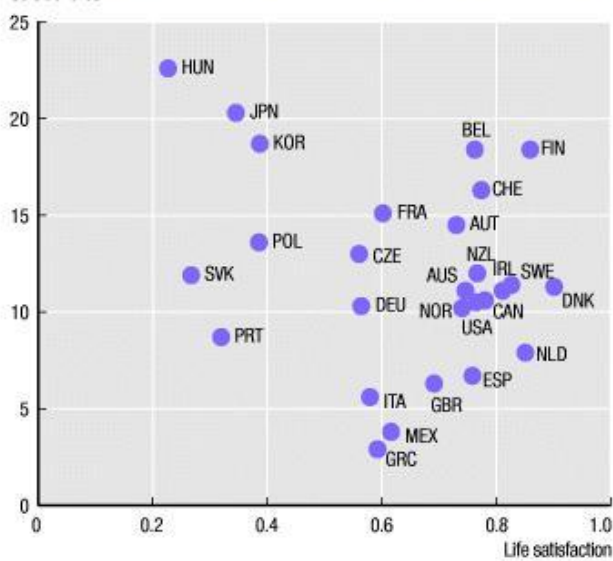


Source: *OECD Factbook 2009*

As mentioned earlier, it is to be expected that dissatisfaction with life correlates with suicide rates. To wit, the more dissatisfied one feels, the more likely he or she is to commit suicide; the more satisfied one feels, the less likely he or she is to commit suicide. The following chart confirms this correlation: high subjective life satisfaction and low suicide rates go together. What is interesting to note here is that for a given level of subjective satisfaction, persons in Japan and Korea are more likely to commit suicide. While persons in Portugal, Slovakia, Poland, South Korea, and Japan feel similarly satisfied (or dissatisfied) with their lives, the suicide rates of those in Japan and South Korea are higher than their counterparts in Portugal, Slovakia, and Poland. Specifically, the suicide rate is two times higher in Japan and South Korea than in Portugal even though persons in Portugal feel slightly less satisfied.

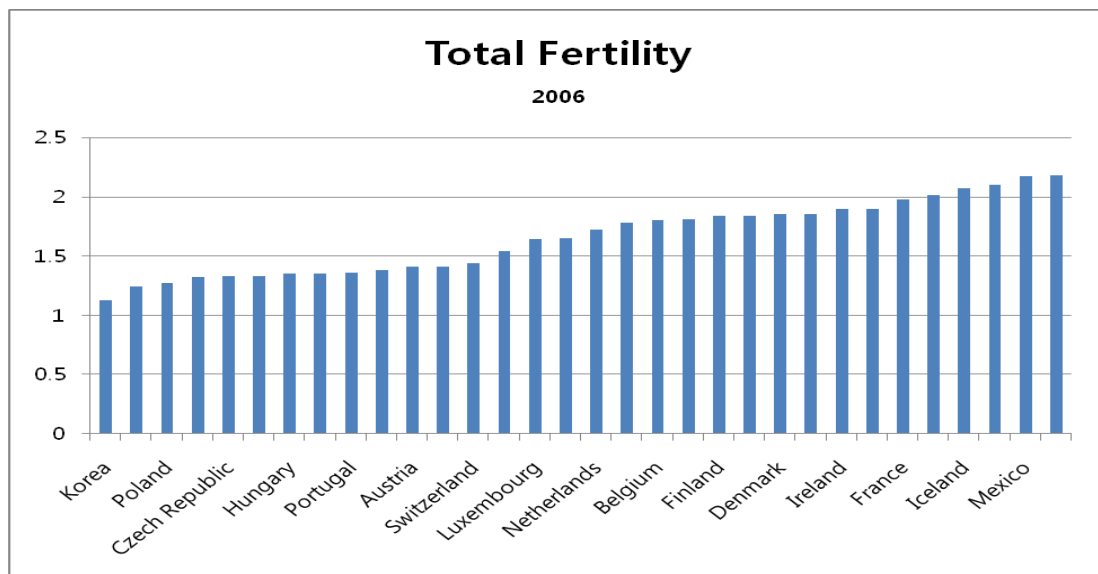
Suicides rates and subjective life satisfaction

Suicides rates (2004 or latest available year) and life satisfaction (2008 or latest available year)



Source: *OECD Factbook 2009*

Not only are Japanese and South Korean persons committing more suicides, but they are also producing fewer children. In 2006, South Korea shows the lowest fertility rates (1.13) in the chart below, with Japan showing only slightly higher rates (1.32).

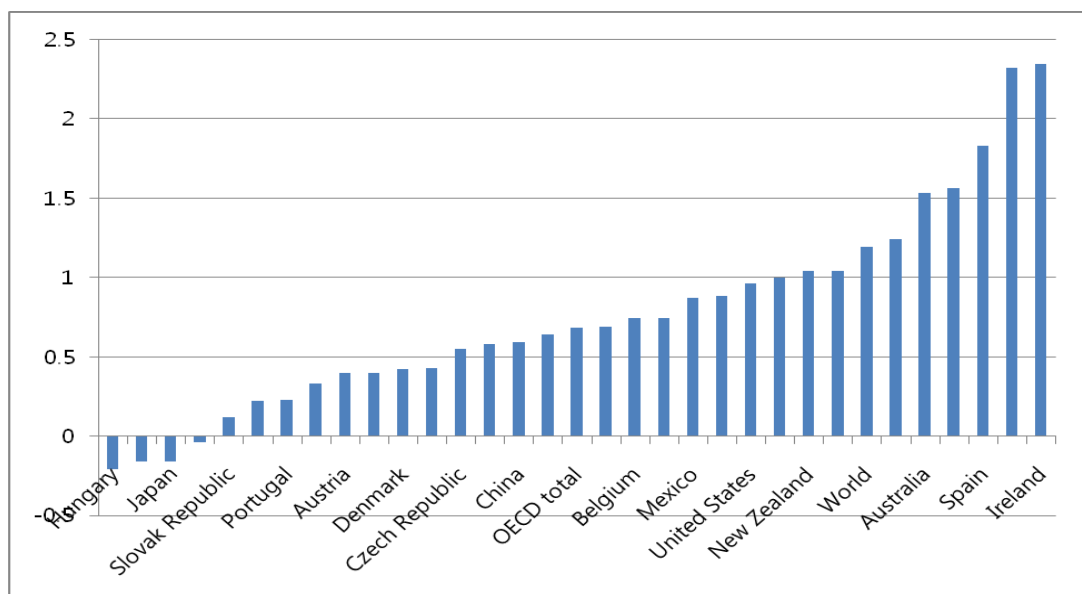


Note: Number of children born to women aged 15 to 49

Source: *OECD Factbook 2009*

Since both countries' fertility rates fall below the replacement level, 2.1, population growth has slowed down. In the case of Japan, the population growth rate was -0.16% (estimate) in 2008, preceded by 0.33% in 2007. Slow population growth may not be bad for environmental preservation, as it represents lower demand for natural resources. It may, however, indicate a fragile social system or even social disintegration, as it comes as the result of a rising suicide rate and a declining fertility rate.

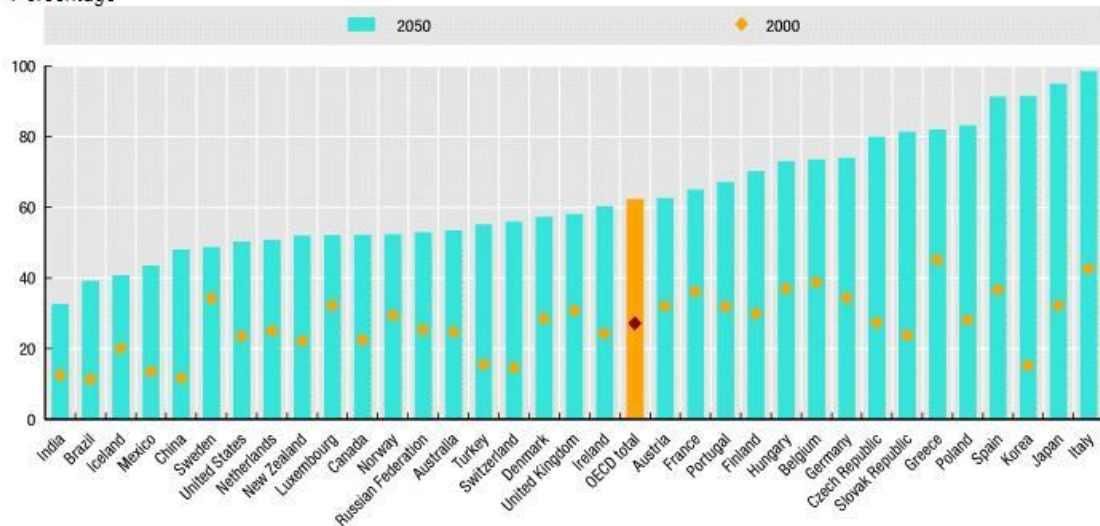
Population Growth, 2007/2008



Source: OECD

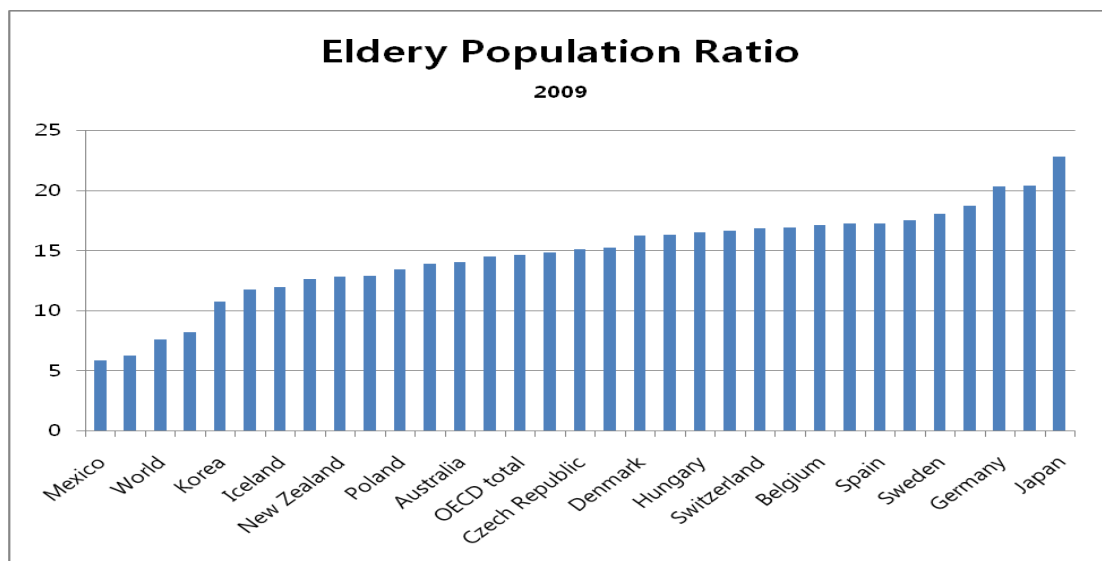
What's more, the populations of Japan and South Korea are aging rapidly. The chart below shows that Japan and South Korea have the highest ratios of elderly population in the labour force except for Italy.

Ratio of the inactive elderly population aged 65 and over to the labour force
Percentage



Source: *OECD Factbook 2009*

However, in terms of the ratio of the population aged 65 and over to the total population—rather than to the labour force—South Korea was twice “younger” than Japan in 2009; the ratio for South Korea was 10.7%, while the ratio for Japan was 22.8% (the ratio for China was 8.2%).



Note: Ratio of population aged 65 and over to the total population

Source: *OECD Factbook 2009*

The picture that emerges from a brief analysis of the “social” pillar is grim. Despite their economic success, persons in East Asia are unhappy with life, more prone to suicide, and are producing fewer children than any reasonable comparison groups. Admittedly, we can reach a very different conclusion by examining different statistics, such as crime rates or health care. However, the figures we have used in this presentation—life evaluation, fertility rates, and suicide rates—do tell us about how members of society actually think and feel about the society they are in (crime rates or health care, on the other hand, may tell us more about the quality of the police or hospitals, or more generally about governance, than society itself). Therefore, the analysis in this section, though based on selected statistics, does have important messages about the “social” pillar in East Asia.

