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## South Korea's National Security Law: A Tool of Oppression in an Insecure World

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## South Korea's National Security Law: A Tool of Oppression in an Insecure World

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# **SOUTH KOREA'S NATIONAL SECURITY LAW: A TOOL OF OPPRESSION IN AN INSECURE WORLD**

DIANE KRAFT\*

## **INTRODUCTION**

In September 2004, the ruling party in South Korea, along with two opposition parties, called for the abolishment of the 1948 anti-communist National Security Law. The following month, Amnesty International, a long-time critic of the law, officially called for the law's repeal. The law had been enacted in 1948 in response to threats from communist North Korea, but has long been used by the government to silence legitimate opposition in South Korea. This Comment will examine South Korea's National Security Law as viewed by its domestic supporters and critics, as well as by the international community. Part I will consider the historical context of the law's enactment. Part II describes the content of the National Security Law, and Part III examines the rationale for the law and its enforcement during the past fifty five years. Part IV examines previous discussions about the law's repeal; Part V discusses the extent to which the law violates international human rights norms; Part VI compares South Korea to two Asian countries with similar laws, and Part VII considers the prospects for the law's eventual repeal in light of both domestic and international pressure.

## **I. HISTORICAL BACKGROUND OF THE NATIONAL SECURITY LAW**

The National Security Law was enacted on December 1, 1948,<sup>1</sup> just three and a half months after the establishment of the Republic of Korea.<sup>2</sup> Japan's defeat in World War II only a few

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<sup>1</sup> *E.g.*, IAN NEARY, HUMAN RIGHTS IN JAPAN, SOUTH KOREA AND TAIWAN 79-80 (2002).

<sup>2</sup> *E.g.*, DONALD STONE MACDONALD, THE KOREANS: CONTEMPORARY POLITICS AND SOCIETY 46 (1990) (Republic of Korea established on August 15, 1948).

years prior had resulted in the end of almost four decades of Japanese rule in Korea.<sup>3</sup> By 1946, political unrest had increased, and conflicts between right-wing anti-communists and the left-wing People's Committees erupted throughout the country, especially in the south.<sup>4</sup> Cheju Island, for example, located off the southern coast of Korea, had a de facto government run largely by the left-wing People's Committee.<sup>5</sup> In the ensuing battle by the government to suppress this left-wing insurgency, as many as sixty thousand people were killed.<sup>6</sup> Shortly thereafter, in October 1948, a rebellion in the southern coastal city of Yosu resulted in the deaths of more than one thousand people.<sup>7</sup> Newly elected President Syngman Rhee responded by arresting members of the left.<sup>8</sup> To aid the president in suppressing the leftist threat to the government, the National Assembly proposed an anti-treason law, which it ultimately passed as the National Security Law.<sup>9</sup> By 1949, President Rhee had imprisoned thirty thousand people accused of being communists, and 80 percent of all court cases involved charges against suspected communists.<sup>10</sup>

## II. DESCRIPTION OF THE NATIONAL SECURITY LAW

The stated purpose of the National Security Law is to prevent anti-state acts from threatening the security of South Korea.<sup>11</sup> "Anti-State groups" are defined in the law as "domestic or foreign organizations or groups whose intentions are to conduct

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<sup>3</sup> Japan occupied Korea between 1910 and 1945. See, e.g., *id.* at 39-41, 44-45.

<sup>4</sup> BRUCE CUMINGS, *KOREA'S PLACE IN THE SUN: A MODERN HISTORY* 202-24 (1997); see also MACDONALD, *supra* note 2, at 47.

<sup>5</sup> See CUMINGS, *supra* note 4, at 217-18.

<sup>6</sup> *Id.* Estimates of the number of people killed range from 15,000 to 60,000. *Id.* In addition, almost 40,000 homes were destroyed, as well as more than half the villages on the island. *Id.*

<sup>7</sup> *Id.* at 221-23.

<sup>8</sup> MACDONALD, *supra* note 2, at 49.

<sup>9</sup> NEARY, *supra* note 1, at 80. The National Security Law was modeled on Japanese law intended to suppress Korean dissidents.

<sup>10</sup> CUMINGS, *supra* note 4, at 223.

<sup>11</sup> National Security Act, Law No. 3318 (1980), as revised by Law No. 4373 (1991), art. 1 (S. Korea) [hereinafter National Security Act]; see also Kuk Cho, *Tension Between the National Security Law and Constitutionalism in South Korea: Security for What?* 15 B.U. INT'L L.J. 125, 138 (1997) (noting that an anti-State group "was originally designed to relate to North Korean organizations, but the idea has had

or assist infiltration of the Government or to cause national disturbances.”<sup>12</sup> The second chapter of the law details specific crimes and their punishments. Chief instigators or organizers of anti-state groups are sentenced to death or life imprisonment. Leaders are sentenced to a minimum of five years in prison and a maximum of death, and lesser members and those who encourage others to join an anti-state group receive a minimum of two years in prison.<sup>13</sup> Further, Article 5 punishes those who voluntarily aid anti-state groups, and it prescribes up to seven years in prison for “accepting valuables from anti-state groups.”<sup>14</sup>

Probably the most-criticized section of the National Security Law is Article 7, which punishes those praising or sympathizing with an anti-state group. Those who “praise, encourage, disseminate or cooperate” with an anti-state group will be imprisoned up to seven years, while anyone who organizes or joins a group that intends to do any of those acts will receive a minimum of one year in prison.<sup>15</sup> Those who “create or spread false information which may disturb national order” will be imprisoned for a minimum of two years.<sup>16</sup> Those who “create, import, duplicate, possess, transport, disseminate, sell, or acquire documents, arts or other publications” in order to violate Article 7 will be punished according to the article violated.<sup>17</sup> Finally, under Article 9, those who “knowingly provide valuables or other monetary benefits or facilities for hiding, meeting, communicating, and contacting or provide other conveniences to persons who have committed or plan to commit” anti-state acts will be sentenced up to ten years in prison,<sup>18</sup> and under Article 10, anyone who fails to inform on

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its application extended to other organizations, including, for instance, Jochongryon, a representative organization of pro-North Korean residents in Japan, home-grown hard-line anti-regime political organizations in South Korea like Sannaeng, the Korean Socialist Workers' League.”).

<sup>12</sup> National Security Act, art. 2.

<sup>13</sup> *Id.* ch. 2.

<sup>14</sup> *Id.* art. 5(2).

<sup>15</sup> *Id.* art. 7(1), (3).

<sup>16</sup> *Id.* art. 7(4).

<sup>17</sup> *Id.* art. 7(5).

<sup>18</sup> *Id.* art. 9(2).

those who have committed anti-state acts can receive up to five years in prison.<sup>19</sup>

### III. RATIONALE FOR AND ENFORCEMENT OF THE NATIONAL SECURITY LAW

The rationale for the National Security Law has always been the threat of subversion from North Korea.<sup>20</sup> Indeed, North Korea's surprise invasion of South Korea on June 25, 1950 would seem to justify the need for a security law, if not the law's effectiveness. Even after the Korean War, North Korea has continued to send operatives into South Korea.<sup>21</sup>

The North Koreans have launched thousands of infiltration operations against the south since 1953. . . . Highly trained North Korean special warfare troops continue armed infiltrations into the south; some of these are detected and many probably are not. Such operations are aimed at disturbing authority and public order, planting long-term agents for subversion and espionage, and promoting uprisings.<sup>22</sup>

In 1968, for example, North Korean agents tried to assassinate South Korean President Park Chung Hee.<sup>23</sup> Later the same year, 120 North Korean agents were discovered after landing on the eastern coast of South Korea.<sup>24</sup> In 1983, North Korean agents tried to assassinate South Korean President Chun Doo Hwan in

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<sup>19</sup> *Id.* art. 10. Punishments under Articles 9 and 10 may be "reduced or waived in cases involving family members." *Id.* art. 9(2), art. 10. The National Security Law consists of a total of 25 Articles plus an Epilogue. Chapter 3 addresses "Special Prosecutions" including the arrest and detention of witnesses (Article 18) and appeals (Article 20); Chapter 4 addresses "Rewards and Merits." *Id.* chs. 3, 4. The National Security Law has been revised numerous times since 1948; the version described here is the most recent enactment. Its core purpose and structure have remained unchanged.

<sup>20</sup> See MACDONALD, *supra* note 2, at 241.

