



Korea Economic Institute

# *Academic Paper Series*

June 2007. Volume 2. No 6

## **Brushes with the Law: North Korea and the Rule of Law**

*by Marion P. Spina Jr.*

Brushes with the law experienced by Democratic People's Republic of Korea (DPRK) include its behavior with respect to its own laws, international contracts, international dispute resolution, international treaties, and legal actions taken or required by international organizations and other nations. This paper presents the results of a preliminary survey of the DPRK's brushes with the law. It represents an effort to identify the laws of the DPRK and note the behavior of the DPRK government with respect to those laws and to legal instruments and procedures it is exposed to in its dealings with other nations. The paper concludes with a suggestion as to a possible policy implication arising from a better understanding of the DPRK's attitude toward law.

### **Lawless or Full of Laws?**

The DPRK has been called a lawless country.<sup>1</sup> It has been suspected of not honoring a single significant legal agreement in its entire history.<sup>2</sup> These assertions by respected scholars with noted expertise in DPRK watching caused me to look into the actual legal environment of the DPRK. As an attorney who has lived and worked in Northeast Asia for a number of years, I felt it was unlikely that the DPRK would be either lawless or that it would have systematically breached every single one of the thousands of agreements that it had entered into during its 60-year history. This paper does not aim to either defend or criticize

the DPRK's current government for any of its policies but aims only to examine the DPRK's various encounters with laws in order to postulate a practical way of taking into account the DPRK's behavior and attitudes when formulating policy and plans.

It turns out that the DPRK has a lot of laws.<sup>3</sup> It even passed laws before it became a country.<sup>4</sup> Indeed, the DPRK relies on the rule by law to maintain order and achieve government ambitions. Whether or not, as is widely believed, the DPRK is a totalitarian society actually ruled by a dictator, the DPRK society nevertheless is ruled by law. That is, the ruling group uses constitutionally established legal procedures to declare and enforce its policies.

Scholars who declare that the DPRK is lawless or not law abiding actually are referring to the absence in the DPRK of what we call the "rule of law." What is the difference between "rule by law" and "rule of law"? Both systems aim to maintain order in society. Rule by law basically refers to the use of law as a tool to communicate and enforce the will of a powerful subset of a society on the remainder of the society. Rule of law, on the other hand, refers to the concept that not only individual citizens but also the government itself is subject to and is limited by the law, and that certain human rights are protected by the law against infringement by other individuals or the government itself. The concept of rule of law assumes a legiti-

Marion Spina's paper is the seventh in KEI's new *Academic Paper Series*, which began in December 2006. KEI intends to commission 9 to 10 papers per year on original subjects of current interest to Korea watchers on a wide array of topics. KEI will edit and distribute each paper as a *KEI Academic Paper* to over 2,000 government officials, think tank experts, and scholars around the United States and the world. Distribution of each paper will be followed by a public discussion with the author at KEI. The annual collection of *KEI Academic Papers* will be collated and published in a single volume by KEI.

mate source of the law. In recent years, the prevalent view has been that democratic institutions and processes must significantly impact the sources of law in order for a rule-of-law environment to exist. Naturally, the position of the DPRK leadership is that their socialist law by definition is democratic because they have declared it to be so.<sup>5</sup>

A discussion of the legitimacy or relative democratic nature of the DPRK government is beyond the scope of this paper. Even deeming the government to be both democratic and legitimate does not establish that it is implementing a rule-of-law system. Considering the accumulated accounts chronicling the DPRK's noncompliance with international standards of human rights protections<sup>6</sup> and the statements of the DPRK government itself,<sup>7</sup> let us simply stipulate that the DPRK is not a rule-of-law state.<sup>8</sup>

This paper will not try to recatalog the evidence or quibble with that commonly accepted conclusion. Although sympathy and anger are invoked at the DPRK's poor treatment of its own citizens, the cause of that treatment cannot be corrected in a vacuum, and it certainly cannot be corrected in the current DPRK institutional environment. Legal infrastructure must be built before human rights can be protected under a rule-of-law system. The good news is that the DPRK is rapidly building that infrastructure. A dramatic change is taking place in the DPRK's legal environment. The zeal of foreigners who hope to improve the DPRK's human rights situation should be devoted to a path of steps required to construct a legal system that can protect those rights.