3. Conclusion

East Asian countries are enigmas. They boast the highest economic growth rates in history but they also have some of the highest suicide rates combined with the lowest fertility rates in the world. Furthermore, their populations are unhappy and growing old at record speeds. This indicates, among other things, that at least one of the three pillars of sustainable development, the “social” pillar, may be collapsing or at least decaying. This does not imply, however, that the other pillars are strong. In fact, the “environmental” pillar is far from strong in East Asia, and more must be done to protect the environment. This is vitally important as China continues to industrialize in the years to come, and mostly likely this will be at the expense of the environment. Of the three pillars, the strongest one must be the “economic” pillar, although it should not be relied upon too heavily. As evidenced by two financial crises since the 1990s, the economy will never be rock-solid in this age of financial globalization. Furthermore, as the economy grows it may undermine rather than buttress the other two pillars if previous discussions on the relationship between per-capita income and suicide rates have any validity.

In the field of international economics and the international political economy, an unavoidable regularity has been found among capital mobility, economic policy autonomy, and exchange rate stability. Referred to as the unholy trinity or the impossible trinity, it argues that capital mobility, economic policy autonomy, and exchange rate stability cannot be obtained simultaneously. At most, two can be achieved but never three at the same time. This author cannot avoid thinking that for at least Japan and South Korea, there exists an equivalent of the unholy trinity for sustainable development, and the three pillars of sustainable development may never stand together. We know all too well that the environment and the economy rarely go together. What our discussion of East Asia's sustainable development here suggests is that the environment, the economy, *and* society have not gone together in East Asia, similar to the unholy trinity in international economics. If there truly exists an unholy trinity in sustainable development, as this analysis seems to suggest, it is a sad discovery. East Asia's best minds should examine this and better yet, discover how to resolve it.

Development and Human Rights

Jun Matsukuma¹

Introduction

In his policy statement entitled “My priorities for a better world,” UN Secretary-General Ban Ki-moon pointed out that the Millennium Development Goals are a blueprint to ensure that in a technology-rich and prosperous twenty-first century, no human being should be dying of malnutrition or preventable diseases, or be deprived of education or access to basic health care.² In his recent remarks, he also stated that just six years before the deadline for the Millennium Development Goals, the danger is growing that many countries will not achieve them because as many as 100 million people have fallen below the poverty line since the financial crisis began.

For the past several years, international legal scholars have referred to the concepts of the right to food and the right to health within the broad concept of the right to minimum sustenance.³ Many academics have concluded that one should see the right to live as a civil minimum of international society, and should examine ways in which it may be realized. The concepts of the right to food and the right to health are reflections of this perspective.

In this article, I would like to discuss a human rights perspective on the Millennium Development Goals. In the first section, I will explain my concept of the right to minimum sustenance. In the second section, I will analyze the national implementation of the Millennium Development Goals

¹ Professor, Tokyo University of Foreign Studies.

² Ban Ki-moon: “My priorities for a better world” http://www.un.org/sg/priority_print.htm.

³ In my previous article, I analyzed the concept of the right to minimum sustenance in relation to humanitarian exemptions of economic sanctions. See Jun Matsukuma, “The Legitimacy of Economic Sanctions: An Analysis of Humanitarian Exemptions of Sanctions Regimes and the Right to Minimum Sustenance,” in Hilary Charlesworth and Jean-Marc Coicaud (eds.), (2009), *Fault Lines of International Legitimacy*, Cambridge: Cambridge University Press, pp. 360–388.

in light of the right to minimum sustenance. In the third section, I will discuss the issues of international cooperation for the implementation of the Millennium Development Goals in light of the right to minimum sustenance. This analysis leads to the conclusion that a human rights approach would make the Millennium Development Goals much more effective, even though the definition of the right to minimum sustenance will require time and broad discussion.

1. MDGs and the concept of the right to minimum sustenance

The eight Millennium Development Goals (MDGs) are as follows.

- (1) Eradicate extreme poverty and hunger
- (2) Achieve universal primary education
- (3) Promote gender equality and empower women
- (4) Reduce child mortality
- (5) Improve maternal health
- (6) Combat HIV/AIDS, malaria, and other diseases
- (7) Ensure environmental sustainability
- (8) Develop a global partnership for development

Yet, there have been various criticisms of the MDGs. For example, some argue that “MDGs allow that by 2015 at least half of today’s poor will continue to live in a state of poverty and deprivation.” Or, “The first Goal might not be met on a global basis because of the progress made towards poverty alleviation only by India and China.” Or, “The MDG process will be used by governments and donors to distract attention from real human rights issues.” Or, “The MDG process is a top-down rather than a grassroots effort. It is an imposition by governments acting through the UN General Assembly.”

Among East Asian countries, the status of the MDGs in China is often criticized from viewpoints of this nature. China has now achieved its target of halving the number of people in poverty with

respect to the 1990 figure, but inequality has increased and there is still a need to work towards balanced regional economic growth and to realize sustainable development with equity.⁴

Facing such criticism, I believe that a human rights approach would make the MDGs much more effective. Before examining the concept of the right to minimum sustenance, I would like to refer to the notion of human security that Japan is now promoting to the mainstream.

In the outcome document of the World Summit in 2005, political leaders committed themselves ~~to~~ discussing and defining the notion of human security in the General Assembly.” According to the Government of Japan, the essence of human security is the conviction that a human being is entitled to live a healthy, dignified, fulfilling life, irrespective of where he or she is born.⁵

In my view, the right to minimum sustenance should include all of the elements of human security—including availability, accessibility, and utilization of a basic human need. The right to minimum sustenance as a basic human need is more than freedom from hunger or the right to the mere survival of the people, but a right to realize the health and security of human beings.⁶ Before examining its applicability to the Millennium Development Goals, it is necessary to analyze the provisions of the international human rights covenants related to the right to minimum sustenance.

Article 11, Paragraph 1 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) stipulates that ~~“The States Parties to the present Covenant recognize the right of~~ everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” The second paragraph of the same article provides that ~~“The States Parties to the present Covenant, recognizing~~ the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programs, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of

⁴ UNDP, “MDGs in China”

<http://www.undp.org.cn/modules.php?op=modload&name=News&file=article&catid=32&sid=6>.

⁵ Statement by Ambassador Yukio Takasu, Permanent Representative of Japan to the United Nations at the General Assembly Thematic Debate on Human Security, New York, 22 May 2008.

⁶ Philip Alston and Katarina Tomasevski, (1984), *The Right to Food*, Netherlands: Nijhoff, p. 2.

technical and scientific knowledge, by disseminating knowledge of the principles of nutrition, and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.” From this wording, it is clear that Article 11 serves as the central provision for the right to minimum sustenance.

Article 12, Paragraph 1 of the ICESCR stipulates that “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” The second paragraph of the same article further provides that “The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational, and other diseases;
- (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

Brigit C.A. Toebes pointed out the fact that the number of steps mentioned in Paragraph 12(2) implies that the provision is more tangible than similar provisions that do not enumerate such steps.⁷

In the International Covenant on Civil and Political Rights (ICCPR), Article 6 is the article that relates to the right to minimum sustenance and is the provision of the right to life in international law. To be free from want is to be free from danger to one’s life, and to be able to live. Hence, this Article must be realized with the positive participation of the States. In regards to the interpretation of this Article, many States have strongly opposed a broad interpretation. The reason for this is that

⁷ Brigit C.A. Toebes, (1999), *The Right to Health as a Human Right in International Law*, Belgium: Intersentia, pp. 292–301.

Article 6 was thought to be an article on civil rights and not on standards of living. In other words, for those who opposed a broad interpretation, the focus of this Article was on protecting people from having their lives taken arbitrarily, and not on protecting them from hunger, cold, or illness. However, the Human Rights Committee has adopted a General Comment on this Article, in which they have criticized the previous narrow interpretation of Article 6 and have stated that the Committee considers it desirable for States Parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.⁸ Based on this interpretation, States that do not take any measures to eradicate starvation will be violating Article 6 of the Covenant.

In summary, Article 11, Paragraph 2 and Article 12, Paragraph 2 of the ICESCR aim to realize the right to minimum sustenance by having the States take positive measures, based on the interpretation that this right is part of common Article 1, as well as Article 11, Paragraph 1 and Article 12, Paragraph 1 of the ICESCR, and Article 6 of the ICCPR. These paragraphs form the basic provisions related to the right to minimum sustenance. According to the ICESCR, most East Asian countries are now ratifying this convention.

2. The national implementation of the Millennium Development Goals in light of the right to minimum sustenance

There has been discussion in which it is assumed that the MDGs have already become customary international law. I believe, however, that this might not be very persuasive. Philip Alston, Special Advisor to the United Nations High Commissioner for Human Rights on the Millennium Development Goals, pointed out that the Millennium Development Goals and human rights are not

⁸ Human Rights Committee, General Comment 6, Article 6 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 6 (1994).

just significantly overlapping and mutually reinforcing, but also fully compatible and complementary.⁹ According to him, there is extensive overlap between the MDG indicators and the provisions of the ICESCR. The following table gives an indication of the extent of that overlap.¹⁰

Indicators	Principal relevant provisions of ICESCR
Malnutrition	–“The fundamental right of everyone to be free from hunger.” Art. 11 (2)
Access to clean water	–“Right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” Art. 12 (1)
Access to sanitation services	Right to health measures including –“The improvement of all aspects of environmental and industrial hygiene” and –“The prevention, treatment, and control of epidemic, endemic, occupational and other diseases.” Art. 11 (2)
Infant mortality rates	–“Right to health measures to include reduction of the stillbirth-rate and of infant mortality.” Art. 12 (2) (a)

There are two approaches that obligate States to realize the right to minimum sustenance under international law. The first approach aims to prove the existence of international customary law regarding this right, and the second approach aims to conclude a treaty that would stipulate this right under positive international law.

In regards to the former, though repetitive State practice and *opinio juris* do exist to a certain degree, it is difficult to conclude at present that an international customary law exists that clarifies

⁹ Philip Alston, “Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals,” *Human Rights Quarterly* 27 (2005), pp. 759–762.

¹⁰ Philip Alston, “A Human Rights Perspective on the Millennium Development Goals,” Paper prepared as a contribution to the work of the Millennium Project Task Force on Poverty and Economic Development (2004), pp. 30–31.

the details of the obligations. Therefore, to consider the issue of States' obligations under international law today, one must turn to the latter approach. In this sense, Article 11 and Article 12 of the ICESCR may be useful.

According to Article 11, the national obligation of the States is to take appropriate steps to ensure the realization of the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. Article 12 stipulates the steps to be taken by the States Parties to achieve the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Since obligations to realize human rights relate to Article 2 of the Covenant, it is closely linked with the progressive achievement principle of its first paragraph, and the non-discrimination principle of its second paragraph. Paragraph 1 of Article 11 articulates that the States ~~take~~ "appropriate measures" and Paragraph 2 of Article 12 articulates ~~"The steps to be taken by the States Parties."~~ Whereas the second paragraph of Article 2 of the ICCPR stipulates clear and definite legislative measures that the States are obligated to take in order to realize human rights, the same article of the ICESCR does not provide as clear and definite wordings as the ICCPR. Though it may be inferred from the Covenant that States are requested to take legislative and administrative measures, this is not an obligation that must be fulfilled immediately, due to the wording ~~"achieving progressively"~~ seen in Article 2, Paragraph 2. The word ~~"progressively"~~ grants the States some time to implement their obligation, and the meaning of ~~"progressively"~~ is left unclear. If one extends the meaning of the wording, in the end, the States may get away with taking no measures at all to realize the right to minimum sustenance.

Since it is necessary to take appropriate policy measures in order to progressively realize this right, the requests that States legislate basic laws and make policy declarations must not be neglected due to the word ~~"progressively."~~ States must implement the Covenants in good faith, and they must establish comprehensive and consistent plans necessary for the ~~"progressive"~~ realization

of the right to minimum sustenance. The details given in Paragraph 2 of Article 11 and Paragraph 2 of Article 12 are examples of legislative and administrative measures that need to be taken.

3. International cooperation for the implementation of the Millennium Development Goals in light of the right to minimum sustenance

In the present international society, where the interdependence of States is becoming greater every day, the right to minimum sustenance cannot be attained solely by one State's national efforts. The ICESCR, reflecting the international character in the implementation of this right, stipulates the States' obligation to cooperate. For example, in Article 2, Paragraph 1, it is stated that ~~Each State~~ Party to the present Covenant undertakes to take steps individually, and through international assistance..." Article 11, Paragraph 1 stipulates that ~~the States Parties~~ will take appropriate steps to ensure the realization of this right, recognizing to th is effect the essential importance of international co-operation based on free consent." Moreover, the second paragraph obligates the States to ~~take~~, individually and through international co-operation, the measures, including specific programs, which are needed."