<sup>21</sup> *E.g., id.*

<sup>22</sup> *Id.*

<sup>23</sup> See *id.*

<sup>24</sup> *Id.*

Burma, and in 1987 North Korean agents blew up a Korean airliner, reportedly to convince people not to attend the Olympic Games in Seoul.<sup>25</sup>

Nonetheless, critics of the law have long charged the government with using it to silence legitimate political and social opposition.<sup>26</sup> Indeed, since enacting the law in 1948 the government has used it many times to arrest individuals, for acts ranging from praising North Korea in casual conversation to running as an opposition candidate in presidential elections.<sup>27</sup> In the first year of its enactment, the National Security Law was used to arrest or imprison 188,621 people,<sup>28</sup> including thirteen members of the National Assembly accused of "disturbing the tranquility of the nation."<sup>29</sup> Almost a decade later, opposition Social Democrat presidential candidate Cho Bong Ahm was sentenced to death and executed the following year.<sup>30</sup> Afterwards, his Progressive Party "disbanded."<sup>31</sup>

In 1961, Major General Park Chung Hee took control of the South Korean government in a military coup.<sup>32</sup> During the first few years of his regime, he dissolved the legislature and suspended the constitution.<sup>33</sup> He used the North Korean threat as a reason to arrest and torture political dissidents, including future South Korean presidents Kim Dae Jung and Kim Yong Sam, using the National Security Law as authority.<sup>34</sup> Kim Dae Jung, the

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<sup>25</sup> *Id.*

<sup>26</sup> *E.g.*, NEARY, *supra* note 1, at 82.

<sup>27</sup> *Id.*; CUMINGS, *supra* note 4, at 216-17, 368; *cf.* MACDONALD, *supra* note 2, at 57.

<sup>28</sup> NEARY, *supra* note 1, at 80.

<sup>29</sup> CUMINGS, *supra* note 4, at 216-17.

<sup>30</sup> NEARY, *supra* note 1, at 82.

<sup>31</sup> Cho, *supra* note 11, at 132.

<sup>32</sup> MACDONALD, *supra* note 2, at 53.

<sup>33</sup> *Id.* at 54.

<sup>34</sup> Uichol Kim, *Analysis of Democracy and Human Rights in Cultural Context: Psychological and Comparative Perspectives*, in 1 DEMOCRACY, HUMAN RIGHTS, AND PEACE IN KOREA: PSYCHOLOGICAL, POLITICAL, AND CULTURAL PERSPECTIVES 53, 83-84 (Henriette Sinding Aasen et al. eds., 2001); *see also* MACDONALD, *supra* note 2, at 54-55 (noting that despite Park's repressive tendencies, a new Constitution with greater civil rights guarantees was adopted in 1963, Park was elected President, and reelected in 1967). When I asked students at Korea University what they thought of President Park, many defended him for improving

opposition leader during the 1971 presidential election, was abducted in Tokyo in 1973, brought back to Korea, and imprisoned.<sup>35</sup> The popular poet Kim Chi Ha was jailed in the 1970s for writing poems that advocated "class division."<sup>36</sup> In 1976, an opposition group wrote a declaration to commemorate the anniversary of a 1919 independence uprising, and under the National Security Law, those who signed the declaration were sent to prison.<sup>37</sup>

Repression under the National Security Law continued in the 1980s, when General Chun Doo Hwan took power in another military coup in 1980 and declared martial law in response to student demonstrations.<sup>38</sup> Kim Dae Jung was sentenced to death for instigating a large uprising in Kwangju in 1980, although he was not executed.<sup>39</sup> General Chun also cracked down on the press, removing 937 editors and journalists from their posts and putting newspapers and radio and television stations under government control.<sup>40</sup> The Kwangju uprising prompted domestic and foreign criticism of Chun's repressive policies.<sup>41</sup> As a result, a new constitution was adopted and political parties were again allowed to form.<sup>42</sup> However, the government continued to employ the National Security Law to punish anyone suspected of North Korean sympathies. In 1987, the president of a publishing company was arrested for publishing "travel essays written by Koreans living in the United States who were reportedly sympathetic to North Korea."<sup>43</sup>

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the economy, arguing that he was a good President in spite of the repression that occurred during his administration.

<sup>35</sup> See MACDONALD, *supra* note 2, at 57.

<sup>36</sup> CUMINGS, *supra* note 4, at 368.

<sup>37</sup> See MACDONALD, *supra* note 2, at 57.

<sup>38</sup> Kim, *supra* note 34, at 84.

<sup>39</sup> *Id.* at 84-85; see also NEARY, *supra* note 1, at 82. Two other Presidential candidates, Suh Min-ho and Kim Chul, were also charged with crimes under the National Security Law. *Id.*

<sup>40</sup> Kim, *supra* note 34, at 84.

<sup>41</sup> See MACDONALD, *supra* note 2, at 59.

<sup>42</sup> *Id.*

<sup>43</sup> ASIA WATCH ET AL., FREEDOM OF EXPRESSION IN THE REPUBLIC OF KOREA 31 (1988).



Later that year, Roh Tae Woo succeeded Chun Doo Hwan as president.<sup>44</sup> Workers and students continued to demonstrate, and “the use of North Korean propaganda themes by some of them and their attempts to establish contact with the north caused renewed efforts at control by police and security forces.”<sup>45</sup> During this time, five Yonsei University students were convicted under the National Security Law for allegedly meeting to study North Korean ideology, two Korea University students were charged with producing publications favorable to North Korea, and another university student was charged with producing leaflets allegedly based on North Korean radio broadcasts.<sup>46</sup> In 1989, President Roh arrested an average of 3.3 dissidents per day under the National Security Law.<sup>47</sup>

During the early 1990s, many pro-democracy, pro-reunification, and anti-government movements became active, challenging the legitimacy of the National Security Law.<sup>48</sup> However, following the economic crisis of 1997-98, the National Security Law was used against students and workers who demonstrated against unemployment, resulting in more than four hundred arrests in the first half of 1998.<sup>49</sup> In general, throughout its fifty-six years of existence, critics argue, the National Security Law has been used to arrest “many hundreds” of writers, artists, academics, publishers, and bookstore owners.<sup>50</sup> It has even been used to arrest and convict ordinary people for casual comments made while intoxicated.<sup>51</sup>

The National Security Law continues to be used in the twenty-first century. In 2001, an American citizen, Song Hak Sam, was arrested in Seoul and imprisoned for two months after he supported the publisher of a best-selling book, *Kim Jong Il's*

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<sup>44</sup> E.g., Kim, *supra* note 34, at 84-85.

<sup>45</sup> MACDONALD, *supra* note 2, at 59.

<sup>46</sup> ASIA WATCH ET AL., *supra* note 43, at 32.

<sup>47</sup> CUMINGS, *supra* note 4, at 390.

<sup>48</sup> See Cho, *supra* note 11, at 135.

<sup>49</sup> NEARY, *supra* note 1, at 82.

<sup>50</sup> See *id.*

<sup>51</sup> *Id.* (quoting WON SOON PARK, *THE NATIONAL SECURITY LAW* (1993)).

*Unification Strategy*.<sup>52</sup> Later that year, seven members of a South Korean peace delegation to North Korea were threatened with arrest for violating the National Security Law after they attended ceremonies at a North Korean peace monument in Pyongyang.<sup>53</sup> Also in 2001, Kang Jeong Koo, a sociology professor at Dongguk University in Seoul, was arrested for violating the National Security Law after he visited the birth place of North Korean founder Kim Il Sung in Pyongyang.<sup>54</sup>

The law's reach is limited, however, when alleged violators are not seen as a threat to South Korean security, especially in the context of recent openings between North and South Korea. In one case, a South Korean dissident who had been living in Germany was arrested when he returned to South Korea after thirty-six years.<sup>55</sup> Although Song Du Yul had traveled to North Korea eighteen times and had written letters to Kim Jong Il professing his loyalty, a Seoul appellate court suspended his three-year sentence "in light of the growing perception of North Korea as a dialogue partner."<sup>56</sup> Similarly, President Kim Dae Jung discouraged any legal action against the Hyundai Business Group for secretly giving approximately US\$186 million to North Korea in a blatant violation of the National Security Law.<sup>57</sup> This reluctance may be part of a trend toward using the law only when a

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<sup>52</sup> *Congressman Seeks Release of Prisoner*, N.Y.L.J., May 3, 2001, at 4 (reporting that Mr. Song was released and returned to his home in New York after U.S. Representative Gary Ackerman appealed to South Korea's ambassador to the U.S. on his behalf); see also *Korean-American Returns After Arrest*, N.Y.L.J., July 31, 2001, at 6.

<sup>53</sup> Don Kirk, *Peace Advocates Charged*, N.Y. TIMES, Aug. 25, 2001, at A4; see also *Arrest Warrants Sought for 7 S. Korean Visitors to North Korea*, ASIA POL. NEWS, Aug. 27, 2001 (reporting that others were not arrested due to lack of evidence).