### **Adapting the DPRK'S Legal System to International Norms**

South Korean scholars have been studying and tracking DPRK legal developments for years and have produced hundreds of books and articles on this subject. A review of comprehensive surveys and topical studies of the legal system from 1992 to 2006 shows that drastic developments occurred in the legal environment while we were all paying attention to the famine and the nuclear showdown. The nature of the changes include the passage of new laws, revision of civil and criminal laws to accommodate market economics and international human rights conventions, and professionalization of the legal specialists.<sup>9</sup> The trend toward positive developments in the DPRK was also pointed out by James T. Laney, former ambassador to South Korea, in his 2003 article in *Foreign Affairs*.<sup>10</sup> Bradley Babson, a former World Bank official who has focused on the DPRK for years, stated in late 2006 that the DPRK leadership was gearing up for a new phase of economic reform efforts. He cited, among other positive developments:

improvements in organizational and legal arrangements for economic management under the leadership of the Cabinet, formation of a national economic cooperation committee, reorganization of the legal and administrative apparatus for inter-Korean economic cooperation, and widely publicized trips to China by Chairman Kim Jong-il and the economic leadership team in January and February 2006, with expressions of admiration for Chinese economic achievements.<sup>11</sup>

Kim Jong-il has been talking about "new thinking" since 2000. Economists and political scientists have summarized the 2002 reforms as a move to adapt to an emerging economic shift to marketization by:

- Raising the prices of goods distributed by the state (to approach the prices paid for the same goods at markets),
- Raising wages by printing more Korean won, knowing that the population would be impoverished because even their increased wages could not keep up with inflation, and
- Formalizing the legality of increased market activity.<sup>12</sup>

However, the changes to laws may be more important than the economic policies. It is hoped the "new thinking" will give rise to a next-stage evolution of political philosophy that can rationalize a new legal order, somehow cleverly linked to the *juche-sungun* philosophies in a way that avoids political meltdown.

In addition to changing laws, the DPRK is changing the system for training professionals to staff the legal system. A 1996 report by South Korea's Court Administrative Office indicated that before 1996 courts in the DPRK were staffed by untrained individuals selected by party leaders and that there were no more than 200 full-time lawyers in the country,<sup>13</sup> but a fresh review by a South Korean scholar showed that by 2001 an improved system had come into existence.<sup>14</sup> Kim Il-sung University's social science department includes a law division comprising three sections: law, national management, and international law. Each section has 40 to 50 students. Although the law division is one of the smallest in the university, it has about 50 professors. It produces judges, prosecutors, lawyers, educators, researchers, administrative law specialists, and diplomacy experts. The curriculum includes studies in Russian and Chinese laws along with the typical dose of *juche*. The program of study requires five years and includes a thesis, practical work-study (three years), and a graduation examination with written and oral parts. This graduation exam

is essentially a national qualification exam. Competition for entrance is intense although some students seem to enroll and ultimately obtain certificates by way of a correspondence course.

No one other than faculty of Kim Il-sung University and scholars selected by the Social Science Research Center is allowed to author legal reference materials, and publication is subject to strict review.<sup>15</sup> Between 1998 and 2001, the DPRK sent waves of legal scholars to participate in training seminars on law held in Beijing organized by the Asia Foundation. Additional training sessions were held in Europe. In addition, the United Nations Office of Legal Affairs organized a seminar on international law held in Pyongyang to provide the Ministry of Foreign Affairs and legal officials with an overview of treaty law and practice, jurisdictional immunities of states, as well as extradition and refugee law.<sup>16</sup>

The Lawyers Act was passed in 1993. This new law replaced regulations that had been in place since 1948 and that loosely described the roles of lawyers and their qualifications.<sup>17</sup> Its provisions establish qualifications and obligations for attorneys, including the methods of their organization and assignment to cases. It even provides for acceptance of foreign lawyers from jurisdictions that offer reciprocal treatment.<sup>18</sup>

Despite efforts to change its legal culture, the DPRK's system has a long way to go to shed its legacy characteristics in favor of more modern concepts. Aside from using law to govern the nation, the DPRK also uses law as a vehicle for formalizing propaganda and as a planning and management tool. The provisions found in the constitution appear over and over in news articles, on Web sites, and in other outlets of the DPRK government. A review of the contents of the laws enacted under the constitution shows that they are the blueprints for operation of the DPRK economy. Perhaps laws will ultimately replace central planning.

Commentators have noted that passing laws, including the so-called 2002 reform, tends to legitimize activities such as market-oriented economic behaviors that have become common while still technically illegal.<sup>19</sup> Other laws seem aimed at declaring that an aspiration be guaranteed by law, whether or not the condition actually exists. It is this aspect of DPRK law that might annoy or amuse a reader who sees it as hypocritical or worse to declare that citizens are guaranteed various rights in a society noted for not protecting any individual rights.