Regarding the scope of the international obligations, the Committee on Economic, Social, and Cultural Rights, in its General Comment 12, proposed the following:

(a) Regarding the obligations of States Parties:

States Parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food, and to provide the necessary aid when required;

(b) Regarding the obligations of States and international organizations:

1. States have a joint and individual responsibility to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons;

2. Food aid should be provided in ways that do not adversely affect local producers and local

markets.¹¹

Regarding the scope of the international obligations to protect the right to the highest attainable standard of health, the Committee on Economic, Social, and Cultural Rights, in its General Comment 14, proposed the following:

a) States Parties have to respect the enjoyment of the right to health in other countries, and to prevent third parties from violating that right in other countries, if they are able to influence these third parties by way of legal or political means. Depending on the availability of resources, States should facilitate access to essential health facilities, goods, and services in other countries wherever possible, and provide the necessary aid when required

b) States Parties have a joint responsibility to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons. Each State should contribute to this task to the maximum extent of its capacities.

As has been examined above, the right to minimum sustenance has been recognized as a human right in international law and a human rights approach would make the Millennium Development Goals much more effective.

Conclusions

In this concluding section, I would like to refer to the traditional concept of the offices of humanity, which is often regarded as the origin of humanitarian assistance.

In his book, *The Law of Nations, Or, Principles of Natural Law*, Emer de Vattel argued that the offices of humanity consist of the fulfillment of the duty of mutual assistance, which men owe to one another because they are men, that is to say, because they are made to live together in society and are of necessity dependent upon one another's aid for their preservation and happiness, and for

¹¹ United Nations, (1999), "The right to adequate food", E/C.12/1999/5, General Comments, United Nations Committee on Economic, Social, and Cultural Rights, New York: Economic and Social Council, Para. 12.

the means of a livelihood conformable to their nature.¹² He insisted that if a nation is suffering from famine, all those who have provisions to spare should assist it in its need. To give assistance in such dire straits is so instinctive an act of humanity that hardly any civilized nation is to be found that would refuse absolutely to do so.

Yet, we should note that Vattel also pointed out that a nation has no right to force another nation to accept its offer of help, and that an attempt to do so would be a violation of that nation's natural liberty. According to his theory, every nation has a perfect right to ask for assistance and offices of humanity from another if that nation thinks it has need of them, but does not have the right to demand them. In other words, a nation has only an imperfect right to offices of humanity and cannot force another nation to perform them. Vattel concluded that if a nation refuses offices of humanity without good reason, it offends against charity but it does no injury, since injury results from denying a perfect right.

Attempts to link human rights and development issues have a long history in the UN context. The process of the adaptation of the UN Declaration on the Right to Development is one example; yet, the succeeding debates over the right to development were not able to make a meaningful practical contribution. Thus, in this century, we should aim ahead of Vattel's theory in order to ensure that no human being will die of malnutrition or preventable diseases, or be deprived of access to basic health care.

¹² Emer de Vattel, (1758), *Le droit des gens, ou Principes de la loi naturelle* [*The Law of Nations, Or, Principles of Natural Law*], 2 vols.

**The United Nations and East Asian Community
for Enhanced Human Security and Sustainability**

Ryokichi Hirono¹

At the time of the founding of the United Nations in San Francisco in 1945, freedom from hunger, freedom from ignorance and freedom from fear, or the three basic elements of what we call today Human Security, constituted the basic aims of the international community in creating the universal institution called the United Nations. The greatest challenge of development facing the global community in this millennium is not only to realise all three of these dimensions of freedom, preferably simultaneously, but also to secure one more dimension of freedom, that is, freedom from self-destruction and self-extermination resulting from the ecological meltdown.

We are now witnessing the age of globalisation. Globalisation has contributed enormously to enhancing economic efficiency in resource allocation within and across national borders and the wellbeing of the people, but unfortunately at the expense of social equity and the human and natural environment, our precious national and global public goods, and at the expense of diversity in culture, institutions and life styles, the source and symbol of our human richness and civilisation.

We must now raise our global banner high and high enough, before it is too late to set our irreversible common goal at enhancing National Human Security in each and every country, while simultaneously at enhancing Global Human Security at the international level. This requires each and every country and the international organisations including the United Nations to pursue in an integrated manner economic, employment and income security (development), political, social and cultural security (democracy), personal, family and national security (peace) and ecological security (environment), within each country, sub-national region and local community as well as at the regional and global levels.

Under these circumstances, we should consider all major issues in developing countries not as

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those happening on the other side of the river that have nothing to do with us in industrial countries, but as those happening on this side of the river that affect all the people in the global community. We should also call for the redefinition and recasting of national development in the broader context of global economic, political, socio-cultural and ecological realities and should target our national and international efforts on political, economic, social and environmental capacity building, including the development of not only economically productive facilities, but also viable political and social institutions and cultural assets and traditions conducive to sustainable human development and human security in the respective societies.

In spite of a declining incidence of poverty, there still remains a high level of poverty particularly in Asia and sub-Saharan Africa, one of the major factors contributing to social instability, political conflicts and confrontation, internal displacement, cross-border refugees and environmental deterioration. High and rising levels of unemployment and underemployment are being observed both in developed and developing countries today, though with large differences among them. The East Asian economic crisis of 1997-98 and the current financial and economic crisis of 2007-09 have forced corporate and government restructuring, hitting hard, in particular, the weaker segments of the population such as children, women, unskilled and even semiskilled workers.

In spite of vast improvements in human development, much needs to be done in all social sectors, such as longevity, mortality rates, primary healthcare, sanitation, literacy and basic education. The political and economic participation of women is also still lagging behind in many countries, and social investment as a percentage of total public expenditures has been either unchanged or declining during the last decade or so. Conversely, defence expenditures have been rising in terms of absolute amounts in many countries, and in some cases even as a percentage of their public expenditures.

There has also been a rapid pace of urbanisation, contributing to urban slums, traffic congestion and social crimes. With industrialisation, urbanisation and rising income, dramatic increases have

been observed in the consumption of electricity, commercial energy, petrochemicals, lumber and paper products, and hazardous products, contributing to the deterioration of the natural environment, as represented by a faster rise of CO₂, SO_x and NO_x emissions into the atmosphere, water, soil and marine pollution, loss of biodiversity, ozone layer destruction, acid rain deposition, as well as rapid increases in household wastes, particularly in metropolitan areas.

Conflicts are spreading the world over, particularly in the Middle East. Millions of women and children, the major victims, would have been left unfed, unclothed, unhoused and unschooled, had it not been for international humanitarian and development assistance. There is a dire need for reorienting our official development cooperation in the 21st Century, facilitating the mindset of all peoples in both industrial and developing economies (including transition countries) that the problems of human insecurity, including among others poverty, conflicts, health hazards, environment and social exclusion are global issues to be dealt with by all development actors, peoples, NGOs, private sector corporations, local and central governments, and international organizations in our ever smaller global village under full partnership, and not just by “donor and recipient” governments alone, and not just by people and governments in developing countries alone.

It is against these backgrounds that many national and international NGOs, as well as a large number of national governments, have appealed to the heads of state in East Asia at its ASEAN Plus Three and East Asia Summit meetings in the past to enshrine key messages of the Earth Charter, i.e., a critical need for international commitment to poverty reduction, human rights protection, the maintenance of world peace without nuclear weapons, and the protection of the global environment. Our efforts for building an East Asian Community within a decade or two, if possible by 2020, five years after the official establishment of the ASEAN Economic, Social and Security Communities, which the East Asian Community Association of Japan, composed of government, private sector, academia and NGOs, would like to see happen. The Association has dedicated itself to spreading these urgent messages around the world. We are urging all countries to

give top priority once again to the eradication of poverty, reduction of income disparity between urban and rural areas, arresting the violation of human rights, the spreading of democratic governance, building a world without nuclear weapons and other weapons of mass destruction, and preventing the adverse impact of climate change on the natural and human environment.

The commitment of the international community to achieving the Millennium Development Goals adopted by the United Nations General Assembly in the fall of 2000 must be fulfilled by 2015, if not before. The 15th Conference of Parties to the United Nations Framework Convention on Climate Change is on our doorstep, starting on 7th December, and yet the international community has not come to agreement on the post-Kyoto international arrangement to deal with climate change beyond 2012. It is Mr Hatoyama, the Prime Minister of Japan, who has put the building of an East Asian Community at the top of the international political agenda of Japan under his administration, and who has officially proposed to the international community of both developed and developing countries to work together to prevent the further advance of global warming and reduce worldwide greenhouse gas emissions by 25% by 2020 and by 50% by 2050, while requesting industrial countries to do their best to reduce GHG emissions by 80% by 2050.

In this connection, I have had the honour and privilege to assist in the production of, and act on stage for, an Environmental Musical entitled *Our Blue Planet, Will it Survive till Tomorrow?* which is set in 2100 when mankind and the Earth are facing a critical moment of self-destruction, and is warning our present generations to do everything we can to prevent such natural and human disasters. If all the countries should take united and bold actions now and rapidly deal with climate change, there is no doubt that mankind will be able to survive, and so *Our Blue Planet*. Let the peoples of the United Nations be united to create a dynamic world without poverty and human rights violations, promote democratic governance, build a world without nuclear and other weapons of mass destruction, as proposed by President Obama of the United States and as agreed upon by the United Nations Security Council in September 2009.

IS EAST ASIA'S RAPID ECONOMIC GROWTH SUSTAINABLE UNDER GLOBALISATION : THE ROLE OF EAST ASIAN COMMUNITY ?

RYOKICHI HIRONO
Professor Emeritus, Seikei University
At 9th ROK-Japan UNSA's Dialogue

at Waseda University
12 December, 2009

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YES, For the time being, but **DIFFICULT to IMPOSSIBLE** in the long-term future, unless All Stakeholders including national governments in the region and international community take prompt actions to deal with **the creeping time bombs in the economic, social, environmental and security arenas**, and unless willing to accelerate closer cooperation and integration in Asia such as building of the **East Asian Community**, patterned after ASEAN Economic, Social and Security Communities to be established in 2015 !

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2. REMARKABLE ECONOMIC ACHIEVEMENTS IN EAST ASIAN COUNTRIES DURING THE PAST FEW DECADES
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 - 2) SOCIAL SCENE, AND
 - 3) ENVIRONMENTAL SCENE
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3

1. INTRODUCTION

4

1A. Shaping an East Asian Community by 2025, if not Earlier

1. Objectives:
To accelerate the on-going process of economic cooperation and integration through market forces and social, environmental and security cooperation through institutional actors such as academic bodies, NGOs, private sectors, governments and international organisations with a view to staying competitive with the rest of the world, enhancing the wellbeing of the people in the region and maintaining peace and security of the region, thus contributing to peace and sustainable development of the world.

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2. Historical Background:
As presented by Prof. Wongi Choe, IFANS and discussed by Prof. Takashi Terada, IAS, Waseda University, Tokyo as well as by many scholars in ASEAN, Australia, China, Japan, ROK and U.S.A, too numerous to mention;
3. Building Process;
 - 1) Need for generating a deeper sense of community among people in those core countries in East Asia and for early announcements by national governments of their political commitment to establishing an East Asian Community (EAC) at the earliest possible time, as discussed by Mr. Tadashi Yamamoto, Japan Center for International Exchange (JCIE) et al under Asia-Pacific Agenda Project In 1995-2000;
 - 2) A functional approach to building EAC: open to those countries willing and ready to accelerate closer cooperation and integration in various functional areas such as trade, investment, finance, environment, social welfare, culture and security, as discussed by Prof. Ryokichi Hirono, Seikei

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University on JIIA/ISEAS's ASEAN- Japan Joint Research Project during the years 1981-86 and by the Network of East Asian Think Tanks (NEAT), by Prof. Kenichi Ito et al, Japan Association for East Asian Community (JAEAC) during the past nine years and by ASEAN Economic Research Institute (AERI) during the last two years;

3) An open-ended, step-by-step approach to EAC building: open to those countries willing and ready to take functional approach to building EAC, as discussed by Prof. Ippei Yamazawa et al on PECC Research Project on Regional Economic Integration Project during the 1990s;

4) A small secretariat within ASEAN at the outset, if need be, to monitor the progress being made toward EAC and expand it as necessary, as discussed by Dato Seri. Mohamed Jawhar Hassan, Malaysian Institute for Strategic and International Studies (MISIS) on its Roadmap for EAC;

4. Different Roles now perceived by Key Players: China and Japan, as discussed by Prof. Satoshi Amako and Prof. Christian Wirth, GIARI, Waseda University, and ROK and U.S.A. by Prof. Choe and Prof. Jesus P. Estanislao, Institute for Corporate Directors (ICD), Philippines.