<sup>54</sup> Chung-Un Cho, *Kang Case Rekindles Debate on National Security Law*, KOREA HERALD (Seoul), Oct. 17, 2005, available at <http://www.koreaherald.co.kr>.

<sup>55</sup> Jong-Heon Lee, *1948 S. Korean Security Law Challenged*, UNITED PRESS INT'L, Sept. 7, 2004; Amnesty Int'l, *Open Letter to Acting President Goh Kun – Continued Use of the Draconian National Security Law: Amnesty International's Concerns about Professor Song Du Yul's Case*, AI Index ASA 25/003/2004, Apr. 1, 2004, available at <http://web.amnesty.org/library/Index/ENGASA250032004?open&of=ENG-KOR>.

<sup>56</sup> Lee, *supra* note 55.

<sup>57</sup> Kim denied that the money was a bribe to persuade North Korea to participate in the first inter-Korean summit, saying instead that the money was payment for the granting of exclusive business rights for seven projects in North Korea. *Kim Apologizes Over Hyundai's Secret Financial Aid to North*, ASIAN POL. NEWS,

legitimate threat exists. In any event, it is almost certainly linked to the renewed debate over the legitimacy of the National Security Law.

#### IV. DISCUSSIONS OF POSSIBLE REVISIONS/REPEAL OF THE NATIONAL SECURITY LAW

The National Security Law has been revised seven times since its enactment in 1948.<sup>58</sup> For example, when the 1988 Constitution permitted "much freer political activity," the law was revised in the wake of discussions to abolish it altogether.<sup>59</sup> In 1993, during the administration of Kim Young Sam, South Korea's first freely elected civilian president, the law was again revised, this time to deny the National Security Planning Board the right to investigate alleged violations of the much-criticized Article 7.<sup>60</sup> However, under the influence of conservatives in government, the law was rewritten again three years later, giving the National Security Planning Board the power to investigate allegations of internal rebellion, foreign invasion, and breaches of military security.<sup>61</sup>

When Kim Dae Jung ran for president after having been arrested and sentenced to death under the National Security Law, his call for the eventual revision of the National Security Law was no surprise.<sup>62</sup> While his administration did not abolish the law, his Sunshine policy of renewed contact between North and South Korea did act as a catalyst for increased discussion about the ultimate purpose and fairness of the law, renewing calls for its complete repeal.<sup>63</sup>

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Feb. 18, 2003, [http://www.findarticles.com/p/articles/mi\\_m0WDQ/is\\_2003\\_Feb\\_18/ai\\_97790620](http://www.findarticles.com/p/articles/mi_m0WDQ/is_2003_Feb_18/ai_97790620).

<sup>58</sup> E.g., Yang-Hwan Jung & Min-Hyuk Park, *National Human Rights Commission of Korea Urges Abolition of National Security Law*, DONG-A ILBO (Seoul), Aug. 24, 2004, available at [http://english.donga.com/srv/service.php3?biid=200408255158&path\\_dir=20040825](http://english.donga.com/srv/service.php3?biid=200408255158&path_dir=20040825).

<sup>59</sup> NEARY, *supra* note 1, at 81.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 82.

<sup>63</sup> Kim Dae Jung's Sunshine Policy is a strategy of engagement with North Korea, rather than confrontation, leading in June 2000 to the first summit meeting between North and South Korea. E.g., Oh Kongdan, *Terrorism Eclipses the Sunshine Policy* 5 (2002), available at <http://asiasociety.erlbaum.net/publications/>

Kim's successor, President Roh Moo Hyun, and the Uri Party, have openly called for the repeal of the National Security Law.<sup>64</sup> In a television interview, Roh asserted that the law had been used to silence opposition to the government, saying "it would be better to send [the law] to a museum sealed."<sup>65</sup> Accordingly, the Uri Party, which holds a plurality of seats in the South Korean Parliament, along with two smaller parties, announced in September 2004 that they would submit a bill calling for the law's abolition.<sup>66</sup> The Uri Party welcomed Amnesty International's public support of this position, and a spokeswoman for the party expressed the hope that "the opposition party will take this opportunity to join the global trend of valuing human rights."<sup>67</sup>

The main political opponent of the Uri Party's pro-abolition stance is the Grand National Party.<sup>68</sup> The Grand National Party argues that abolishing the law would compromise national security by leaving South Korea defenseless against North Korea, making it a "haven of North Korean spy agents" if the law is repealed.<sup>69</sup> Their concern, however, extends beyond infiltration

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KoreanUpdate2002.pdf; see also NORMAN D. LEVIN & HAN YONG SUP, SUNSHINE IN KOREA: THE SOUTH KOREAN DEBATE OVER POLICIES TOWARD NORTH KOREA 12-15 (2002).

<sup>64</sup> E.g., Lee, *supra* note 55.

<sup>65</sup> Jeong Rok Shin, *National Security Law Should be Abolished: Roh*, CHOSUN ILBO (Seoul), Sept. 5, 2004, available at <http://english.chosun.com/cgi-bin/printNews?id=200409050029.html>.

<sup>66</sup> Jin Ryu, *3 Parties to Scrap Security Law*, KOREA TIMES, Sept. 23, 2004, available at <http://times.hankooki.com/lpage/200409/kt2004092322135952820.htm>. The Uri Party initially held a majority of seats in Parliament, but lost its majority in by-elections "and as a result of convictions for election law violations." U.S. State Dep't, Bureau of East Asian & Pac. Aff., *Background Note: South Korea*, <http://www.state.gov/r/pa/ei/bgn/2800.htm>.

<sup>67</sup> Song Wu Park, *Amnesty Backs Security Law Abolition*, KOREA TIMES, Oct. 14, 2004, available at <http://times.hankooki.com/lpage/200410/kt2004101416243410230.htm>.

<sup>68</sup> E.g., *Uri Party Decides to Abolish National Security Law*, CHOSUN ILBO, Sept. 7, 2004, available at <http://english.chosun.com/w21data/html/news/200409/200409070029.html>.

<sup>69</sup> So Young Kim, *National Security Law: Repeal or Revision?*, KOREA HERALD, Sept. 9, 2004, available at <http://www.asiamedia.ucla.edu/article.asp?parentid=14480>. According to intelligence estimates, there are currently up to 40,000 North Korean spies in South Korea. Anthony Faiola, *National Security Law Challenged*, HOUSTON CHRONICLE, Dec. 4, 2004, at 35.

by spies. Some members of the Grand National Party also attribute South Korea's stability at least in part to the National Security Law, and fear that if the law were repealed, South Koreans would feel free to express their support for North Korea,<sup>70</sup> leading to political unrest.<sup>71</sup> Opponents of the law's abolition also accuse the Uri Party of conceding to North Korean demands to repeal the law before the North will consider further contacts between North and South Koreans.<sup>72</sup> Members of the Grand National Party insist that any change in the National Security Law must be preceded by a major change in North Korean ideology.<sup>73</sup> As one member argued, "It is impossible to scrap or revise the National Security Law without a basic change in the attitude of North Korea."<sup>74</sup>

The opposition's position is strengthened by support from both the South Korean Constitutional Court and Supreme Court.<sup>75</sup> In 1990, while the Korean Constitution Court recognized that parts of the National Security Law were unconstitutional, it did not hold the National Security Law to be unconstitutional as a whole.<sup>76</sup> In addition, the court found that a repeal of the entire National Security Law could lead to legal chaos, and stated that the disadvantages of repealing the law could be greater than the advantages, given the tensions between

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<sup>70</sup> Kim, *supra* note 69. One Grand National Party member predicted that if the National Security Law were repealed, "people would support and laud North Korea without any restraint. People who sympathize with North Korean leader Kim Jong Il would be able to act freely." *Id.*

<sup>71</sup> Interview by Kanaha Sabapathy with Song Hae Young, Senior Assistant to the Uri Party spokesman, Gong Sung Jin, Grand National Party congressman, and Dr. Chong Young Sun, Deputy Director of the Policy Department of the National Human Rights Commission of South Korea (ABC Radio Australia broadcast, Aug. 9, 2004), available at <http://www.abc.net.au/ra/asiapac/programs/s1194480.htm>. According to Grand National Party Congressman Gong Sung Jin, "The National Security Law is the only law to maintain the South Korean liberal democracy status quo. With the general law we cannot maintain the status quo." *Id.*

<sup>72</sup> *Cf. Lee, supra* note 55.

<sup>73</sup> Lee Myoung Jin, *Ruling, Opposition Parties Fight Over National Security Law*, CHOSUN ILBO, Sept. 6, 2004, available at <http://english.chosun.com/w21data/html/news/200409/200409060040.html>.

<sup>74</sup> *Id.*

<sup>75</sup> *E.g., Lee, supra* note 55; Shin, *supra* note 65; Ryu, *supra* note 66.