Let us examine two examples of this. The constitution provides that every citizen aged 17 and over is allowed to vote and hold office, with the expected exceptions of the men-

tally incompetent and other people in similar circumstances. To outsiders, this appears to be a sham because the slate of candidates appears to be provided by the ruling party without a process allowing participation by candidates who oppose the government or its policies. Another example is the constitution's Article 158 provision that court cases are heard in public and the accused is guaranteed the right of defense. In fact, the accused is assigned a defense attorney in criminal cases unless the crime is a political crime. The tautological definition of the state's interests being equivalent to the citizens' collective interest is used to preempt any challenge to the state.

Perhaps the DPRK efforts at building a modern legal system will fail or be detoured along the way. Maybe the legal infrastructure will end up like the Ryugang Hotel, the 105-story pyramid that has dominated Pyongyang's skyline since 1987 but cannot be completed because of early and fundamental engineering errors.<sup>20</sup> Or maybe the efforts will lead in a better direction. The actions of the DPRK's leaders, its citizens, and its neighbors will each affect the outcome.

### Snapshot of DPRK Laws

What are the laws of the DPRK? The Constitution of 1948, modeled after the Soviet Constitution of 1936, was the law of the land until it was totally replaced by the Socialist Constitution of 1972, which in turn was amended in 1992 and 1998. The current DPRK constitution includes an extensive introduction describing the contributions of Kim Il-sung to the nation, ending with: "The DPRK Socialist Constitution is a Kim Il-sung constitution which legally embodies Comrade Kim Il-sung's *juche* state construction ideology and achievements."<sup>21</sup>

The constitution goes on to lay out the structure and authority of the government and the rights and duties of citizens. The ultimate sovereignty and legislative authority of the nation reside in the Supreme People's Assembly (SPA) to which the Presidium of the SPA, the Cabinet and its premier, and the National Defense Commission are all held accountable. The SPA is elected by direct vote via a secret ballot for a term of five years, and each of the organs subject to its authority are coterminous. At the local level, local assemblies are elected for four-year terms and they in turn select "local people's committees" that perform the functions of local government, including local budgeting, law enforcement, and the operation of the courts.<sup>22</sup>

Laws passed by the SPA are gathered in a legal code, first published for public use in 2004, and its supplement published in January 2006. There are 112 laws in the legal code; 15 new laws appeared in the 2006 supplement, and 32 of the original 112 laws were revised and republished in

the supplement. In addition, special laws were enacted in cooperation with the Republic of Korea (ROK) for the management of the Kaesong industrial complex. These are not the only laws of the DPRK, but they are the only texts I have been able to obtain so far. Older versions of some of the laws are published in earlier publications by South Korean scholars.<sup>23</sup>

Noteworthy among recently passed laws are the amendments to the civil law, including the succession law that codifies and recognizes individual rights to property and the succession to individual property by heirs. In January 2006, a commercial bank law was passed to provide procedures for establishing banks aimed primarily at taking deposits from citizens and lending them for profit. In October 2006, a law to prohibit money laundering was passed.<sup>24</sup> These laws along with other 2002 laws and law revisions have been portrayed as steps to marketization of the economy. Before commenting on economic laws, we should also note a change to the criminal law, which for the first time adopted the principle of *nullum crimen sine lege*—no crime without law—to replace the previous principle that allowed a crime to be identified without specific reference to a violated rule.<sup>25</sup> This change and some of the changes to the civil law indicate intent to conform to the International Covenant on Civil and Political Rights (ICCPR).

During recent years, the DPRK has passed an increasing number of laws and is exerting great efforts to publish laws that outline procedures for modern international business engagements. That is, the country is publishing laws aimed at would-be foreign investors. The laws appear crude and naive, however, and seem likely to discourage rather than encourage investment. The initial version of the Foreign Equity Joint Venture Law was passed as early as 1984. Over 10 years, fewer than 100 foreign investments were induced under its provisions, and almost all of these came from pro-DPRK Koreans living in Japan. In 1992, the DPRK updated the investment law and added more related laws. Whether because these laws remained unattractive or because of the awful economic disasters that the DPRK muddled through during the 1990s, foreign investment still did not materialize.

The DPRK dispatched legal experts for training in international legal norms at a series of Asia Foundation–sponsored workshops in Beijing between 1998 and 2001 and dispatched teams to Europe for similar training thereafter. It appears that after the legal experts returned to the DPRK they drafted large numbers of laws and revisions to existing laws. Unfortunately, these laws, like their predecessors, bear a distinctive DPRK style that remains unattractive to foreign investors.