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2.

REMARKABLE ECONOMIC ACHIEVEMENTS IN EAST ASIAN COUNTRIES: Changing Positions of EA in the Global Economy and its Unchanging Diversity

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2A Remarkable Economic Achievements of East Asia, 1960-2009

	1960-70	70-80	80-90	90-00	2000-07	08	09
Dvlping	5.2	5.8	3.4	3.6	6.2	5.8	2.1
EAP	6.2	7.2	8.0	7.2	8.9	8.0	5.3
China	3.7	5.5	9.5	10.3	9.8	9.0	6.5
SA	4.7	3.0	5.6	5.6	7.3	5.6	3.7
India	4.6	2.7	5.4	6.0	7.4	5.5	4.0
Japan	8.9	6.8	4.1	1.3	1.7	-0.7	-5.3
USA	2.2	2.5	3.2	3.4	2.7	1.1	-2.4
UK*	2.7	2.3	2.7	2.5	2.6	0.7	-2.7
Germany*	6.6	2.2	2.2	1.5	1.5	0.7	-2.7
World	4.9	3.4	3.2	2.6	3.2	1.9	-1.7

Sources: World Bank, WDR 1972, 1982, 1992, 2002 & 2009 and Global Economic Prospects 2009 Update; UNCTAD, TDR 2007; PECC, State of the Region 2007-2008;

Note: Figures for U.K. and Germany in 2008 and 2009 are for the Euro Area average.

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2B Country and Regional Shares of the World GDP, 1950-2007

	1950	1960	1970	1980	1990	2000	2007
Dvlping	14.0	16.0	16.3	18.0	20.1	21.0	26.0
EAP	4.0	4.2	5.1	6.2	4.4	6.6	8.2
China	1.3	1.9	3.3	2.5	1.7	3.4	6.0
SA	1.8	1.9	2.6	1.9	2.0	2.0	2.6
India	1.2	1.3	1.9	1.4	1.0	1.5	2.2
Japan	1.2	1.7	7.3	9.9	15.5	14.9	8.1
France	3.4	2.4	5.1	5.6	5.5	4.1	4.7
Germany	3.5	2.9	6.6	7.1	7.3	6.0	6.1
UK	3.6	2.9	3.8	4.4	4.1	4.5	5.0
USA	43.7	41.5	36.2	24.7	25.9	31.5	25.4
ROW	30.6	32.6	24.7	30.3	21.6	18.0	24.7
World *	1,100	2,472	7,328	10,674	19,328	31,337	54,347

Source: World Bank, ibid;
Note: * US\$ Billion.

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2C Varied Growth Experiences in East Asia, 1965-2008

	1965-80	70-80	80-90	90-2000	2000-07	06	08*
Cambodia	n.a.	n.a.	n.a.	4.6	9.8	6.1	6.7 n.a.
China	4.2	5.5	9.5	10.3	9.8	8.4	6.7 (10.0)
Indonesia	8.0	7.2	6.1	4.2	5.1	6.2	5.1 (6.2)
Lao, PDR n.a.	n.a.	3.7	6.5	6.6	7.5	6.8	n.a.
Malaysia	7.3	7.9	5.3	7.0	5.1	5.9	4.3 (5.6)
Philippines	5.9	6.0	1.0	3.2	5.1	5.2	3.6 (4.5)
ROK	7.5	9.6	9.9	5.7	4.7	4.9	2.9 (4.6)
Singapore	10.1	8.3	6.7	7.8	5.8	6.0	-0.5 n.a.
Thailand	7.2	7.1	7.6	4.2	5.4	5.7	2.0 (5.0)
Vietnam	n.a.	n.a.	4.6	7.9	7.8	8.0	6.5 (6.5)
India		3.4	5.4	6.0	7.8	9.7	5.8 (7.4)

Sources: World Bank, WDR 1982, 1992, 2002, 2009 and Global Economic Prospects 2009 Update, ADB, Asian Development Outlook 2009 Update and ESCAP, Economic Social Survey of Asia and the Pacific 2006.

Note: * Figures in parentheses are estimates made by ADB in Asian Development Outlook 2008 Update.

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2D Benefits of Economic Growth, 1975-2007

	EAP		SA		SSA	
	1975	2007	1975	2007	1975	2007
Per Capita GDP(US\$)	224	2,180	214	880	205	952
GCF (%GDP)	n.a.	38.0	n.a.	35.0	n.a.	21.0
China, India & South Africa	35.0*	44.0	17.0*	38.0	14.0*	20.0
FER (% Imports)**	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
China, India & SA	1.24	1.52	1.58	1.02	1.30	n.a.
US Child Mortality***	56	29	123	83	184	157
Life Expectancy	60.5	70.4	50.1	63.2	45.8	49.1
P Completion Rate***	101	98	62	80	51	60
Adult Literacy Rate+	64.7	90.7	49.1	60.9	34.4	59.3
Access to DRWater++	72	79	72	85	48	56
Access to Internet+++	ins.	106	0	29	ins.	26

Sources: World Bank, WDR 1977 & 2009; UNDP, HDR 2000 & 2007/8.

Notes: * for 1970; ** for 2005 & 2007; *** for 1990 & 2006; + for 1975 & 2005, ++ for 1990 & 2004; +++ Per 1,000.

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2E Benefits of Economic Growth in East Asia, 1970-2007

	Indonesia		China		Singapore	
	1970	2007	1970	2007	1970	2007
<i>Per Capita GDP(US\$)</i>	80	1,650	130	2,180	950	32,470
GCF (%GDP)	16	25	28	44	39	23
<i>Industry(% of GDP)</i>	19	47	38	48	30	31
<i>ManufExp(% of MExports)2</i>	45	70	92	30	80	
FER (% Imports)* 3.3	8.88	1.24	1.52	5.4	7.44	
<i>US Child Mortality**</i>	104	34	120	24	27	3
Life Expectancy ***	49.2	68.6	63.2	72.0	69.5	78.8
<i>Adult Literacy Rate+</i>	74.7	90	71.9	91	85.6	93
Access to DRWater++	72	77	70	77	100	100
<i>Access to Internet++</i>	0	73	0	85	0	571

Sources: World Bank, WDR 1972 & 2009; UNDP, HDR 2000 & 2007/8.

Notes: * Figures for 1970 are for 1991; ** Figures for 2007 are for 2006; *** Figures for 1970 are for 1970-75 and for 2007 are for 2000-05; + Figures for 1970 are for 1985 and for 2007 are for 2005;

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3. POSSIBLE THREATS TO SUSTAINABILITY IN EAST ASIA : What, When and How have they happened ?

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3A1 Perceived Risks to Economic Growth in East Asia

	Low		Moderate		Serious		Very Serious	
<i>High energy prices</i>	12 (12)	28 (24)			42 (38)	18 (22)		
Water pollution & shortage	28 (17)	35 (27)			30 (37)	6 (15)		
Global warming	35 (22)	29 (25)			26 (28)	10 (22)		
<i>Failure of the Doha Round</i>	28 (22)	33 (35)			24 (25)	12 (13)		
<i>Protectionism</i>		26 (24)	38 (31)		29 (34)	6 (8)		
Terrorists	21 (27)	33 (31)			26 (26)	8 (11)		
<i>Sharp decline in asset markets</i>		31 (22)	37 (39)		23 (24)	6 (8)		
Natural disaster	34 (30)	34 (32)			24 (24)	5 (9)		
<i>Current account imbalance</i>	30 (22)	38 (40)			21 (22)	6 (7)		
Avian flu and other pandemics	33 (30)	32 (27)			17 (20)	6 (7)		
<i>Proliferation of preferential TAs</i>	40 (22)	36 (39)			18 (20)	4 (5)		

Source: PECC, State of the Region, 2007-08, Table 2, pp.45-46.

Notes: Respondents to the above survey taken in 2007 were: 107 businessmen, 68 government officials, 166 academics and researchers, 14 media persons, 5 civil society representatives and 22 others. Of these 382 respondents, 228 are from Asia.

Figures are for the next 1-2 years, whereas those in brackets for 3-5 years or longer.

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3A2 Possible Threats to Economic Sustainability

- High Dependence on Export-led Industrialization**, resulting in Adverse Impact immediately from Recessionary Trend Overseas,
- Continuing High Dependence on Extra-Regional Trade** in the Age of Regional Free Trade and Cooperation Regimes in North America & Europe, in spite of a growing intra-ASEAN and intra-East Asian trade,
- High Dependence on Short- and Medium-term Foreign Capital Inflow**, increasing volatility of East Asian Financial Markets, and **High Mobility of MNC Investment in the Globalised Market**,
- Increased Involvement of Individual and Institutional Investors in the Region**, such as

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pension funds, insurance companies, financial conglomerates and sovereign wealth funds of East Asia in **high-risk investment trust, commodity index funds, private equity and hedge funds** at home and overseas, as well as **increased involvement of banking and non-bank financial institutions in investment banking activities** through merger and acquisition (M&A), initial public offer (IPO), and **securitisation of bank lending** in particular for housing markets,

- Inability of National Financial Regulators and International Financial Architecture** to monitor and supervise the exposure of individual and corporate investors to growing and high risks in the globalised financial market,
- High Dependence on Natural Resources and in Particular on Energy Resources** whose prices are extremely volatile, as shown in recent years, causing a varied degree of inflationary pressures.

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3A3 Risks of Export-led Industrialisation, 1970-2007

	Export (A)		A/GDP(%)		Manufactures/A(%)		
	2007(\$M)	%	1990	2007	1970	1990	2006
World	13,899,267	100	19	26		63	74
High-income	9,752,088	70	17	21		33	81
Developing	4,149,329	30	25	44		24	48
EAP	1,783,695	13	34	66		32	72
SA	184,991	1	10	23		47	72
CEE&CA	874,122	6	29	45		n.a.	n.a.
MENA	297,678	2	38	54		7	10
SSA	361,373	3	27	33		8	8
LAC	750,092	5	17	26		9	34

Sources: World Bank, WDR 1992 & 2009; UNDP, HDR 1992&2007/8.

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3A4 Risks of Export-led Industrialisation, 1970-2007

	Export (A)		A/GDP(%)		Manufactures/A(%)		
	2007(\$M)	%	1990	2007	1970	1990	2006
Cambodia	3,750	0.2	6	65	n.a.	n.a.	97
China	1,217,939	68.3	19	37	51	72	92
Indonesia	118,163	6.6	25	34	1	35	47
Lao PDR	980	0.05	12	27	n.a.	n.a.	n.a.
Malaysia	176,211	9.9	75	123	8	54	75
Philippines	50,276	2.8	28	47	8	71	89
ROK	371,554	20.8	28	42	76	94	91
Singapore	299,271	16.8	n.a.	243	31	72	81
Thailand	152,469	8.5	34	74	8	63	73
Vietnam	48,387	2.7	36	70	n.a.	n.a.	53
EAP	1,783,695	100	34	66	33	72	80
India	145,228	78.5*	9	12	52	73	70

Sources: World Bank, WDR 1992 & 2009; UNDP, HDR 1992&2007/8; ESCAP, Economic and Social Survey of Asia and the Pacific, 1991.

Note: * as percent of South Asian exports.