<sup>76</sup> Cho, *supra* note 11, at 136.

North and South Korea.<sup>77</sup> The South Korean Supreme Court agreed and, in September 2004, ruled against a proposal to repeal the law.<sup>78</sup>

In response to charges of a potential compromise of South Korean security, the Uri Party asserts that the criminal law could be revised to close any dangerous gaps left by the abolition of the National Security Law.<sup>79</sup> Accordingly, in October 2004, the Uri Party proposed alternative versions of legislation to revise or repeal the law, which included proposed revisions in the criminal law.<sup>80</sup>

In defense of its pro-abolition position, the Uri Party argues that the National Security Law will have to be repealed in order to facilitate exchanges between North and South Koreans.<sup>81</sup> The Uri Party admits to the problems posed by the existence of North Korean laws, such as those that prevent North Koreans from traveling to South Korea, and particularly the Workers Party Law, which advocates for a communist South Korea.<sup>82</sup> They assert, however, that if North and South Korea are ever to reunite, communication and exchanges between the citizens of the two countries are essential.<sup>83</sup> The first step in making this possible, the Uri Party argues, is to abolish the National Security Law.<sup>84</sup> As one Uri Party spokesperson pointed out, exchanges have already taken place in spite of the law, including a summit between

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<sup>77</sup> *Id.* at 163.

<sup>78</sup> Lee, *supra* note 55; see also Shin, *supra* note 65 (stating that according to the Supreme Court, “[p]ossibilities are still left open for North Korea to try to overthrow our system. . . . We should be careful in taking a measure that allows the country to disarm itself.”).

<sup>79</sup> Lee, *supra* note 55; Kim, *supra* note 69.

<sup>80</sup> Park, *supra* note 67; see also *Uri Party Decides to Abolish National Security Law*, *supra* note 68. The Uri Party’s assurance that “changes in the Criminal Law will include punishment for non-organizational, non-violent, voluntary praise for North Korea” leaves in question the degree to which the abolition of the National Security Law would actually appease human rights groups that call for greater freedom of speech in South Korea. *Id.*

<sup>81</sup> Limited exchanges between families from North Korea and South Korea, separated since the Korean War, began in 2000. See Stephanie Strom, *Koreans, Divided by War, Await Loved Ones’ Return*, N.Y. TIMES, Aug. 13, 2000, at 1.

<sup>82</sup> Kim, *supra* note 69; *Uri Party Decides to Abolish National Security Law*, *supra* note 68.

<sup>83</sup> Kim, *supra* note 69.

<sup>84</sup> *Id.*

Kim Dae Jung and Kim Jong Il in June 2000 as well as several large exchanges of family members, "so if the law is applied then former President Kim Dae Jung should be arrested."<sup>85</sup>

While the Uri Party has a plurality in the Korean parliament, public opinion does not seem to support its call for the total repeal of the National Security Law.<sup>86</sup> According to a newspaper poll conducted in September 2004, 66 percent of those polled favored revision, but not repeal, of the law.<sup>87</sup> In fact, more people preferred to keep the law in its current form than wanted the law abolished.<sup>88</sup> When a "Citizens Rally for Defending the National Security Law" was held in Seoul in October 2004, police estimated attendance at between one hundred thousand and one hundred twenty thousand.<sup>89</sup> Groups attending the rally included the conservative Korea Freedom League, the Christian Council of Korea, and Korea War Veterans.<sup>90</sup> One of the arguments posited for keeping the law was to maintain the country's economic stability, lest foreign companies opt not to do business in South Korea.<sup>91</sup> Using the National Security Law as a mechanism of stability appears to be one of the key reasons for its overall popular support. One editorial queried,

What then would happen if we had completely abolished the National Security Law? There would be no legal way to block a South Korean citizen from joining the North's Workers Party. . . . Even if one established a *juche*<sup>92</sup> ideology research institute . . . and instruct[ed] the ideology to

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<sup>85</sup> Interview by Kanaha Sabapathy, *supra* note 71.

<sup>86</sup> See Kim, *supra* note 69; Editorial, *Proper Path of National Security Law Debate*, CHOSUN ILBO (Seoul), Sept. 7, 2004, available at <http://english.chosun.com/w21data/html/news/200409/200409070039.html>.

<sup>87</sup> Kim, *supra* note 69.

<sup>88</sup> *Proper Path of National Security Law Debate*, *supra* note 86 (sixteen percent wanted to keep the law in its current form, fourteen percent wanted the law abolished).

<sup>89</sup> Hyun-Joo Jin, *Huge Rally Opposes Anticommunist Law Repeal*, KOREA HERALD, Oct. 5, 2004; Yang-Hwan Jung & Se-Jin Jung, *About the Citizens Rally for Defending the National Security Law*, DONG-A ILBO, Oct. 4, 2004.

<sup>90</sup> Jung & Jung, *supra* note 89.

<sup>91</sup> Jin, *supra* note 89.

<sup>92</sup> *Juche* (or *chuch'e*) is commonly translated as "self reliance." It is one of the core ideas in North Korean nationalism. *E.g.*, CUMINGS, *supra* note 4, at 402-05.

students, nobody would be able to block it. . . . Few citizens believe that our society is fully capable of digesting such confusions.<sup>93</sup>

As long as such sentiments predominate among South Koreans, the Uri Party and its supporters will most likely have a difficult time abolishing the law.

While the South Korean general public does not support the abolition of the National Security Law, domestic civic organizations and human rights groups do. Until recently, however, the dearth of such groups in South Korea has limited the ability of opponents of the National Security Law to mount organized campaigns.<sup>94</sup> One domestic civic organization, People's Solidarity for Participatory Democracy, founded in 1994 with the goal of "promoting justice and human rights in Korean society through the participation of the people,"<sup>95</sup> was one of ten groups to make a joint declaration urging the abolition of the National Security Law.<sup>96</sup> In November 2001, the government established the National Human Rights Commission of Korea,<sup>97</sup> and in August 2004, the commission for the first time publicly supported the abolition of the law.<sup>98</sup> The commission makes three main arguments for abolishing the law: (1) it was established as a temporary measure and should have been repealed when the Criminal Law was enacted in 1948; (2) there was no national consensus for any of its seven revisions; and (3) it is a violation of

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<sup>93</sup> *Proper Path of National Security Law Debate*, *supra* note 86.

<sup>94</sup> Cf. Ah Young Chung, *International Rights Activists Urge Repeal of Security Law*, KOREA TIMES, Sept. 14, 2004, available at <http://times.hankooki.com/lpage/200409/kt2004091416421653460.htm> (stating that only a small number of groups made declaration).

<sup>95</sup> People's Solidarity for Participatory Democracy, <http://eng.peoplepower21.org/contents/about.html> (last visited March 3, 2006).

<sup>96</sup> Chung, *supra* note 94.

<sup>97</sup> The Commission was established under the National Human Rights Act (NHRC Act). The limits of the Commission's investigative powers and the NHRC Act's "vaguely worded provisions" have been criticized by Amnesty International. Amnesty Int'l, *South Korea: Making the National Human Rights Commission Autonomous and Effective*, AI Index ASA 25/004/2002, Apr. 24, 2002, available at <http://web.amnesty.org/library/Index/ENGASA250042002?open&of=ENG-KOR>.

<sup>98</sup> Jung & Park, *supra* note 58.



“freedom of thought, conscience, and expressions. . . .”<sup>99</sup> The National Human Rights Commission also points out that North Korea is recognized as an independent country by more than one hundred nations, and it argues that South Korea needs to acknowledge North Korea’s identity as more than just an “anti-state organization.”<sup>100</sup> The commission chairman argued that “Korea has to accept the opinions and decisions of international society as a member. Its attitude toward North Korea also needs to reflect the changes in our time and its surroundings.”<sup>101</sup>

## V. INTERNATIONAL HUMAN RIGHTS STANDARDS

Critics of South Korea’s National Security Law argue that it violates international human rights norms. This section will discuss some of the major international human rights documents, and the extent to which they are violated by the National Security Law.

### A. UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948)

On December 10, 1948, just nine days after South Korea enacted the National Security Law, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR).<sup>102</sup> Since then, the UDHR has succeeded in “establishing the contours of the contemporary consensus on internationally recognized human rights,” and it has been endorsed by almost all nations.<sup>103</sup> The UDHR includes among its core structures that human rights belong to individuals, and that these rights are to be viewed holistically, as an “indivisible whole” rather than as a list from which nations may pick and choose.<sup>104</sup> In addition, each nation has the responsibility of ensuring that its citizens are accorded these rights.<sup>105</sup>

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<sup>99</sup> *Id.*

<sup>100</sup> Interview by Kanaha Sabapathy, *supra* note 71.