To a would-be investor, the laws include the type of impractical provisions we saw in early South Korean and Chinese foreign investment laws. For example, an investor is required to obtain a series of approvals from multiple organizations and is expected to make investments prior to gaining certainty that key approvals—for example, approval for a foreign manager to reside in the DPRK—are obtained. Also, investors are required to disclose comprehensive confidential business information in advance of learning whether the investment will be permitted and without guarantees of the extent to which such information might be protected from disclosure for purposes other than its own. Further, the DPRK's laws include some unique deal-killing provisions such as mandatory arrangements for labor pooling. Foreign-invested companies are required to recruit their employees from the local labor exchange and to negotiate a contract with the labor exchange. Despite this, foreign-invested firms are also required to fund labor union activities such as sporting and cultural events and social ethics programs.

The declaratory parts of these laws proclaim the intention of applying laws evenhandedly, but this appears to mean that the DPRK government intends to treat all foreign investors equally, not that it intends to treat foreign investors in the same way it treats its local enterprises. In fact, DPRK law does not provide for the existence of domestic corporate entities. Domestic entities include the state itself and its subdivisions and collective production units.

The DPRK proudly announced some years ago that, upon completion of its socialist revolution, the government abolished all taxes to become the first tax-free country in the world. Yet the new laws establish hefty income taxes to be paid by foreign-invested firms as well as several other taxes, none of which is paid by any domestic entities. Again, the fair and equal application of the new laws refers to the plan of applying the taxes to all of the foreign-invested firms, not to extend national treatment to foreign-invested firms. Tax rates are generally 25 percent of net profit. Net profit is defined in the statute as gross revenue less a specific list of allowable deductions. The rate is reduced and tax holidays apply for certain investments made in target industries—for example, those including transfer of the “latest technologies” and for those made in special trade zones, specifically the Rajin-Sonbong zone.

By taking this approach to recruiting and regulating foreign investors, the DPRK will not be able to attract investment from serious large-scale multinationals. If the current slightly relaxed political atmosphere leads to increased contacts between the DPRK government and serious foreign investors, the experience of meeting these firms and learning from them why the current set of laws is not con-

ductive to investments will help the DPRK government adjust its expectations or its approach, or both.

Dealing with serious foreign entrepreneurs will be quite different from the DPRK's experience to date, which includes generally selling access to the country to nongovernmental organizations (NGOs) and South Korean organizations. The experience will also be different from the experience of dealing with Chinese enterprises. The NGOs and South Koreans may empathize with the DPRK to some extent and go along with the political line as they seek to accomplish their missions. Chinese entrepreneurs seem to engage the DPRK on a different basis. The new foreign investment laws stipulate, for example, that foreign investments should be located in special trade zones (read Rajin-Sonbong) unless they are investments in preferred high-tech businesses. Yet the Chinese have somehow managed to invest in three department stores in Pyongyang.<sup>26</sup>

Foreign investors, particularly those from the United States and Europe, will tend to take a legalistic approach to their investments and will cumulatively force focus on deal-killing provisions. The DPRK will calculate its own interest in deciding whether to maintain such provisions.<sup>27</sup> The process of give and take can yield progressive results only by beginning ("well begun is half done") and by continuing in sufficient volume to thoroughly exercise the system. The DPRK's experience with the Korean Peninsula Energy Development Organization (KEDO) and with South Korean businesses in the Kaesong industrial complex has already enriched the DPRK's understanding of the behavior of capitalist enterprises. Further and continuous contacts with foreign investors might be the best way for the DPRK legal system to improve and accomplish its stated goals.

### Who Cares about DPRK Law?

Who is paying attention to DPRK law? A huge number of South Korean scholars have devoted attention, if not their entire careers, to DPRK law studies. English-language articles have analyzed the DPRK's laws with specific reference to either its constitution and political structures, or its emerging trade and investment laws.<sup>28</sup>

And, of course, scholars exist in the DPRK. A reference volume, *International Law Dictionary*, was published in Pyongyang in 2002.<sup>29</sup> It catalogues treaties and terms along with definitions and political commentary. Seventy-two individuals contributed to this volume. The scholarship appears slightly random in that the book includes a grab bag of defined items ranging from "Code of Hammurabi" to "Nuclear Non-Proliferation Treaty." It includes items such as the Katsura-Taft Agreement of 1904, which it naturally points out as an example of the wicked behavior of

imperialists.<sup>30</sup> This *International Law Dictionary* includes an entry for "Trade terms" but no reference to widely accepted international commercial terms (Incoterms).<sup>31</sup>