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3A5 Risks of Extra-Regional Trade Dependence in East Asia, 1980-2007

ASEAN Exports to:	1980	1990	2000	2007
ASEAN	17.3	19.0	23.0	24.9
Japan/China/ROK	29.5/1.0/1.5	18.9/1.8/3.3	13.5/3.8/3.7	10.0/10.5/3.7
USA	16.3	19.4	19.0	12.3
EU	12.5	15.6	14.5	12.4
Others	21.9	22.0	22.6	26.2
China Exports to:				
ASEAN	6.6	6.6	7.0	7.7
Japan/ROK	22.2/n.a.	14.6/0.7	16.7/4.5	8.4/4.6
Indonesian Exports to:				
ASEAN	12.6	10.0	17.5	19.4
Japan/China/ROK	49.3/n.a./1.3	42.5/3.2/5.3	23.2/4.5/7.0	18.5/8.6/6.8
Singapore				
ASEAN	23.0	10.0	27.4	31.8
Japan/China/ROK	8.1/1.6/1.5	8.8/1.5/2.2	7.5/3.9/3.6	4.8/9.7/3.5

Source: ASEAN-Japan Centre, ASEAN-Japan Statistical Pocketbook 2008.

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3A6 Risks of Foreign Direct Investment Dependence in East Asia, 1990-2005 (% of GDP)

	EAP		SA		SSA	
	1990	2005	1990	2005	1990	2005
Net FDI inflows	2.5	5.4	0.3	0.8	0.4	2.4
	1990	2005			1990	2005
Cambodia	n.a.	6.1	Philippines	1.2	1.1	
China	1.0	3.5	ROK	0.3	0.6	
Indonesia	1.0	1.8	Singapore	15.1	17.2	
Lao PDR	0.7	1.0	Thailand	2.9	2.6	
Malaysia	5.3	3.0	Vietnam	2.8	3.7	

Sources: UNDP, HDR 2007/08

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3A7 Financial Assets and Liabilities in East Asia of BIS Reporting Banks, End March, 2008 (In US\$ Billion)

	Assets	Liabilities	Net
China	218.2	253.1	-34.9
India	139.6	41.3	98.3
Indonesia	49.5	12.5	37.0
Malaysia	60.0	41.2	18.8
ROK	245.3	77.9	167.4
Taiwan	74.5	146.8	-72.3
Brazil	167.4	61.2	106.2
Mexico	102.3	81.9	20.4

Source; Bank for International Settlements, website

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3A8 Distribution of Claims in Different Regions among Major Banks by Nationality, End 2007

	Asia/Pacific	Africa/ME	Europe	LACs	Total Claims
France	8.3	18.6	10.3	4.2	9.4
Germany	8.3	11.7	15.2	3.9	10.3
U.K.	23.6	36.7	3.4	10.4	15.1
Europe	59.8	85.5	93.8	71.9	77.8
U.S.A	18.2	7.2	4.0	18.6	11.8
Japan	10.0	4.0	1.6	2.4	4.6
Others	12.0	3.3	0.5	7.1	5.8
Total Claim*	1,278.0	513.7	1,513.8	891.0	4,196.5

Source: BIS, International Consolidated Banking Statistics 2008.

Note: * US \$Billion.

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3A9 Impact of U.S. Sub-Prime Mortgage Crisis on Asian Economies*

	2007	2008	2009	2009+ C		2010**	
			A	B			
Asian NIEs	5.5	n.a.	n.a.	5.0	3.8	2.1	n.a.
Hong Kong	6.3	2.5	-3.0	4.8	4.4	3.7	n.a.
ROK	4.9	2.5	-3.8	5.0	3.8	2.4	n.a.
Singapore	7.7	1.2	-4.2	5.2	4.5	2.3	n.a.
Taiwan	5.7	0.1	-5.0	4.9	3.1	0.4	n.a.
ASEAN 4	6.0	5.2	3.8	5.3	4.8	4.0	4.4
Indonesia	6.3	6.1	3.8	5.5	5.2	4.9	5.4
Malaysia	6.3	4.6	-1.5	5.2	4.2	3.3	1.6
Philippines	7.3	4.6	2.0	5.6	4.8	3.6	3.1
Thailand	4.8	2.6	0.5	5.0	4.4	3.3	1.7
Vietnam	8.5	6.2	5.1	n.a.	n.a.	n.a.	7.5
China	11.4	9.0	7.5	8.7	8.5	7.9	7.5
India	8.7	6.5	5.2	9.1	8.4	7.4	7.0

Sources: + NRI, Nomura Fund 21, Table 5, p.7; Asia Monthly, vol.9, no.97, 1/4/09.

Note: * Annual average growth rate of GDP; A growth scenario, B mild recession scenario; and C deep recession scenario, as estimated by NRI in 6/2008; **.World Bank, GEP Update, 2/2009.

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3A10 Share Market Price Fluctuations in East Asia, 2007-9/2009*

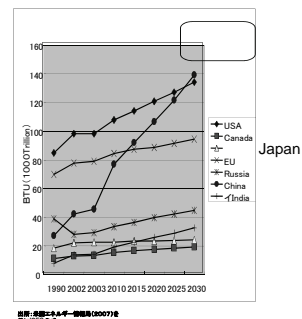
Country	10/2007	1/2008	5/2008	10/2008	2/2009	9/2009
China	6,252	4,600	3,603	1,816	2,187	2,917
Hong Kong	31,353	23,456	24,533	13,969	12,812	20,955
India	19,838	17,649	16,416	9,788	8,892	17,127
Indonesia	2,643	2,627	2,444	1,257	1,285	2,468
Malaysia	1,414	1,393	1,276	864	891	1,202
Philippines	3,759	3,266	2,827	1,951	1,872	2,801
ROK	2,065	1,625	1,852	1,113	1,063	1,673
Singapore	3,806	2,982	3,193	1,794	1,595	2,673
Taiwan	9,711	7,521	8,619	4,871	4,557	7,509
Thailand	907	784	834	417	432	717

Source: Asia Monthly, vol.9, no. 97, 1/4/2009 & 01/11/2009.

Note: * - Share price transacted at the end of the month.

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3A11 Energy Consumption by Country, 1960-2030



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3A12 Energy Consumption in Asian Countries, 1990-2015

Energy Resources	Annual average rates of increase					2015-30
	1990-2005		2005-2015		Asia	
	World		Asia	World		World
Total	1.7 (1.8)	4.2	2.1 (2.3)	3.2	(1.4)	
Coal	1.3 (1.8)	4.1	2.0 (3.3)	2.8	(1.5)	
Oil	0.8 (1.5)	3.3	1.9 (1.7)	3.1	(1.1)	
N. Gas	2.7 (2.3)	7.9	2.6 (2.6)	4.7	(1.7)	
Nuclear	6.6 (2.1)	8.6	0.7 (1.1)	3.2	(0.4)	
Hydro	2.1 (2.1)	3.3	2.1 (2.7)	4.4	(1.6)	
Biomass, waste	6.6 (1.6)	9.4	5.2 (1.5)	6.2	(1.3)	
Other renewables	2.9 (3.8)	19.8	2.4 (9.0)	7.0	(5.2)	
Mtoe	6,481	1,054	13,593	4,570	n.a.	

Sources: IEA, Energy Balances 2000; Japan Energy Research Institute, Asia/World Energy Outlook, 2004; and World Bank, Global Economic Prospects 2009.

Note: Figures in parentheses are the estimates made in OECD/IEA, 2008, Energy Technology Perspectives: Scenarios & Strategies to 2050, Paris, while those without are the estimates made by JERI.

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3A13 Shares in Total Energy Demand, 1970-2030 (% of Total)

	1970	1990	2005	2015	2030
Coal	26.0	25.3	25.3	27.8	28.2
Oil	44.0	36.7	35.0	32.9	31.5
Gas	16.0	19.1	20.6	21.2	22.3
Nuclear	1.0	6.0	6.3	5.6	4.8
Hydro	2.0	2.1	2.2	2.3	2.3
Biomass, waste	11.0	10.3	10.1	9.3	9.1
Other renewables	n.a.	0.4	0.5	1.0	1.7

Source: IEA, ibid.

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3A14 Regional & Country Shares of Oil Consumption, 2010-30

Country & Region	1973	2010	2020	2030
North America		29.5	27.9	26.6
Australia/New Zealand		9.4	8.4	7.7
Western Europe	60.6*	17.1	15.4	14.2
Transition Economies	12.5	6.6	5.6	5.6
Russia		3.3	3.3	3.2
Developing Countries	22.8	38.4	42.8	45.9
China	7.9	9.8	11.1	11.7
India		n.a.	3.7	4.2
Other Asian Countries		6.5 +7.8	8.6	9.3
LACs	3.7	6.1	6.4	6.7
MENA	0.9	7.4	4.4	5.1
SSA	3.8	3.7	8.1	8.5

Source: IEA, World Energy Outlook, 2005 & 2008.

Notes: * - OECD countries; + - Including India.

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3B1 Possible Threats to Social Sustainability

- Widening Income, Employment and Social Service Disparities between Urban and Rural Population**, giving rise to and precipitating Protest, if not Riots, among the Disadvantaged, and
- Social and Cultural Globalization accelerated by the Rapid Pace of Economic Globalization**, raising Concern with the Loss of Local and National Culture, Identity and Ethos, and rekindling a Sense of Communalism and Nationalism once Strong in the Early Post-Independence Days.

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3B2 Poverty in Developing Countries by Region, 1990-2015

	1990		2005		2015	
	A	B	A	B	A	B
EAP	54.7	79.8	16.8	38.7	6.8	21.6
CEE&CA	2.0	6.9	3.7	8.9	2.2	6.0
LACs	11.3	19.7	8.2	16.6	5.0	11.8
MENA	4.3	19.7	3.6	16.9	2.5	9.3
SA	51.7	81.7	40.3	73.9	23.8	56.6
SSA	57.6	76.2	50.9	73.0	37.1	60.8
Developing Cs	41.7	63.2	25.2	47.0	15.5	34.6

Note: A—Percent of population earning \$1.25/day & below; B—Population earning \$2.00/day & below

Source: World Bank, Global Economic Prospects 2009

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3B3 Income Inequality in East Asia, 1990s & 2000s

	Poorest 10%		Richest 10%		Gini index	
	1990s	2000s	1990s	2000s	1990s	2000s
Cambodia	2.9	2.9	33.8	34.8	40.4	41.7
China	2.4	1.6	30.4	34.9	40.3	45.9
Indonesia	4.0	3.6	26.7	28.5	31.7	34.3
Lao PDR	3.2	3.4	30.6	28.5	37.0	34.6
Malaysia	1.7	1.7	38.4	38.4	49.2	49.2
Mongolia	2.9	3.0	24.5	24.6	33.2	32.8
Philippines	2.3	2.2	36.6	34.2	46.2	44.5
ROK	2.9	2.9	24.3	22.5	31.6	31.6
Singapore	n.a.	1.9	n.a.	32.8	n.a.	42.5
Thailand	2.8	2.7	32.4	33.4	41.4	42.0
Vietnam	3.6	4.2	29.9	28.8	36.1	34.4
India	3.5	3.6	33.5	31.1	37.8	35.8

Source: UNDP, HDR 2002 & 2007/08.

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3B4 Consumer Price Indices in East Asia, 2007-9/2009

	2007	2008	1/2009	2/2009	5/2009	8/2009
China	4.8	5.9	1.0	-1.6	-1.4	-1.2
Hong Kong	2.0	4.3	3.1	0.8	0.0	-1.6
Indonesia	6.4	9.8	9.2	8.6	6.0	2.8
Malaysia	2.0	5.4	3.9	3.7	2.4	-2.4
Philippines	2.8	9.3	7.1	7.3	3.3	0.1
ROK	2.5	4.7	3.7	4.1	2.7	2.2
Singapore	2.1	6.5	3.0	1.8	-0.3	-0.3
Thailand	2.3	5.4	-0.4	-0.1	-3.3	-1.0
India	6.4	9.8	10.4	n.a.	8.6	11.7

Source: Asia Monthly, Vol.9, No. 98, 1 May, 2009 & No.104, 1 November, 2009.

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3B5 Poverty and Income Gap Ratios in Urban and Rural Areas, 2005

	The Absolute Poor* as % of Population		Income Gap Ratios as % below Poverty Line*	
	2005	2005	2005	2005
EAP	13.2	(31.9)	20.3	(23.2)
CEE&CA	2.5	(8.2)	8.7	(6.6)
LACs	3.7	(18.6)	37.6	(43.9)
MENA	2.7	(15.4)	17.8	(22.9)
SA	32.3	(43.3)	25.0	(24.0)
SSA	34.1	(54.9)	38.1	(41.5)
Developing Cs	15.3	(37.1)	27.1	(28.2)

Source: World Bank, Global Economic Prospects 2009.