<sup>101</sup> Jung & Park, *supra* note 58.

<sup>102</sup> G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948).

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 23.

<sup>105</sup> *Id.*

Among the rights that South Korea is accused of violating are the rights to liberty, freedom of thought, and opinion; to peacefully assemble; to be free from arbitrary arrest and detention; and to be presumed innocent until proven guilty in a public trial.<sup>106</sup>

### B. U.N. DECLARATION ON THE RIGHT AND RESPONSIBILITY OF INDIVIDUALS, GROUPS AND ORGANS OF SOCIETY (1998)

Fifty years after the adoption of the Universal Declaration of Human Rights, the U.N. General Assembly passed the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms ("Declaration on Human Rights Defenders").<sup>107</sup> The declaration calls on each state to create the social, economic, political, and legal conditions necessary to allow its citizens all the rights and freedoms

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<sup>106</sup> Some of the relevant articles from the Universal Declaration of Human Rights, *supra* note 101, are:

"Everyone has the right to life, liberty and the security of person." *Id.* art. 3.

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." *Id.* art. 5.

"No one shall be subjected to arbitrary arrest, detention or exile." *Id.* art. 9.

"Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence." *Id.* art. 11, para. 1.

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to protection of the law against such interference or attacks." *Id.* art. 12.

"Everyone has the right to freedom of thought, conscience and religion. . . ." *Id.* art. 18.

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." *Id.* art. 19.

"Everyone has the right to freedom of peaceful assembly and association." *Id.* art. 20, para. 1.

"Everyone has the right to take part in the government of his country, directly or through freely chosen representatives." *Id.* art. 21.

<sup>107</sup> G.A. Res. 53, U.N. Doc. A/RES/53/144 (Mar. 8, 1999).

they are due.<sup>108</sup> Among those rights is the right “to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning”<sup>109</sup> and the right “to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts . . . attributable to States that result in violations of human rights and fundamental freedoms. . . .”<sup>110</sup> In addition, “The State has the responsibility to take legislative, judicial, administrative, or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social, and cultural rights.”<sup>111</sup>

### C. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1976)

The International Covenant on Civil and Political Rights (ICCPR) was entered into force by the United Nations General Assembly in 1976 and ratified by South Korea in 1990.<sup>112</sup> Despite ratification, human rights organizations accuse South Korea of violating its provisions for the rights to liberty and freedom of opinion and expression, as well as the right to be free from arbitrary interference into one's privacy.<sup>113</sup> South Korea is perhaps

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<sup>108</sup> *Id.* arts. 1-2.

<sup>109</sup> *Id.* art. 8, para. 2.

<sup>110</sup> *Id.* art. 12, para. 3.

<sup>111</sup> *Id.* art. 14.

<sup>112</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, S. EXEC. DOC. E, 95-2 (1978), 999 U.N.T.S. 171; Suk Tae Lee, *South Korea: Implementation and Application of Human Rights Covenants*, 14 MICH. J. INT'L L. 705, 706 (1993).

<sup>113</sup> Relevant portions of the International Covenant on Civil and Political Rights, *supra* note 112, include:

“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” *Id.* art. 9, para. 1.

“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.” *Id.* art. 17, para. 1.

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all

justifying its use of the National Security Law on the basis of Article 4, Section 1, which states:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.<sup>114</sup>

#### D. THE SIRACUSA PRINCIPLES (1984)

The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights ("Siracusa Principles") were drafted by a group of international human rights experts in 1984.<sup>115</sup> They "set forth the general interpretive principles justifying human rights limitations as well as interpretive principles relating to specific areas such as

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kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

*Id.* art. 19.

<sup>114</sup> The Covenant continues:

Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

*Id.* art. 4, para. 3.

<sup>115</sup> The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4/Annex (Sept. 28, 1984), *reprinted in* 7 HUM. RTS. Q. 1 (1985); e.g., Cho, *supra* note 11, at 164.

national security and public safety.”<sup>116</sup> Among the principles relevant to the National Security Law are the following:

Principle 29: National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.

Principle 30: National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.

Principle 31: National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exists adequate safeguards and effective remedies against abuse.

Principle 32: The systematic violation of human rights undermines true national security and may jeopardize international peace and security. A state responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population.

Principle 33: Public safety means protection against danger to the safety of persons, to their life or physical integrity, or serious damage to their property.

Principle 34: The need to protect public safety can justify limitations provided by law. It cannot be used for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.

Critics charge the South Korean government with using the National Security Law to do precisely what the Siracusa Principles prohibit: touting national security as a pretext for arresting opponents of the government.

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<sup>116</sup> *Id.*

### E. THE JOHANNESBURG PRINCIPLES (1996)

The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (“Johannesburg Principles”) were adopted by experts in international law, national security, and human rights.<sup>117</sup> Among the Johannesburg Principles’ stated objectives is the desire

to promote a clear recognition of the limited scope of restrictions on freedom of expression and freedom of information that may be imposed in the interest of national security, so as to discourage governments from using the pretext of national security to place unjustified restrictions on the exercise of these freedoms. . . .<sup>118</sup>

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<sup>117</sup> U.N. Doc. E/CN.4/1996/39, at 28 (Mar. 22, 1996).

<sup>118</sup> *Id.* pmb. Relevant portions include:

“Everyone has the right to hold opinions without interference.” *Id.* princ. 1(a).

“No restriction on freedom of expression or information on the ground of national security may be imposed unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest. The burden of demonstrating the validity of the restriction rests with the government.” *Id.* princ. 1(d).

“Any restriction on expression or information must be prescribed by law. The law must be accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful.” *Id.* princ. 1.1(a).

“Any restriction on expression or information that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest.” *Id.* princ. 1.2.

To establish that a restriction on freedom of expression or information is necessary to protect a legitimate national security interest, a government must demonstrate that:

- (a) the expression or information at issue poses a serious threat to a legitimate national security interest;
- (b) the restriction imposed is the least restrictive means possible for protecting that interest; and
- (c) the restriction is compatible with democratic principles.”

*Id.* princ. 1.3.

A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country’s existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from

## F. APPLICATION OF INTERNATIONAL HUMAN RIGHTS TO SOUTH KOREA

A major criticism of the National Security Law is that it is a blatant violation of international human rights standards.<sup>119</sup> While human rights norms have been internationalized,<sup>120</sup> the extent and manner in which they are implemented varies.<sup>121</sup> The Universal Declaration of Human Rights is not a treaty and thus is not binding on United Nations members.<sup>122</sup> The United Nations Commission on Human Rights (UNCHR) is the main authority on setting international human rights norms, including the Universal Declaration of Human Rights.<sup>123</sup> The UNCHR's monitoring powers are weak: while it can investigate a country's alleged human rights violations under the "1503 procedure," the monitoring is sporadic.<sup>124</sup> The Human Rights Committee, the next major international human rights body, reviews reports submitted by member countries.<sup>125</sup> Because countries are inconsistent in the quality and thoroughness of their reports, the ability

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an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government."

*Id.* princ. 2(a).

In particular, a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.

*Id.* princ. 2(b):

<sup>119</sup> *E.g.*, Cho, *supra* note 11, at 166.

<sup>120</sup> By 2001, the six leading international human rights treaties had been signed by an average of 156 parties. JACK DONNELLY, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE* 38 (2003).

<sup>121</sup> *Id.* at 34.

<sup>122</sup> *E.g.*, PHILIP J. ELDRIDGE, *THE POLITICS OF HUMAN RIGHTS IN SOUTHEAST ASIA* 19 (2002).

<sup>123</sup> DONNELLY, *supra* note 120, at 129.

<sup>124</sup> See Colm Campbell & Avril McDonald, *Practice to Theory: States of Emergency and Human Rights Protection in Asia*, in *HUMAN RIGHTS AND ASIAN VALUES: CONTESTING NATIONAL IDENTITIES AND CULTURAL REPRESENTATIONS IN ASIA* 249, 260 (Michael Jacobsen & Ole Bruun eds., 2000).

<sup>125</sup> DONNELLY, *supra* note 120, at 133.

of the Human Rights Committee to monitor human rights is limited.<sup>126</sup>

In part for these reasons, and because human rights are violated by states and so are a state matter, some argue that international human rights groups can have only a limited impact in effecting change in countries accused of human rights violations.<sup>127</sup> While it is true that international human rights groups can encourage change at the highest level of government as well as provide international scrutiny of nations that violate human rights,<sup>128</sup> it is national action from the bottom up that will be best able to improve human rights.<sup>129</sup> International human rights groups can best help, some experts argue, by encouraging awareness of human rights issues among local groups.<sup>130</sup>

South Korea provides an illustration of both the potential and limitations of international human rights groups in eliminating human rights violations in a given country. South Korea has ratified the ICCPR and the International Covenant on Economic, Social and Cultural Rights, among other human rights treaties.<sup>131</sup> According to the South Korea Constitution, treaties

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<sup>126</sup> *Id.* at 134.