The seeming randomness of topics included might lead us to surmise that the topics reflect the actual experiences of the contributors in terms of their interests or assignments, or possibly what just happened to be on their desks when the idea of compiling the dictionary came into existence. The inclusion of items such as the "Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases and Bacteriological Methods of Warfare"<sup>32</sup> and similar protocols involving weapons of mass destruction suggests that at least one scholar had reason to check into these protocols. Extensive commentary is offered on what normally would be simple definitions. "Loan," for example, is amply defined as an international transaction in which a party of one country lends money to a party of another and receives interest and repayment on agreed terms. This is followed by an explanation that imperialist countries normally attach conditions to their loans in order to attack and exploit the country of the borrower and that the United States has totally colonized South Korea using such tactics.<sup>33</sup>

A similar DPRK volume with a similar list of contributors describes civil law.<sup>34</sup> I have not yet been able to confirm whether the contributors to these two dictionaries are among those who participated in foreign law training sessions, whether they overlap with the negotiators of laws implementing North-South special laws, or whether they are authors of other DPRK laws.

Aside from legal specialists, none other than Great Leader Kim Il-sung and Supreme Commander (Dear Leader) Kim Jong-il have offered comments on the role of law in society. In a speech delivered at the seventh session of the Fifth Supreme People's Assembly on 29 April 1977, Kim Il-sung explained the significance of the passage of the new Land Law:

Without law the order of the state and society cannot be maintained . . . and society cannot be developed. The fundamental law that governs all activities of the state and society in our country now is the Socialist Constitution. In order to enhance the functions of our socialist state and further consolidate and develop our socialist society, we must have amplified specific laws for different fields of life based on the Socialist Constitution . . . Our main objective in adopting the Land Law . . . is not to govern the people by force of law; it is to set forth a programme for land development . . ."<sup>35</sup>

A few months later, in a speech delivered at the first session of the Sixth Supreme People's Assembly of the Democratic People's Republic of Korea, on 15 December 1977, Kim Il-sung lectured that "elimination of bureaucratic behavior requires strengthening socialist law-abiding life among the leading personnel of the state and economic organizations." He pointed out that "[o]ur socialist law is the basic weapon of state administration created by the people themselves to safeguard the interests of the working masses." And continued: "The socialist law-abiding life guidance committee should strengthen the education of leading functionaries of the state and economic institutions in the spirit of obeying laws . . ."36

Kim did not offer these remarks for foreign consumption. Law is a tool for orderly management of the state, but in no case is law seen as restricting the authority of the state. Because the state is deemed to be possessed and ruled by the people themselves, suggesting that the state's power be limited does not make sense. How can the people's authority to rule themselves be limited? This tautology removes the issue from discussion.

Similarly, in 1986 Kim Jong-il explained that "[o]bedience to socialist laws is the true obedience of the working masses who are masters of the state and society." He distinguished this from nonsocialist societies:

The laws of an exploiting society are instruments of power politics which represent the will of the ruling class and serve its interests; and they are coercive. In contrast, the laws and regulations in a socialist society reflect the will and requirements of the working masses and serve their interests.<sup>37</sup>

Kim Jong-il has expressed admiration of capitalist legal systems. He told visiting Korean residents of Japan: "In a capitalist nation, even the prime minister and the president are prosecuted if they break the law. We must study how to strengthen our legal system."<sup>38</sup>

### **What Law Does the DPRK Pay Attention To?**

Although DPRK law is greatly influenced by Russian and Chinese law, the DPRK also pays attention to South Korean, Japanese, and even U.S. laws and expresses its opinion thereon in righteous and legalistic terms.<sup>39</sup> In January 1997, a DPRK-affiliated organization in Europe sent letters to the secretariat of the International Labor Organization, the secretariat of the Organization for Economic Cooperation and Development, and the director of the secretariat of the UN Commission on Human Rights:

urging them to continue discharging their responsibility and duty for the abrogation of the revised "labor laws" and "law on the agency for national security planning" in South Korea. The letters said that the "New Korea Party" betrayed the moral baseness of the Kim Young-sam regime by illegally railroading the "labor law" and "law on the agency for national security planning." The letters requested these international organizations to strongly and officially urge the South Korean regime to abrogate the revised laws at once.<sup>40</sup>