Notes: Figures in Parenthesis are those for rural area, while those without are for urban area.

* - Poverty line is set at 1.25 international dollars a day per capita

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3B6 Sources of Social Instability under Globalization, 1975-2005

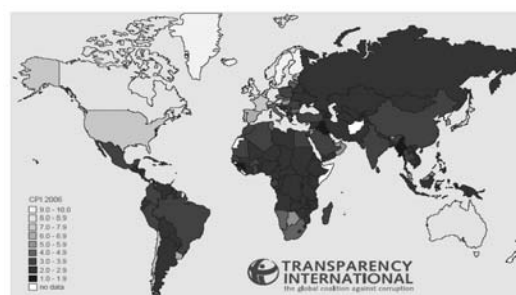
	A		B+		C		D	
	1975	2005	1975	2005	1975	2005	1975	2005
Cambodia								
China	52.6	34.9	40.3	46.9	20.4	41.9	0.2	0.2
India	86.2	80.4	37.8	36.8	21.2	29.9	n.a.	0.7
Indonesia		52.4		34.3		48.1		0.1
Lao PDR	74.1		34.6		20.6		0.1	
Malaysia	9.3		39.2		67.3		0.5	
Philippines		43.0		44.5		62.7		<0.1
ROK		<2.0		31.6		80.8		<0.1
Singapore		n.a.		42.5		100.0		0.3
Thailand	25.2		42.0		32.3		1.4	
Vietnam	n.a.		34.4		26.4		0.5	

Source: World Bank and UNDP, ibid.

Notes: A stands for Poverty (below \$2/day), B for Gini Index, C for Urbanisation, and D for HIV/AIDS; * Figures are for 1983-2000 and 1990-2005; + Figures are for 1998 and 2004 for China, 1997 and 2004-05 for India; and ** Figures for 1975 and 2004.

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3B7 Another Source of Social Instability around the World, 2006



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3B8 Governance in East Asian and OECD Regions, 2007

	Percentile Rank (0-100)	Governance Score (-2.5 to +2.5)
East Asia and the Pacific		
Voice and Accountability	49.4	-0.03
Political Stability	59.7	+0.34
Government Effectiveness	48.1	-0.09
Regulatory Quality	45.2	-0.18
Rule of Law	54.9	+0.15
Control of Corruption	45.2	-0.19
OECD		
Voice and Accountability	91.4	+1.31
Political Stability	81.4	+0.96
Government Effectiveness	88.7	+1.51
Regulatory Quality	91.1	+1.48
Rule of Law	90.3	+1.51
Control of Corruption	90.5	+1.72

Source: World Bank, World Governance Indicators, 2007.

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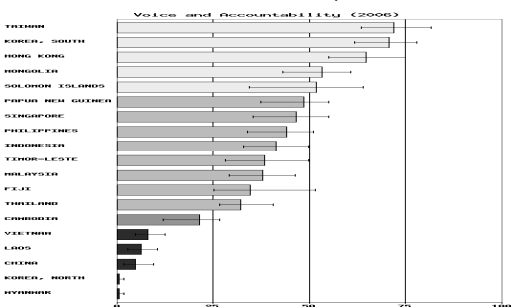
3B9 Governance in Other Developing Regions, 2007

	Percentile Rank (0-100)	Governance Score (-2.5 to +2.5)
South Asia		
Voice and Accountability	28.0	-0.69
Political Stability	19.3	-1.32
Government Effectiveness	36.5	-0.50
Regulatory Quality	31.9	-0.61
Rule of Law	38.3	-0.46
Control of Corruption	33.9	-0.56
Sub-Saharan Africa		
Voice and Accountability	33.2	-0.55
Political Stability	34.2	-0.53
Government Effectiveness	26.8	-0.77
Regulatory Quality	27.8	-0.74
Rule of Law	28.3	-0.75
Control of Corruption	30.7	-0.64

Source: World Bank, World Governance Indicators, 2007.

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3B10 Governance in East Asian Countries, 2006



Source: Kaufmann, D., A. Kraay, and M. Mastruzzi (2007) Governance Indicators: A New Approach to Measuring Governance. *Journal of Money, Credit, and Banking*, 39(3), pp. 135-149. The scores are based on the average of three indicators: Voice and Accountability, Political Stability, and Government Effectiveness. The scores are normalized to a scale from -2.5 to +2.5, where -2.5 represents the worst performance and +2.5 represents the best performance.

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3B11 Confidence of Asian People in Governance Institutions, 2004

	Army	Police	Courts	Parliament	Party	Median
China	95	77	72	86		94
Hong Kong	63	n.a.	69	52		52
Mongolia	67	48	47	61		42
Philippines	54	47	50	44		35
ROK	59	50	51	15		15
Taiwan	58	45	41	20	16	36
Thailand	76	55	60	54		47
East Asia	65	53	56	43		35
Japan	48	48	61	13		9
Africa	53	45	47	42		46
LACs	26	29	20	16		11

Source: IDEA(2005), Ten Years of Supporting Democracy Worldwide, Table 5.1, pp. 63-64.

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3C1 On-going and Possible Threats to Environmental Sustainability

- A Steady Population Increase and Growing Urbanization in Developing Countries,
- Rapid Economic Growth, Export-led and Resources-intensive Industrialization,
- Mass Production Economy in Acquisitive Societies, leading to Mass Consumption/Wastes,
- Competition among Business Enterprises on the Global Market, resulting in the Transfer of Environmentally Unfriendly Technologies,
- A High Incidence of Poverty in Rural Areas, resulting in Deforestation and Rural-Urban Migration which in turn leading to Increased Urban Unemployment and Slum Dwelling, and
- Climate Change,

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3C2 Environmental Deterioration under Globalization, 1995 & 2025

	1995(A)	2025(B)	B/A
Water consumption			
Household Use (Billion m3)	354	645	1.8
Asia	160	343	2.1
Industrial Use	714	1,105	1.5
Asia	184	409	2.2
Irrigation	2,504	3,162	1.3
Asia	1,741	2,245	1.3
Deforestation, 1990-2005			
World	-1,253	68	-76
Dvlpd	-1,253	-1,382	13
EAP	-1,253	-1,382	13
SA	-1,253	-1,382	13
SSA	-1,253	-1,382	13
LACs	-1,253	-1,382	13
Change (%)	-0.2	0.1	-0.1
CO2 Emission (Million mt.)			
1990	11,205	6,831	3,414
2004	13,319	12,303	6,682
% of World Total (%)			
1990	49.4	30.1	15.0
2004	46.0	42.5	23.1
CO2 Emission per GDP (kt. per million 2000PPPUS\$)			
1990	0.54	0.64	0.90
2004	11.5	2.4	3.5
1990	0.54	0.64	0.90
2004	11.5	2.4	3.5

Sources: MCLT, Water Resources of Japan, 2004 Edition; and UNDP, HDR 2007/08.

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3C3 Environmental Deterioration under Globalization, 1993-2010

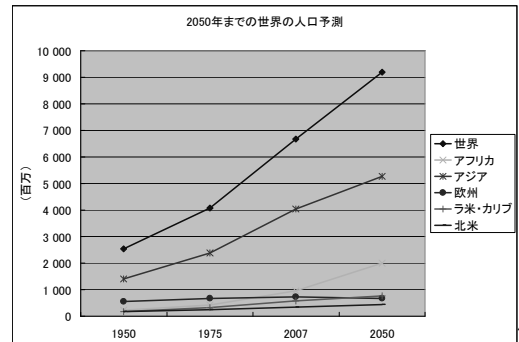
Hazardous wastes*	1993	2000	2010		
China	50,000	130,000	250,000		
India	39,000	82,000	156,000		
Indonesia	5,000	12,000	23,000		
Malaysia	377	400	1,750		
Desertification+	Overgrazing	Deforestation	Agriculture	Mining	Industry
Asia	197.3	297.8	204.3	46.1	1.4
Africa	243.1	66.8	121.4	62.7	0.2
LACs	67.9	100.0	63.5	12.0	0.0
Europe	50.0	83.8	63.9	0.5	20.6
NA	37.9	17.9	90.5	11.5	0.4
Oceania	82.5	12.3	8.0	0.1	0.0
All	678.7	578.6	551.6	132.8	22.7

Sources: UNESCAP, State of the Environment in Asia and the Pacific, 2000; Secretariat of the Base Convention, The Country Facts Sheets; MOE, White Paper on Recycling Society 2005

Notes: * 1,000 tons; + Million hectares.

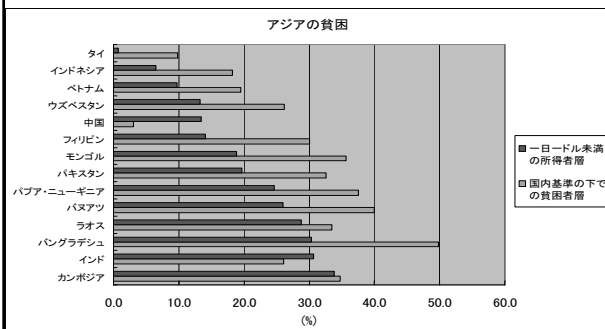
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3C4 Population Expansion, 1950-2050



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3C5 Poverty in Asia, 2005



Source: World Bank, WDR 2008.

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3C6 Heavy and Chemical Industrialisation in East Asia, 1970-2006

Country	1970		1990		1995		2006	
	A	B	A	B	A	B	A	B
China	n.a.	n.a.	24	47	27	44	32	41
Indonesia	2	19	10	52	12*	40*	18#	45#
Malaysia	8	63	31	50	42+	45+	38**	53**
Philippines	8	45	8	46	13	43	30#	41#
ROK	11	47	32	44	41	42	48	40
Singapore	28	55	53	39	62	33	51	46
Thailand	9	35	12	34	30	40	27+	27+
Vietnam	n.a.	n.a.	n.a.	12*	41*	15+	41+	41+
Japan	34	51	39	47	39	47	43	44

Sources: World Bank, WDR1993, 2002 & 2008; UNIDO, CS, D Tables.
Notes: A—Machinery; B—ISIC35—37; * -1998; # -2003; + -2000; ** -2004;

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3C7 Motorisation in East Asian Countries, 1980-2020

	1980	2000	2020
North America ⁶⁷	76	81	
European OECD	27	46	60
Asia	2.0	4.2	8.2
China	0.2	1.3	8.2
Indonesia	0.9	2.6	4.3
Malaysia	6.5	23	38
ROK	1.4	57	51
Thailand	1.9	10	26
Japan	32	57	66
Total No. of Autos (M)	389	796	1,281

Sources: Japan Automobile Industry Association, World Automobile Statistical Yearbook, 2005 and JERI, op. cit.

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3C8 Impact of Climate Change in the 21st Century, 2.4~6.4oC

- Increase in Drought, causing Shortage of Fresh Water and in particular Drinking Water,
 - Decline in Crop Production and Farm Productivity,
 - Increase in Forest Fire,
 - Increase in Human Casualties and Physical Damages due to Storms and Floods.
 - Ecological Changes due to Weakened Ocean Under-Currents,
 - Widespread Disappearance of Beaches and Coastal Swamps and Partial Loss of Small Island Developing Countries (SIDS) under Rising Sea Level due to Melting Icebergs,
 - Higher Risks of Tropical and Infectious Diseases in Temperate Zones, and
 - Increase of Biodiversity Loss
- Source: IPCC, The 4th Assessment Report, 2007.

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3D1 Threats to Security of the Region

- a) Increasing defense expenditures of many countries in the region;
- b) Lack of bilateral and multilateral defense and security cooperation except among ASEAN countries, in spite of the on-going discussion at the Asean Regional Security (ARS);
- c) Some uncertainties in the region over the bilateral security arrangements with the United States on the one hand and Russian Federation on the other.

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4. NATIONAL AND LOCAL GOVERNMENT POLICIES TO DEAL WITH THE THREATS TO SUSTAINABILITY IN EAST ASIA: The Sooner the Better !