<sup>127</sup> *Id.* at 175-76, 179.

<sup>128</sup> ELDRIDGE, *supra* note 122, at 21.

<sup>129</sup> DONNELLY, *supra* note 120, at 179-80.

<sup>130</sup> Shale Horowitz & Albrecht Schnabel, *Human Rights and Societies in Transition: International Context and Sources of Variation*, in HUMAN RIGHTS AND SOCIETIES IN TRANSITION: CAUSES, CONSEQUENCES, RESPONSES 3, 5 (Shale Horowitz & Albrecht Schnabel eds., 2004).

<sup>131</sup> Lee, *supra* note 112, at 706. South Korea has also ratified the Optional Protocol to the International Covenant on Civil and Political Rights, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the Optional Protocols on the Convention of the Rights of the Child. U.N. HIGH COMM'R FOR HUMAN RIGHTS, STATUS OF RATIFICATIONS OF THE PRINCIPAL INTERNATIONAL HUMAN RIGHTS TREATIES (2005), available at <http://www.ohchr.org/english/bodies/docs/RatificationStatus.pdf>.



that are ratified by the government have the same effect as domestic laws; however, if there is a conflict between the two, domestic laws will supersede the treaty.<sup>132</sup> Thus, the effect of such treaties can be significantly reduced.<sup>133</sup>

In part because of this limitation, international human rights groups have long called for the abolition of South Korea's National Security Law without success. In the late 1990s, NGOs criticized Kim Dae Jung's government for using the National Security Law to arrest people who demonstrated during the economic crisis.<sup>134</sup> Kim was also criticized for using the law to punish the filmmaker Suh Joon Sik for showing "Red Hunt," his film about the suppression of communists on Cheju Island in 1948, at the Korean Human Rights Film Festival in 1997.<sup>135</sup> While arrests continued under the Kim regime, an unofficial moratorium on executions that began when Kim was elected president means that recently no one has been executed for National Security Law violations.<sup>136</sup>

Since Roh Mu Hyun became president in 2003, punishment for violations of the National Security Law has become less harsh, although reportedly more than fifty people have been arrested under the law since his inauguration.<sup>137</sup> Not surprisingly, international human rights groups continue to criticize the law. In an open letter to the Korean National Assembly, Amnesty International denounced the law's "vaguely worded clauses" and its failure "to meet international standards that require all criminal offenses to be defined clearly so that people understand what conduct is prohibited."<sup>138</sup> The group also argued that the law is

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<sup>132</sup> KOREA CONST. ch. I, art 6(1); Lee, *supra* note 112, at 713.

<sup>133</sup> Lee, *supra* note 112, at 713.

<sup>134</sup> See NEARY, *supra* note 1, at 82.

<sup>135</sup> Letter from The FilmWatch Comm. to Kim Dae Jung, President of S. Korea (July 16, 1999), available at [http://hrw.org/english/docs/1999/07/16/usint1058\\_txt.htm](http://hrw.org/english/docs/1999/07/16/usint1058_txt.htm).

<sup>136</sup> E.g., Hum. Rights Watch, *Human Rights in South Korea (ROK: The Republic of Korea)* (2004), available at [http://hrw.org/english/docs/2004/07/08/skorea9047\\_txt.htm](http://hrw.org/english/docs/2004/07/08/skorea9047_txt.htm); Open Letter from Amnesty Int'l, to Newly Elected Members of the 17th National Assembly, S. Korea (July 2004), available at [http://www.amnestyusa.org/countries/south\\_korea/document.do?id=479625376824612880256EBA0052B368](http://www.amnestyusa.org/countries/south_korea/document.do?id=479625376824612880256EBA0052B368).

<sup>137</sup> Hum. Rights Watch, *supra* note 136. Of those arrested, approximately half were given suspended prison sentences and released. *Id.*

<sup>138</sup> Open Letter from Amnesty Int'l, *supra* note 136.

applied arbitrarily, pointing out that “while certain left-wing political works are permitted for academic study, possession or reference to the same works often becomes a criminal offense in the hands of a student or activist with perceived ‘pro-North Korea’ leanings.”<sup>139</sup>

International human rights groups meeting at the Asian-Pacific Forum in Seoul in September 2004 also called for the law’s abolition.<sup>140</sup> The forum was followed the next day by the International Conference for National Human Rights Institutions, also held in Seoul.<sup>141</sup> The following month Amnesty International publicly supported the Uri Party’s call for the National Security Law’s repeal, and expressed its strong disagreement with the Constitutional Court’s ruling in support of the law.<sup>142</sup> In a letter to the Uri Party, Amnesty International noted the contradiction between the dictates of the law and the government’s “Sunshine policy,” which supports more communication and contact between North and South Korea.<sup>143</sup>

However, not all NGOs believe the National Security Law should or can be completely abolished. One foreign NGO observer, attending the September 2004 International Conference for National Human Rights Institutions in Seoul, reportedly said that Asian countries need such security laws.<sup>144</sup> Indeed, most constitutions provide for using emergency measures when national security is threatened, even if the government must suspend constitutional rights.<sup>145</sup> To what extent, then, are national security concerns a valid reason to retain security laws that violate international human rights standards? While *realpolitik* advocates often view compliance with human rights standards as little more than a noble goal, those who otherwise view human

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<sup>139</sup> *Id.*

<sup>140</sup> Chung, *supra* note 94.

<sup>141</sup> *Id.*

<sup>142</sup> Park, *supra* note 67.

<sup>143</sup> *Id.*

<sup>144</sup> Chung, *supra* note 94.

<sup>145</sup> Campbell & McDonald, *supra* note 124, at 250.

rights as more than aspirational are sometimes willing to compromise them in the interests of national security.<sup>146</sup> Article 4 of the International Covenant on Civil and Political Rights, for example, countenances the suspension of certain human rights during national emergencies.<sup>147</sup> Even Asia Watch recognized South Korea's concern with security as "understandable and legitimate" given the North Korean threat.<sup>148</sup> Others argue, however, that even if legitimate national security concerns justify national security laws, the security threat does not justify the abuse of those laws.<sup>149</sup>

In the 1990s, much of the debate about human rights abuses in Asia centered on the idea of "Asian values."<sup>150</sup> Briefly, Asian-values proponents argue that human rights are culturally specific, and that Asians value duty to the community over individual rights, and social and economic rights over civil and political rights.<sup>151</sup> One survey showed, for example, that Asians valued group harmony and an orderly society more highly than did

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<sup>146</sup> See, e.g., Daniel Rothenberg, Commentary, "What We Have Seen has been Terrible:" *Public Presentational Torture and the Communicative Logic of State Terror*, 67 ALB. L. REV. 465, 466-67 (2003); DONNELLY, *supra* note 120, at 162 (recognizing that "unless we implausibly assume that international human rights take priority over all other national interests, human rights must sometimes be sacrificed to other interests and values.").

<sup>147</sup> International Covenant on Civil and Political Rights, *supra* note 112, art. 4; ELDRIDGE, *supra* note 122, at 20.

<sup>148</sup> ASIA WATCH ET AL., *supra* note 43, at 29-30.

<sup>149</sup> Lee, *supra* note 112, at 715 (arguing that the North Korean threat "has been an ideological pretext used to oppress individuals and to maintain the masked legitimacy of dictatorship").

<sup>150</sup> See generally Campbell & McDonald, *supra* note 124; DONNELLY, *supra* note 120.

<sup>151</sup> See Ole Bruun & Michael Jacobsen, *Introduction to HUMAN RIGHTS AND ASIAN VALUES: CONTESTING NATIONAL IDENTITIES AND CULTURAL REPRESENTATIONS IN ASIA*, *supra* note 124, at 1, 3. "Asian values" have been traced to Confucianism, which emphasizes hierarchy and obedience. In South Korea, for example, Park Chung Hee and Chun Doo Hwan "utilized Confucianism to reinforce their authority, emphasizing loyalty and obedience to the state and to justify measures taken to halt opposition to their rule." Terence Roehrig, *Human Rights, the Military, and the Transition to Democracy in Argentina and South Korea*, in HUMAN RIGHTS AND SOCIETIES IN TRANSITION: CAUSES, CONSEQUENCES, RESPONSES, *supra* note 130, at 389, 402.

Americans.<sup>152</sup> Similarly, compared with Americans, most Singaporeans value public safety more highly than civil liberties.<sup>153</sup> The suggestion follows that while citizens of Western countries may not be willing to endure harsh security measures in the name of national security, citizens of Asian countries will, and moreover, their choice should be respected by the international community.