What about the regular citizens of the DPRK? What is their perspective? The extensive admonitions of Kim Jong-il on the importance of legal order and of the duty of the Korean Workers' Party to educate the people on why they must voluntarily obey socialist laws have surely been part of the extremely regular educational program in which all DPRK citizens participate as part of their local organizations. Everyone belongs to an organization, and every organization is required to provide constant citizenship and ideological training. It is conceivable that, with the breakdown of regular life since 1994, this pattern was disrupted, with the result that such lessons are fading from the memory of some citizens.<sup>41</sup> It is also possible that these memories are being replaced with the observation that corruption is an effective method of dealing with authorities and the feeling of extreme frustration with the apparent ineffectiveness of the government.<sup>42</sup> There are even reports indicating that bribery is necessary in order to complete a procedure such as a divorce at the local court.<sup>43</sup>

People's awareness of the laws themselves remains obscure. Even though citizens seem aware of the policy allowing "utility," which might be a code word for "pragmatic profit seeking," they do not typically connect the policy to the laws passed on 1 July 2002 that are generally referred to as the "7.1 measures."<sup>44</sup> A member of the Ministry of Public Health, for example, declared in May 2007 that the DPRK had no tobacco control law even though that law was passed in July 2005 and included in a published supplement to the legal code of the DPRK. On the other hand, the same official was well aware of the newly adopted "Government Officials Qualifications Adjudication Law," which requires all bureaucrats who did not pass a qualification exam to be regularly tested for competence.<sup>45</sup>

### **DPRK's International Dealings**

Businesses from South Korea and China are braver than those from countries less familiar with the DPRK in accepting and adapting to the undeveloped business envi-

ronment. But even South Korean and Chinese businesspeople have limited interest in bearing too much risk.<sup>46</sup>

The South deploys its vast experience in international trade and modern contracting when it deals with the DPRK.<sup>47</sup> Even food aid, which is described both as direct contributions to the DPRK's balance of payments and as humanitarian aid, is formally the subject of a contract characterized as, in the case of the supply expected in 2007, 400,000 tons of rice in the form of a loan to be paid back over 30 years after a 10-year grace period.<sup>48</sup> In addition, South Korea negotiated a series of protocols that were enacted into law by the DPRK for the administration of the Kaesong industrial complex. North-South relations are based on formal legal agreements.

In dealing with the South, the DPRK's negotiations attempt to take advantage of opportunities to tap the South's nationalism for progress or, alternatively, public relations points:

“Because of the intervention of foreign powers, the implementation of what is agreed upon between the two Koreas is being suspended, and the inter-Korean relationship is being edged out by foreign powers,” the DPRK's Korean Central News Agency quoted Kwon [Ho-ung, chief of the DPRK negotiation team] as saying in a dispatch datelined Seoul.<sup>49</sup>

The South's officials have accumulated valuable experience in dealing with DPRK officials and are working for what they perceive to be their own interests, with eyes wide open, whether in the management of the Kaesong industrial complex or any other interaction with the DPRK. These continued contacts are changing the DPRK.

The DPRK engages in international trade through state-owned trading companies. These companies are subject to the same standards that apply to any international trader in the sense that their partners will deal with them only to the extent that they are either proved creditworthy or have the ability to guarantee payments or contract performance. Without honoring commitments under international contracts, the trading companies would immediately cease operations.

DPRK trading firms have experience with international arbitration, which is the normal recourse for a disgruntled party to an international agreement that includes an arbitration clause. A case arose in Singapore in which a Russian firm obtained an attachment order for seizure of a DPRK company in order to force payment to it by a different

DPRK company. The Russian party argued that under the DPRK system all companies are commonly owned and accordingly should be treated as a single legal entity. A defense team of lawyers argued on behalf of the DPRK and ultimately prevailed, thereby obtaining release of the ship.<sup>50</sup> Another case was arbitrated in Hong Kong.<sup>51</sup>

The DPRK's law on external economic contracts, its laws and regulations governing foreign-invested joint venture firms, and even its law on land leasing provide that disputes “shall be settled by arbitration or legal procedures provided by the DPRK or may be referred to an arbitration agency in a third country for settlement.”<sup>52</sup> But the law and regulations governing wholly owned foreign ventures provides that all disputes will be settled by either a DPRK court or DPRK-based arbitration.<sup>53</sup>