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4A1 Need for Maximizing Positive Elements of Globalisation in 2010s

- a) **Economic globalisation**, inducing the country to adopt those instruments of economic governance at the national and corporate levels conducive to internationally agreed or "global" standards, e.g. monetary, banking, fiscal and industrial (competition) policy measures, and accounting and auditing standards, with reflections on the current financial and economic crisis;
- b) **Political globalisation**, spreading the principles of democratic governance such as accountability, transparency, civil society participation in the decision-making process and rule of law at all levels and across all sectors, with more rigorous enforcement mechanism;
- c) **Social globalisation**, strengthening people's social values and norms at all levels such as gender equity, fair and equitable distribution of income, greening all activities, care for the disadvantaged, corporate social responsibility and international cooperation for achieving MDGs;

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4A2 Need for Minimizing Negative Elements of Globalisation in 2010a

- a) **Liberalisation (Leave-it-to-the-market)**: while raising short-term efficiency in resource use at the national and corporate levels, has:
 - widened urban-rural and inter-personal income gaps through further concentration of both public and private investment and employment including those by foreign multinationals in metropolitan, urban and growth areas;
 - downgraded the quantity and quality of public services in rural and non-metropolitan areas hitherto available to the masses of people;
 - implanted the seeds of social dissatisfaction among those economically disadvantaged segments of the population such as low-income earners, part-time workers and the un- and under-employed; and
 - intensified environmental degradation and other social costs all over the country;

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- b) **Deregulation of business transactions**: while increasing the inflow of financial and human resources into high-risk and high-return activities, has:
 - increased the vulnerability and uncertainty of equity and financial markets to the detriment of productive sectors, as being increasingly apparent in the recent financial crisis the world over since 2007, triggered by the sub-prime mortgage crisis; and
 - provided unscrupulous investors and unethical businessmen with golden opportunities to exploit the innocent consumers, as seen in the recent incidences of fraudulent branding and illicit rice trading, as well as inadequate food safety;
- c) **Individual freedom and competitive pressure**: while having contributed to raising the sense of individual identity, self-respect and initiatives, has:
 - reduced the sense of commitment to and solidarity with the family, group, organisation and/or nation to which they belong;

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- intensified the sense of social alienation and political apathy among people, particularly the youth; and
- tended to enhance individual claims to "personal rights" out of proportion to "social obligations," contributing to individual malpractices/corruption and social disunity;
- d) **Double TL policies and practices**: while welcoming the cautious stance of the bureaucracy to introduce policy and procedural changes at a slow but steady pace to avoid the adverse impact on the economy, polity and society (East Asian tradition), has:
 - contributed to the bubble since mid-1980s and bubble burst in 1997-98, followed by the current international financial and economic crisis, 2007-09;
 - contributed to the prolonged resistance by the vested interest groups including colluding politicians to any economic, political and social reforms and delayed the formulation and effective implementation of reform agenda;

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4A3 Mainstreaming Economic Sustainability in National and Local Government Policies

- a) **Ensuring Macro-economic Stability and Steady Economic Growth** through Sound Monetary and Fiscal Policies and Long-term Industrial Restructuring and Trade Policies,
- b) **Poverty Reduction** through Effective Implementation of Pro-poor Policies, Reorienting Investment into Agriculture and for Productivity Improvement and Employment Expansion in Growth and Emerging Sectors, assisted by Improved Physical Infrastructures in both Urban and Rural Areas,
- c) **Improving Efficiency of Resource Use including Energy Resources** through Technological Innovations,

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Domestic Economic Deregulation/Incentives and Open-Door Policies, reinforcing Economic, Legal and Administrative Arrangements conducive to Competitive MNCs at Home and Overseas, as shown by Energy Efficiency and Conservation Efforts reducing Energy Demand by 56 percent over the past 35 years, 1970 and 2004, prompted mostly by Higher Prices and Technological Changes. Most important of all will be Increased Efficiency in the Transport Sector expected to account for 75 percent of the Increase of Oil Consumption in the Future due to Rising per capita Income and Car Ownership, as indicated by Tables 1B and 2A3,

- d) **Empowerment of People** through Enriched Basic Education and Training as well as Health for All, regardless of Personal Attributes, and
- e) **Promoting Scientific and Technological Innovations** to ensure Long-Term Competitiveness of Domestic Industries on the Global Market and to accelerate Industrial Restructuring in favour of Higher Value Added.

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4B1 Mainstreaming Social Sustainability in National and Local Government Policies

- a) **Achieving Social Stability** through Equitable Distribution of both Income and Wealth among Population and Equitable Distribution of Public Investment between Urban and Rural Areas,
- b) **Strengthening Government Capacity** to Ensure Effective Implementation of Anti-Poverty Policies at the National and Local Levels,
- c) **Increasing Government Transparency and Accountability** including reducing Corruption,

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- c) **Promoting Capacity Building of Local Governments and Decentralization of Authority** to Ensure Effective Participation of All Groups of Stakeholders in National and Local Decision-making Processes, with a view to installing **Government of the People, by the People and for the People**, and
- d) **Reinforcing Social and Political Environments under which Human Dignity and Human Rights are fully Respected without any Discriminations** on the basis of age, race, religion, sex and nationality, and under which the Public has a Deep Confidence in their own Governance Institutions.

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4C1 Mainstreaming Environmental Sustainability in All Government Policies

- a) **Mainstreaming Environmental Conservation & Protection** including Climate Change Concerns (Mitigation and Adaptation) in All Development Policies at the National, Local and Corporate Levels and Rigorously Enforcing the Polluter-Pay Principle and other Economic Instruments in all Public and Private Sector Activities to install Disaster-Resilient, Low-Carbon Society;
- b) **Strengthening Government Capacity at National and Local Levels** to Collect, Analyse and Monitor every Possible Data on Environmental Degradation, Effectively Implement the On-going Environmentally Sustainable Development Policies and Legislation, and Predict and Take any Preventive Measures on any Forthcoming Threats to Environmental Sustainability;

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- c) **Integrating Education for Sustainable Development (ESD) at all Levels of Formal and Informal Education** including Community Education and In-Service and Corporate Training, with a view to Enhancing Environmental Awareness and Capability among all Stakeholders, and
- d) **Enhancing the Capacity of Environment Experts with academic Background of Science, Engineering, Economics, Management, Politics, Humanities and other Disciplines** by emphasizing Inter-disciplinary Approach to Sustainability, as well as Increasing Interns in Public and Private Sectors and Volunteers working in Local Communities and Improving their Skills.

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4C2 Business Enterprises with ISO 14,000 Certificates, 1999-2005

	Japan	China	ROK	Indonesia	India
1999	2,773	85/50*	463	53	117
2002	8,169	1,085	880	n.a.	n.a.
2005	18,104	9,220	2,610	369	1,500

Source: Forum on Global Environment, Environmental Data 2000/2001 and 2005/2006. (<http://www.ecology.or.jp/isoworld>)

Note: * Mainland China/ Hong Kong.

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5.

Promoting Regional Cooperation in Pursuit of Sustainable East Asia by 2020: Where and How to Start the Ball Rolling !

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5A1 Perceived Impediments and Challenges Facing Regional Economic Cooperation in Asia

	A(%)	B(%)	Total(%)
Uncertain legal environments	36	25	61
Poor intellectual property rights protection	41	20	61
Poor corporate governance	39	20	59
Lack of physical infrastructure	37	18	55
Barriers to investment	34	13	47
Security and political concerns	29	17	46
Lack of mutual recognition of standards	34	12	46
Proliferation of bilateral PTAs	33	9	42
Restrictions on the movement of capital	32	9	41
Restrictions on the movement of labour	27	10	37

Source: PECC, op. cit., Table 5, p.49.

Note: A – Significant impediments; B – Very significant impediments.

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5A2 Top Five Policy Priorities for APEC Leaders to Discuss Now

	2006*	2007
WTO Doha Round	12%	
Free Trade Area of the Asia-Pacific	11	
Energy Security		9
Strengthening the APEC Organization	9	
Climate Change		8

Source: PECC, ibid., Table 9, p. 54.

Note: * Tariff reduction, Counter-terrorism. Investment in physical infrastructure, Preparing for disease & pandemics, Reducing corruption and increasing transparency.

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5A3 Enhancing Regional Cooperation in Stages, 2009-2012

In the wake of the current financial and economic crisis, accelerate the process of:

a) Improving the Chiang Mai Initiative

Multilateralisation (CMIM) agreed to be set up by the 7th ASEM meeting in Beijing in 2009;

- by increasing the foreign exchange swap fund from US\$80 billion to \$120 billion, the amount required during the 1997-98 Asian crisis or, if necessary, to 10% of the foreign exchange reserve of the region, i.e., \$400 billion,
- by agreeing on how to quickly disburse the fund and minimize conditionalities, for instance, by increasing CMIM's 20 per cent quick disbursement component to 50 per cent,
- by installing a strong regional surveillance mechanism required for the fund to be able to function well, and
- by expanding the fund's purpose beyond providing

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emergency liquidity in case of a foreign exchange crisis to providing liquidity support for (recapitalization of) financial institutions as well as to purchase toxic banking assets.

b) Improving the APEC process;

- by expanding the trade facilitation measures including customs clearance procedures, and
- by installing a series of bilateral investment regimes and finally a multilateral investment regime applicable to all countries in the region,

c) Improving and expanding the core programmes of ASEAN-China, ASEAN-Japan and ASEAN-ROK as well as any other ASEAN's Economic Cooperation Agreements;

- by reducing import tariff and non-tariff barriers further to allow ASEAN exporters a greater access to the markets of China, Japan and ROK as well as other developed countries in the region, including agricultural produces,

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other primary commodities and industrial products now classified on sensitive lists,

- ii) by liberalising the immigration policies of developed countries, Australia, Japan, New Zealand and ROK, to allow migrant ASEAN workers to have a greater access to their job markets, to be followed by any country in the region ready to open their domestic labour market,
- iii) by accelerating and expanding technology transfer by the region's developed countries and Singapore to other ASEAN countries to help the latter to upgrade their industrial and economic structures at a faster pace,
- iv) by establishing a regional trade insurance fund and providing ASEAN countries a greater access to it, including a proposal made by Japan to increase its own scheme up to US\$20 billion, as well as the expansion of ADB's subscription and RTB and the redistribution of member state quota, and
- v) by installing and if necessary, strengthening a peer review mechanism in East Asia and a regional monetary

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fund (AMF) a regional regulatory and supervisory mechanism to bring into agreed line the macro-economic and financial policies of member states of the region,

- vi) by initiating joint exploration of energy and other natural resources on land and under the sea and a regional stockpiling programme in energy and other strategic commodities with price volatility and insecure availability, assisting the ASEAN in their early completion of the ASEAN Grid and the ASEAN Natural Gas Pipeline as well as in technical and, if necessary, financial cooperation for improving energy efficiency in all sectors and for promoting clean, renewable energy sources as committed by participating countries in the Singapore Declaration at the East Asian Summit in 2007, exploring into nuclear power expansion within the framework of NPT, mobilising the support of all countries to the post-Kyoto international accord to be effective beginning in 2013 and promoting any regional arrangements for environmentally sustainable human resources, infrastructural and institutional development in ASEAN countries and in particular in CLMV countries.

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5A4 Promoting Regional Cooperation in Pursuit of Sustainable East Asia

Along the line of the ASEAN Economic, Social and Security Communities and with the Spirit of International Cooperation with the Rest of the World, Promote among those countries ready to join in:

- a) **Establishing East Asian Economic Community by 2020**, to lay the Foundations for Enhanced Regional Cooperation in Economic Affairs and to make East Asian Economic Growth both Sound and Sustainable,
- b) **Establishing East Asian Social Community by 2020**, to lay the Foundations for Enhanced Regional Cooperation in Social Affairs such as Education, Health and Culture,

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- c) **Establishing East Asian Security Community by 2020** to minimize the threats of internal and external terrorism affecting the region, along the line of the ASEAN Principles of Cooperation,

- d) **Establishing East Asian Environment Community by 2020** to arrest further Local, National and Global Environmental Degradation facing the Region and install Disaster-Resilient Low-Carbon Asia (LCA), and

- e) **Establishing East Asian Community by 2025**, with step-by-step installation of EA Council of Ministers, EA Central Bank, EA Parliament and EA Court of Justice to be competitive with the rest of the world.