The Bangkok Declaration serves as an example of the conflict.<sup>154</sup> While the Bangkok Declaration expresses Asians' support of universal human rights, it also states that human rights should be viewed in the context of each nation's historical, cultural, and religious background.<sup>155</sup> Further, it emphasizes that all countries have the right to choose their political systems, and pursue their economic, social, and cultural development.<sup>156</sup> Some argue that by including such reservations, the Bangkok Declaration has detracted from the universality of human rights.<sup>157</sup> The problem, according to Asian-values critics, is that given the freedom to do so in the name of national culture and development, many countries will use states of emergency to abuse national security laws, for example by silencing political opponents in the name of national security.<sup>158</sup>

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<sup>152</sup> Joseph Chan, *Thick and Thin Accounts of Human Rights: Lessons from the Asian Values Debate*, in HUMAN RIGHTS AND ASIAN VALUES: CONTESTING NATIONAL IDENTITIES AND CULTURAL REPRESENTATIONS IN ASIA, *supra* note 124, at 59, 69.

<sup>153</sup> ELDRIDGE, *supra* note 122, at 35.

<sup>154</sup> Regional Meeting for Asia of the World Conference on Human Rights, Mar. 29-Apr. 2, 1993, *Final Declaration*, U.N. Doc A/CONF.157/ASRM/8, A/CONF.157/PC/59 (Apr. 7, 1993).

<sup>155</sup> *Id.* art. 8; Chan, *supra* note 152, at 59-60.

<sup>156</sup> Hugo Stokke, *Modernization without Westernization?: Asian Values and Human Rights Discourse in East and West*, in HUMAN RIGHTS AND ASIAN VALUES: CONTESTING NATIONAL IDENTITIES AND CULTURAL REPRESENTATIONS IN ASIA, *supra* note 124, at 134, 135.

<sup>157</sup> *Id.*

<sup>158</sup> See Campbell & McDonald, *supra* note 124; Horowitz & Schnabel, *supra* note 130; See also Amartya Sen for the thesis that the Asian values argument is used to justify authoritarian government. Amartya Sen, *Human Rights and Asian Values: What Lee Kuan Yew and Le Peng Don't Understand About Asia*, NEW REPUBLIC, July 14, 1997, at 33.

## VI. A COMPARISON TO SINGAPORE AND MALAYSIA

To understand South Korea's position in the use of its National Security Law to suppress dissent in the name of national security, it is worth considering other democratic or "semi-democratic" Asian countries that have similar laws and how they have used those laws. To that end, this Comment briefly discusses the national security laws of Singapore and Malaysia. While it appears that fewer people are held under the security laws of Singapore and Malaysia than are held in South Korea under the National Security Law, the laws are similarly broad and arbitrarily applied, and with the potential for an equally widespread restriction of civil and political rights.<sup>159</sup>

### A. SINGAPORE

As a small island nation comprised of three major ethnic groups that have occasionally clashed,<sup>160</sup> Singapore arguably has legitimate security concerns.<sup>161</sup> Singapore's national security legislation includes the Internal Security Act.<sup>162</sup> Like the National Security Law, the Internal Security Act was intended to thwart communist insurgents but has been used to silence critics of the government, and more recently, radical Muslims.<sup>163</sup> Under the Internal Security Act, offenders can be held for up to two years, with right to counsel but no right to challenge the substance of the detention.<sup>164</sup> People detained under the Internal Security Act face restrictions in their freedom of movement.<sup>165</sup> The media is

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<sup>159</sup> A HISTORY OF SINGAPORE 175, 177-78 (Ernest C.T. Chew & Edwin Lee eds., 1991); JIM BAKER, CROSSROADS: A POPULAR HISTORY OF MALAYSIA & SINGAPORE 279, 283-84, 304, 307-08 (1999). Cf. ELDRIDGE, *supra* note 122, at 93.

<sup>160</sup> Singapore's population is approximately seventeen percent Chinese, fourteen percent Malay, and eight percent Indian. U.S. State Dep't, Bureau of East Asian & Pac. Aff., *Background Note: Singapore*, <http://www.state.gov/r/pa/ei/bgn/2798.htm>.

<sup>161</sup> ELDRIDGE, *supra* note 122, at 45.

<sup>162</sup> See BAKER, *supra* note 159, at 266.

<sup>163</sup> Li-ann Thio, *Rule of Law Within a Non-Liberal 'Communitarian' Democracy: The Singapore Experience*, in ASIAN DISCOURSES OF RULE OF LAW 183, 205-06 (Randall Peerenboom ed., 2004).

<sup>164</sup> See Stokke, *supra* note 156, at 147.

<sup>165</sup> *Id.* at 150.

controlled by the government, as is public protest.<sup>166</sup> Groups of more than five people need permission from the police to assemble, and speakers need permission before speaking in public.<sup>167</sup> Foreign publications are licensed and are prohibited from discussing domestic politics.<sup>168</sup> The government justified such restrictions under the notions of Asian values and economic prosperity. Former Singapore Prime Minister Lee Kuan Yew was one of Asia's most vocal proponents of "Asian values,"<sup>169</sup> arguing that "[i]n the East the main object is to have a well ordered society so that everybody can have maximum enjoyment of his freedoms. This freedom can only exist in an ordered state and not in a natural state of contention and anarchy."<sup>170</sup> His critics argue that he used "Asian values" and the Internal Security Act to deny Singaporeans their civil and political rights, for example the right to criticize elected officials.<sup>171</sup> The opposition leader Chee Soon Juan, for example, was banned from parliament when he challenged the lack of openness in the Singapore government.<sup>172</sup> Nonetheless, others assert that Singaporeans have been willing to accept the government's iron-hand rule in exchange for economic prosperity.<sup>173</sup>

## B. MALAYSIA

The situation in Malaysia is similar to that of Singapore. Although not a small island, Malaysia resembles Singapore in that it is comprised of an ethnically diverse population.<sup>174</sup> Malaysia,

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<sup>166</sup> ELDRIDGE, *supra* note 122, at 46.

<sup>167</sup> Stokke, *supra* note 156, at 149.

<sup>168</sup> *Id.*

<sup>169</sup> Randall Peerenboom, *Varities of Rule of Law: An Introduction and Provisional Conclusion*, in *ASIAN DISCOURSES OF RULE OF LAW*, *supra* note 163, at 1, 19.

<sup>170</sup> David Kelly, *Freedom as an Asian Value*, in *HUMAN RIGHTS AND ASIAN VALUES: CONTESTING NATIONAL IDENTITIES AND CULTURAL REPRESENTATIONS IN ASIA*, *supra* note 124, at 178, 182 (quoting from *Culture is Destiny, an Interview with Fared Zakaria*, 73 *FOREIGN AFF.* 109 (1994)).

<sup>171</sup> *Id.*

<sup>172</sup> Bruun & Jacobsen, *supra* note 151, at 17.

<sup>173</sup> ELDRIDGE, *supra* note 122, at 47.

<sup>174</sup> Malaysia's population is approximately fifty percent Malay, twenty-four percent Chinese, eleven percent Indigenous, seven percent Indian, and eight percent other ethnic groups. U.S. State Dep't, Bureau of East Asian & Pac. Aff., *Background Note: Malaysia*, <http://www.state.gov/r/pa/ei/bgn/2777.htm>.

too, has an Internal Security Act, enacted in 1960.<sup>175</sup> Like the Singapore law, the Malaysian Internal Security Act allows violators to be detained for up to two years, but this sentence can be renewed.<sup>176</sup> The Malaysian Internal Security Act goes further in that suspected security threats can be held for up to sixty days without a warrant.<sup>177</sup> In addition, there is no judicial review of cases brought under the Internal Security Act.<sup>178</sup> Those who have been detained under the Act are subject to restrictions of movement until their rehabilitation period has been completed.<sup>179</sup> The most well-known prisoner in recent years is former Deputy Prime Minister Anwar Ibrahim, who in 1998 led a demonstration demanding reform, including the resignation of Prime Minister Mahathir.<sup>180</sup> Ibrahim was arrested under the Internal Security Act, charged with sodomy and conspiracy, and convicted in seriously flawed trials.<sup>181</sup> Ibrahim's wife was restricted under the Internal Security Act from holding meetings in her home and from appearing at public gatherings.<sup>182</sup>

As in Singapore, the government presents restrictions on civil and political rights as "the price to be paid" for social and economic prosperity.<sup>183</sup> Until he voluntarily left office in 2003, Prime Minister Mahathir was re-elected by Malaysian citizens many times, suggesting that in Malaysia, too, the citizens appear to be willing to support these government leaders and pay the price of restricted rights.<sup>184</sup> However, as in South Korea, opposition and human rights groups have called for the abolition of Malaysia's Internal Security Act.<sup>185</sup> There are several NGOs in

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<sup>175</sup> H.P. Lee, *Competing Conceptions of Rule of Law in Malaysia*, in *ASIAN DISCOURSES OF RULE OF LAW*, *supra* note 163, at 225, 240 (2004).