On the face of its laws, the DPRK appears to be prepared and hopeful about dealing with foreign entities for business, and its preparations include theoretical acceptance of dispute adjudication by non-DPRK tribunals. Furthermore, its laws have been continuously upgraded in ways that do not seem to reflect either legitimization of common unlawful practices or of managing actual existing aspects of its economy. Why would the DPRK take the trouble to upgrade its laws in this way? Perhaps it is taking steps to prepare for qualification for aid from international financial institutions (IFIs). Bradley Babson has pointed out that, even if the current impasse over the DPRK's nuclear weapons is resolved, the IFIs would not be able to extend development aid to the DPRK because it lacks crucial institutional infrastructure, including legal institutions, to qualify as a recipient of aid.<sup>54</sup>

### **DPRK's Participation in International Organizations and Treaties**

The DPRK became a member of the United Nations in September 1991. It also belongs to the Food and Agriculture Organization; the International Civil Aviation Organization; the International Postal Union; the UN Conference on Trade and Development; the International Telecommunications Union; the UN Development Program; the UN Educational, Scientific, and Cultural Organization; the World Health Organization; the World Intellectual Property Organization; the World Meteorological Organization; the International Maritime Organization; the International Committee of the Red Cross; and the Nonaligned Movement.<sup>55</sup>

The DPRK ratified the ICCPR and the International Covenant on Economic, Social, and Cultural Rights in 1981, the Convention on the Nonapplicability of Statutory Limitations to War Crimes and Crimes against Humanity in 1984, the Convention on the Prevention and Punishment of the

Crime of Genocide in 1989, the Convention on the Rights of the Child in 1990, and the Convention on the Elimination of All Forms of Discrimination against Women in 2001.

In August 1997, the UN Subcommission on Prevention of Discrimination and Protection of Minorities adopted a resolution criticizing the DPRK government for its human rights practices. The DPRK government subsequently announced that it would withdraw from the ICCPR, and it called the resolution an attack on its sovereignty. In October 1997, the UN Human Rights Committee issued a statement criticizing the attempt to withdraw from the ICCPR and noted that countries that had ratified the ICCPR could not withdraw from the covenant. In August 1998, the Human Rights Committee readopted a resolution urging the DPRK government to improve its human rights record. During the year, the government submitted a report on human rights to the UN Human Rights Committee.<sup>56</sup>

According to the U.S. Department of State, the DPRK became a party to the Biological Weapons Convention in 1987; however, the DPRK is not a member of the Chemical Weapons Convention, the Missile Technology Control Regime, or the International Convention for the Suppression of Acts of Nuclear Terrorism.

### **Impact of Particular Countries**

The influence of South Korea on the development of DPRK law has been noted. Chinese influence can be seen in the development of special economic zones and in concepts of dealings between state and foreign entities.

Credit is due to Russian diplomats for their exercise with the DPRK that resulted in a fresh Treaty of Friendship, Good-Neighborly Relations and Cooperation in February 2000, a treaty that included a reference to the United Nations charter. This was the first international agreement signed by Kim Jong-il as leader of the DPRK and the first such agreement signed by the DPRK with a nonsocialist country. The DPRK and Russia entered into 40 agreements between 1996 and 2005, including agreements encouraging investment and avoiding double taxation. In addition, a 1985 agreement for the construction of two pressurized water-to-water nuclear energy reactors remains “binding,” and Russia is agreeable to resuming that work if it is able to recover outstanding debts owed to it by the DPRK in connection with the project. Russia sees itself as bringing the DPRK closer in line with the norms of the international community by its practical and patient diplomacy.<sup>57</sup>

The DPRK is also subject to developments in U.S. law. Because the United States is in a position to veto any aid to

be provided by the IFIs to the DPRK, it matters whether the United States includes the DPRK on its list of terrorist states.<sup>58</sup> In fact, a number of U.S. laws affect the DPRK either directly or indirectly. The Trading with the Enemy Act, the Export Administration Act, the Foreign Assistance Act, the Arms Export Control Act, the Antiterrorism and Effective Death Penalty Act, and the Atomic Energy Act all contain general provisions that affect actions of the U.S. government and its citizens in support of the DPRK on the basis of contemporary findings as to the DPRK’s behavior. More specific laws such as the North Korea Non-Proliferation Act of 2006 and the North Korean Human Rights Act of 2004 directly refer to the DPRK and establish hurdles and obstacles to “business as usual” with the DPRK until fundamental issues are resolved.<sup>59</sup>

In addition to these provisions that are known hurdles, there is always the possibility that new hurdles could emerge if newly discovered information about the DPRK leads to invocation of sections of laws not yet invoked. For example, the Foreign Assistance Act of 1961 requires submission of annual reports by countries identified under the “international drug control certification procedures” as countries cultivating 1,000 hectares or more of illicit opium poppy.<sup>60</sup> If new information becomes available that leads to inclusion of the DPRK on this annual report, yet another hurdle will obstruct business as usual.