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**THANK YOU FOR YOUR
KIND ATTENTION !**

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The Possibility of an East Asian Community: A Korean Perspective

Wongi Choe¹

1. Origin of the notion of an East Asian community

The original idea of the East Asian community (EAc) came originally from the two reports of the East Asia Vision Group (EAVG) and East Asia Study Group (EASG), which proceeded under the initiative of Korea in the process of ASEAN+3 (APT). The main task of EAVG was to present a vision and plan that would promote and lead to the establishment of an “East Asia community (EAc).” The recommendation for building EAc from the EAVG report in 2001 was “the evolution of the annual summit meetings of ASEAN+3 into the East Asia Summit (EAS).” The main reason for the establishment of EAc was the desire of the three Northeast Asian countries, namely China, Japan and Korea, to have an equal footing in the APT process. In the APT summit meetings, ASEAN always serves as the host, and Northeast Asian countries attend as guests. This kind of structure in the APT meetings, which have been exclusively held in ASEAN countries, makes it hard for the three Northeast Asian countries to have a strong sense of ownership. In order to accommodate the desire of the Northeast Asian countries to share a leadership role with ASEAN in terms of the agenda and priority setting in the summit process, there has to be a change in the structure of the summit format, which would eventually lead to the formation of the EAS.

The EASG report in 2002 confirmed that the EAS was one of the most important medium-and long-term, though not immediate, goals, which should be carried out through a step-by-step approach. This was primarily because ASEAN, as a core organizer (or a driving force) of the ASEAN+3 process, expressed some concerns about the possibility that ASEAN could be marginalized within the framework of the EAS. In this respect, the original concept of the EAS was

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to replace ASEAN+3, eventually integrating into a community, and the main goal of Northeast Asian countries was to make the ASEAN+3 grouping less ASEAN-centered and more “East Asian” by hosting the summit meetings in their respective capital cities. Membership expansion was never considered in the original plan. So when the two reports were adopted by the ASEAN+3 leaders, many analysts and observers predicted that the EAS could be launched at least sometime after 2010. By this time, cooperative efforts among ASEAN+3 members in trade, investment, finance and so forth will have deepened and evolved into a more tangible entity of a regional community, such as an EAFTA or East Asia financial mechanism.

However, such a gradual and incremental approach to the EAS was suddenly abandoned at the 8th ASEAN+3 Summit in Vientiane in 2004 when the leaders of ASEAN+3 agreed to launch the first East Asia Summit in December 2005 in Kuala Lumpur. With the launch of the EAS, India, Australia, and New Zealand joined as new members and the group has now expanded beyond the original geographical notion of the EAc. The problem of defining and forging a concrete concept of identity in community building, and a geographical boundary of membership, has become a perennial issue in East Asia since then.

2. New initiatives for an East Asian Community

Recently, two important and interesting proposals regarding community building in East Asia have been made by Japan and Australia: Japanese PM Hatoyama’s proposal for an East Asian community (EAc) and Australian PM Kevin Rudd’s proposal to create an Asia Pacific community (APc) by 2020.

Advocating that Australia should be more deeply involved in Asian affairs and play the role of a creative middle-power, Kevin Rudd, shortly after taking office, announced his idea of an Asia Pacific community (APc), aiming at creating an institution similar to the EU in Asia to deal with regional economic, security and political challenges. According to his proposal, the members of the

APc should include all the major powers in the Asia Pacific, including the United States, Australia, Japan, China, South Korea, India, Russia, Indonesia, and so on. In his own analysis, none of the current institutional architectures in the region, ARF, APT, EAS, APEC, is adequate to provide the leaders of all major Asian countries with an appropriate platform to discuss the broader issues in the areas of politics, economy and security. He has expressed concern that none of the existing Asia-Pacific regional mechanisms (as currently configured) is capable of engaging in the full spectrum of dialogue, cooperation and action on economic and political matters, or of meeting future challenges to security. For example, APEC is limited to economic matters and excludes India; the East Asian Summit shuts the door to the United States and Russia; and the political- and security-oriented ASEAN Regional Forum (ARF) lacks a summit meeting. Moreover, he believes that existing architectures are numerous, porous, pliable and compete with each other. A combination of economic and security dialogues, all in the same architecture, would be ideal.

The newly-elected Japanese Prime Minister Yukio Hatoyama came up with the idea of an East Asian community as the lynchpin of his administration's Asia policy in the coming future. While the idea of the EAc is not yet clearly specified, it was indicated that the EAc will take China, Japan and Korea and other members of the East Asian Summit as its core members. He explained that his concept of the community is something that would enable countries in the region to share a common vision of promoting cooperation and forging a multi-layered network of functional communities based on the principle of open regional cooperation. So far it is not clear whether the United States will be invited or not.

One of the main issues involved in the two initiatives proposed by Japan and Australia concerns the concept of community. There are differences over what "community" means, and these differences generally stem from the political positions taken by the respective governments. Should the community be geographical, socio-cultural, or politico-economic? A geographical notion of community was originally promoted by the EAVG and EASG reports in the early 2000s. If the geographical interpretation is sustained, East Asia community building must be limited to East

Asian nations, as in the APT. If the community is to be a socio-cultural construct, India may be able to qualify in an EAc process, but not Australia or New Zealand. Should the “community” be an elastic politico-economic construct, virtually any country can participate so long as there is a rationale to support it and consensus among members.

In this respect, the notion of EAc has been highly contested from the beginning of the launch of EAS in 2005. There now seems to be at least three different schools of thought with regard to the question of community building in East Asia. First, there is the school of “East Asianism” (or “East Asia only” group), which favours using ASEAN+3 as a core mechanism for community building in the region. This group is led by China, Malaysia and Thailand including the majority of ASEAN members. Second, there is a school of “Pan Asianism,” (or Pan Asian group), which favours using the EAS, with its wider membership, as the basis for a future community. This group includes India, Australia and New Zealand and possibly Singapore. Third, there is a school of “Asia Pacifism,” which favours US participation in the community building process. This is strongly advocated by Australia in the new APc initiative. Therefore, it seems highly unlikely that contention over the putative regional community’s extent and role will be settled easily or soon.

3. ASEAN and regional cooperation

The idea of these new initiatives is quite alarming to ASEAN countries because, from ASEAN’s points of view, any steps to link the regional big powers closer together would likely weaken its position as an arbitrator among the big powers. This is quite understandable given the fact that after the Asian economic crisis in 1997, ASEAN became the leading force and has been taking the “driver’s seat” in the process of regional cooperation in various ASEAN+N mechanisms. It is quite interesting to observe that the driving force for regional cooperation in East Asia came, not from the larger countries like China or Japan, but from smaller countries in the region, ASEAN and South Korea. In particular, ASEAN has been a catalyst in promoting some of the major institutional

arrangements in the process of regional cooperation such as ASEAN+3 (APT), EAS and ARF.

In 1997, ASEAN launched ASEAN+3 (Japan, China, Republic of Korea), and in 2005 ASEAN+6 (adding Australia, New Zealand and India), also referred to as the East Asia Summit (EAS). Given this history of ASEAN's central role in the regional cooperation process, to the ASEAN countries the possibility that these initiatives might endanger their role as the agenda-setter and demote them to the position of less significant players in the process of regional cooperation is quite worrisome. Some scholars in Singapore made it clear that Rudd's APc plan fundamentally disregarded ASEAN's interests.

There is no doubt that the countries of ASEAN must guard against the gradual loss of the centrality of ASEAN. Countries such as Malaysia and Indonesia believe that ASEAN's centrality is absolutely fundamental to any larger regional enterprise in East Asia. They insist that ASEAN must continue to act as one and be in the driver's seat in the APT, EAS and ARF further down the road. However, while acknowledging the important roles that ASEAN has played over the years in the regional cooperation process, the centrality of ASEAN also signifies the clear limits of the current status of regional cooperation in East Asia. In order to deepen and expand the regional cooperation and community building process in East Asia, the provision of leadership has to be extended beyond ASEAN. The bigger and more able countries in the region should take a more active and greater role no matter what the nature of such institutional architecture might be.

4. The reengagement of the US in East Asia

The US is now making a comeback to East Asia. Quite contrary to the previous Bush administration, the Obama administration has put much more emphasis on engaging in East Asia. In the summer of 2009, the US finally signed the Treaty of Amity and Cooperation (TAC) that would allow it to join the East Asian Summit (EAS) in the future. US President Barack Obama, in a speech during his visit to Tokyo in November 2009, said that ~~the~~ the United States looks forward to

engaging with the East Asia Summit more formally as it plays a role in addressing the challenges of our time,” indicating that the US is now distancing itself from the Bush administration’s arms-length approach toward East Asia. The strategic adjustment by President Obama seems to be part of the US efforts to counterbalance the growing influence of China in the region, which has expanded dramatically during the last decade while the US was preoccupied by the War on Terror. The problem is that the United States is not a member of the currently existing regional mechanisms such as APT and EAS. There seems to be no consensus among East Asian countries, especially between China and Japan, concerning whether or not the United States should be included in the establishment of an East Asian community.

As a residential power in East Asia, the US has been playing a critical role in providing regional stability in security as well as in economic affairs. However, the presence of the US in the regional cooperation process in East Asia has been largely absent. In fact, the US has been a formidable obstacle in the development of East Asian regional cooperation that does not include it, as can be seen from such instances as Japan’s proposal for an AMF (Asian Monetary Fund), and Malaysia’s PM Mahathir’s proposal for an EAEG (East Asian Economic Group). China, which does not seem to regard the presence of the US in regional cooperation in East Asia as an optimal situation for its interests, has been making efforts to gain greater presence in the regional cooperation process while the US has focused its attention elsewhere for the last decade. In this sense, while the specific nature of the extent of renewed US engagement in regional cooperation is not quite clear yet, the recent US efforts to pay greater attention to, and to take a larger role in, regional affairs in East Asia pose a new challenge to China as well as to other countries in the region.

Program of the 9th Japan-Korea Seminar on the United Nations System

Theme: East Asia and the United Nations
—Regional cooperation for global issues

Date: December 11-12, 2009

Venue: #710, Graduate School of Asia-Pacific Studies (GSAPS), Waseda University

Friday, December 11, 2009

10:00-10:30 Opening Remarks

Prof. Akio Watanabe, JAUNS President

Prof. Jin-Hyun Paik, KACUNS President

10:30-12:00 1st Session: Peace and Security in East Asia

Moderator: Prof. Tatsuro Kunugi (United Nations University – Institute of Advanced Studies)

Presenters: Japan – Assist. Prof. Miki Honda (Waseda University)

Korea – Prof. Sung-Hack Kang (Korea University)

Commentators: Japan – Prof. Chikako Ueki-Kawakatsu (Waseda University)

Korea – Mr. Young-Hie Kim (JoongAng Daily)

13:30-15:00 2nd Session: Global Human Rights Regime and Human Rights in East Asia

Moderator: Prof. Jin-Hyun Paik, KACUNS President (Seoul University)

Presenters: Korea – Prof. Heung-Soon Park (Sunmoon University)

Japan – Assoc. Prof. Tomoko Ako (Waseda University)

Commentators: Korea – Prof. Wongi Choe (Institute of Foreign Affairs and National Security)

Japan – Assoc. Prof. Misako Takizawa (Oberlin University)

15:15-16:45 3rd Session: Human Migration in East Asia

Moderator: Prof. Hiroshi Ohta (Waseda University)

Presenters: Japan – Prof. Yasushi Katsuma (Waseda University)

Korea – Dr. Yoojin Rhee (Korea University)

Commentators: Japan – Assoc. Prof. Misako Takizawa (Oberlin University)

Korea – Prof. Seo-Hang Lee (Institute of Foreign Affairs and national Security)

Saturday, December 12, 2009

09:00-10:30 4th Session: Sustainable Development in East Asia

Moderator: Amb. Joun-Yung Sun

Presenters: Korea – Prof. Intaek Han (Jeju Peace Institute)

Japan – Prof. Jun Matsukuma (Tokyo University of Foreign Studies)

Commentators: Korea – Prof. Heung-Soon Park (Sunmoon University)

Japan – Prof. Ryo Oshiba (Hitotsubashi University)

10:40-12:10 5th Session: The Possibility of an East Asian Community

Moderator: Prof. Takeo Uchida (Chuo University)

Presenters: Japan – Prof. Ryokichi Hirono (National Graduate Institute for Policy Studies)

Korea – Prof. Wongi Choe (Institute of Foreign Affairs and National Security)

Commentators: Japan – Prof. Satoshi Amako (Waseda University)

Korea – Prof. Cheol-Hee Park (Seoul National University)

12:10-12:20 Closing Remarks

Prof. Jin-Hyun Paik, KACUNS President

Prof. Akio Watanabe, JAUNS President

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