<sup>176</sup> *Id.*

<sup>177</sup> ELDRIDGE, *supra* note 122, at 93.

<sup>178</sup> *Id.*

<sup>179</sup> Stokke, *supra* note 156, at 150.

<sup>180</sup> ELDRIDGE, *supra* note 122, at 109.

<sup>181</sup> *Id.* In September 2004, Malaysia's Federal Court overturned Ibrahim's conviction and freed him. U.S. State Dep't, *supra* note 174.

<sup>182</sup> ELDRIDGE, *supra* note 122, at 109.

<sup>183</sup> Lee, *supra* note 175, at 244.

<sup>184</sup> *Id.*; Peerenboom, *supra* note 169, at 18. Prime Minister Mahathir held office for 22 years. *E.g.*, U.S. State Dep't, *supra* note 174.

<sup>185</sup> ELDRIDGE, *supra* note 122, at 93.

Malaysia whose goals include the abolition of the Internal Security Act.<sup>186</sup> In addition, the Malaysian Charter on Human Rights was adopted in 1994,<sup>187</sup> and the government established the Human Rights Commission of Malaysia in 1999.<sup>188</sup> While the commission has been criticized as a “tokenistic attempt to improve Malaysia’s tarnished image,” others are hopeful that it is a step toward greater respect for human rights.<sup>189</sup> Unlike South Korea, neither Malaysia nor Singapore has ratified the International Covenant on Civil and Political Rights.<sup>190</sup>

## VII. FUTURE PROSPECTS FOR THE NATIONAL SECURITY LAW

Singapore and Malaysia differ from South Korea in several ways, perhaps most importantly in that they are not democracies to the same extent as South Korea. In Malaysia, the prime minister holds almost all power, and in Singapore there is no real political opposition.<sup>191</sup> Furthermore, as countries transition from authoritarian to democratic rule, they may be more economically and politically dependent on foreign countries, thus making them more susceptible to demands for increased attention to human rights.<sup>192</sup> Repeal of the National Security Law and an improvement in the human rights situation might therefore seem more likely in South Korea,<sup>193</sup> especially given the Uri Party’s recent pledges to at least amend the law.

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<sup>186</sup> *Id.* at 97. These NGOs include the Voice of Malaysia, the National Association for Human Rights, the Malaysian Bar Council, the Movement in Defense of Malaysian Islam, and the Centre for Peace.

<sup>187</sup> MALAYSIAN CHARTER ON HUMAN RIGHTS (1994), available at [http://suaram.net/malaysian\\_hr\\_charter.pdf](http://suaram.net/malaysian_hr_charter.pdf); ELDRIDGE, *supra* note 122, at 99.

<sup>188</sup> ELDRIDGE, *supra* note 122, at 114.

<sup>189</sup> *Id.* at 114-15.

<sup>190</sup> U.N. HIGH COMM’R FOR HUMAN RIGHTS, *supra* note 131. Both Malaysia and Singapore have ratified the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child. *Id.*

<sup>191</sup> ELDRIDGE, *supra* note 122, at 200.

<sup>192</sup> Richard Lewis Siegel, *Universalism and Cultural Relativism: Lessons for Transitional States*, in HUMAN RIGHTS AND ASIAN VALUES: CONTESTING NATIONAL IDENTITIES AND CULTURAL REPRESENTATIONS IN ASIA, *supra* note 124, at 52, 52.

<sup>193</sup> See Roehrig, *supra* note 151, at 407 (asserting that “democracy has led to more respect for human rights, and vice versa”).



On the other hand, the North Korean security threat seems more imminent than any threats to Singapore or Malaysia, especially given the announcement in 2005 by North Korean leader Kim Jong Il that North Korea has nuclear weapons.<sup>194</sup> This revelation, however unsurprising, could dampen efforts to amend or repeal the National Security Law. On the positive side for Singapore and Malaysia, ASEAN<sup>195</sup> nations have started to show greater interest in United Nations human rights regimes.<sup>196</sup> However, this increased recognition is not always accompanied by greater adherence to the requirements of United Nations human rights treaties.<sup>197</sup> In addition, Asia has lagged behind Europe, the Americas, and Africa in establishing regional human rights regimes.<sup>198</sup>

An additional factor that is likely to affect the human rights situation in all three countries is globalization, which, in addition to expanding markets worldwide, has started to propagate international human rights norms throughout the world.<sup>199</sup> The economies of these countries have grown tremendously in the last several decades, with greater opportunities to improve the living and educational standards of its people. These opportunities in turn can result in greater awareness of human rights violations and demands for adherence to international human rights

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<sup>194</sup> James Brooke & David E. Sanger, *North Korea Says They Hold Nuclear Arms*, N.Y. TIMES, Feb. 11, 2005, at A5.

<sup>195</sup> Association of Southeast Asian Nations. ASEAN was established in 1967 by Indonesia, Malaysia, Philippines, Singapore, and Thailand to promote economic growth, social progress, cultural development, and stability in Southeast Asia. ASEAN homepage, <http://www.aseansec.org/64.htm>.

<sup>196</sup> ELDRIDGE, *supra* note 122, at 2.

<sup>197</sup> *Id.* at 88.

<sup>198</sup> Campbell & McDonald, *supra* note 124, at 268 (discussing, for example, the European Convention on Human Rights, the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights).

<sup>199</sup> See Alex Y. Seita, *Globalization and the Convergence of Values*, 30 CORNELL INT'L L.J. 429, 491 (1997).

norms.<sup>200</sup> Simply put, as people improve their economic situation, demands for imported goods increases, which in turn increases contacts between countries.<sup>201</sup> Furthermore, countries that wish to play a more important role in the global economy may be forced to pay more attention to their human rights record; they could be politically and economically shunned if the world community perceives them as persistent human rights violators.<sup>202</sup>

Finally, if South Korea's main justification for retaining the National Security Law is the North Korean threat, the recent development of economic links between North and South may make at least part of the law obsolete. A "special economic zone" inside North Korea hosts South Korean companies that make semi-conductors and kitchenware, with more companies expected to start operations in the near future.<sup>203</sup> If Article 5 of the National Security Law prohibits aiding or accepting valuables from anti-state groups, buying cooking pots and semi-conductors made by North Koreans would seem to be of questionable legality.<sup>204</sup> Furthermore, prohibitions on South Koreans traveling to North Korea will have to be eased for the South Korean employees of the "special economic zone" companies. Finally, the increased economic ties between North and South Korea may change South Koreans' attitudes toward the North. One South Korean project manager said that after several visits to North

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<sup>200</sup> See Horowitz & Schnabel, *supra* note 130, at 11-14.

<sup>201</sup> *Id.* at 14 (arguing that "[i]nternational economic integration probably has a more significant impact on human rights norms simply by increasing personal and cultural interaction with the rest of the world."); see also Bruun & Jacobsen, *supra* note 151, at 11 ("Globalization provides the arena for cross-cultural conversation, for instance by submitting human rights to a continued scrutiny of 'public reason' around the world.").

<sup>202</sup> Albrecht Schnabel, *International Efforts to Protect Human Rights in Transition Societies: Right, Duty, or Politics?*, in HUMAN RIGHTS AND SOCIETIES IN TRANSITION: CAUSES, CONSEQUENCES, RESPONSES, *supra* note 130, at 141, 158-59; see also Jong-Hoon Lee, *Globalization, Nationalism, and Security Options*, in DEMOCRATIZATION AND GLOBALIZATION IN KOREA: ASSESSMENTS AND PROSPECTS 227, 241 (Chung-in Moon & Jongryn Mo eds., 1999).

<sup>203</sup> Norimitsu Onishi, *2 Koreas Forge Economic Ties to Ease Tensions*, N.Y. TIMES, Feb. 8, 2005. South Korea predicts that 300 South Korean factories will be operating in the special economic zone by 2007.

<sup>204</sup> Yet the stainless steel pots made in the special economic zone sold out of a South Korean department store in two days. *Id.*

Korea, his opinions about the country started to change for the better, after a lifetime of being told that North Koreans were the enemy.<sup>205</sup> If economic ties between South and North Korea continue to expand, and if attitudes towards North Korea continue to soften as a result of economic expansion, the National Security Law is perhaps destined to become an anachronism, even if it is never repealed.

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<sup>205</sup> *Id.*