Although the DPRK might not require or even want direct U.S. assistance or commercial relations, the United States will not be able to support IFIs such as the World Bank if the IFIs are otherwise prepared to offer development aid to the DPRK, or even if an IFI wants to offer a grant to assist the DPRK to prepare for qualification for development aid. Accordingly, resolution of issues that invoke the provisions of these laws is important for any scenario that includes an evolution of the DPRK to a market- and law-based economy integrated with the international community.

### **Summing Up**

All in all, the DPRK is being dragged into the international community by laws, including its own. The DPRK has devoted resources to evolving its laws without conceding any ideological ground with respect to the nature of the society it intends to maintain. It could be that the DPRK is moving as fast as it can, for the most practical of reasons, to implement whatever formalities and practical systems are required to reform its economy and attract foreign investment. Still, every brush with the law exposes the DPRK and its citizens to a generally rational and widely accepted system for practical intercourse among nations.



Law is a language, and the DPRK must speak this language to deal with its neighbors and the rest of the international community. Ironically, the DPRK may find that firming up its legal institutions and practices will be a way of maintaining its society while expanding its contacts with other nations and international institutions. Its continued reliance on and use of law to accomplish its purposes will gradually lead to more mature institutions that are equipped to enforce the rights of individuals. As Professor Jay Murphy stated when he surveyed the legal system of South Korea in 1967: "If Korea is to make rapid strides in economic development, if foreign capital is to invest in Korea, and if basic rights of the people are to be protected in Korea, then it is indispensable that the laws and legal system are competent for the task."<sup>61</sup>

### Policy Implications

If the foregoing is a possible evolutionary path for the DPRK, it seems that any and all steps taken by its neighbors and counterparts to engage the DPRK will hasten this development. In this respect, accelerating engagement would be an advisable path. Those who oppose engagement because they consider it to be a type of reward for bad behavior might want to recalculate which is the fastest path to changing the character of the DPRK: playing the role of an external enemy without which the justification of oppression of political and human rights cannot be maintained, or playing the role of an engaged partner negotiating at arms length for the normal fruits of international trade.

The DPRK may be open to grand deals. An offer in 2003 to abandon nuclear and missile programs in return for a written security guarantee, economic compensation, and a U.S. pledge not to hinder the DPRK's economic development seems like a deal that the United States could effectively implement.<sup>62</sup> I say: Call their bluff. But the United States must be creative and aggressive and must deploy its best tools to the task.

One U.S. tool that remains totally undeployed in dealing with the DPRK is the U.S. business community.<sup>63</sup> U.S. businesses have been the driving force of tremendous U.S. achievements domestically and internationally. Their built-in focus on self-interest, their obsession with efficiency and legality, and their vast experience in dealing with people of all cultures in the world, including Koreans, could contribute much more to the transformation of the DPRK than could any combination of carrots and sticks contrived by government officials whose perceived constituency is an amorphous and changing political morass with little interest in history or the long-term future. But U.S. businesses

cannot participate in this process unless the legal restrictions preventing them from doing business in and with the DPRK are removed. This is not to say that U.S. firms are lined up trying to enter the DPRK market. U.S. businesses will need an economic incentive in order for them to deploy their qualified attention to the task. If the market initially does not provide an incentive, perhaps the U.S. government could divert its resources to resolving that market issue instead of squandering larger amounts on approaches that have proved to backfire.

Another tool that the United States has misdeployed so far is the tool of no-cost concessions. A written security guarantee and a pledge not to interfere with the economic development of the DPRK are among such concessions. These should extend to taking favorable executive action with respect to all of the obstacles included in U.S. law preventing diplomatic and business relations, including the establishment of normal friendly diplomatic relations with or without a formal peace treaty and extending to treaties of goodwill, noninterference, and cooperation and treaties for avoidance of double-taxation and others necessary for modern business relations. These items are all no-cost except in the calculation of people who believe that these items ought to be bartered for items that actually have cost and who excessively estimate the value of these items to the DPRK. In fact, some items—such as eliminating Voice of America and Radio Free Asia—might even save money. These programs needlessly aggravate the DPRK without bringing a benefit to the relationship. Eliminating them would contribute to the persuasiveness of the security guarantee.

Perhaps instead of paying compensation directly to the DPRK government for an unverifiable cessation of production of weapons of mass destruction, the United States should use a similar amount of money to subsidize U.S. firms to employ the DPRK personnel involved in such activities. That is, U.S. firms would need to come up with plausible projects to which the DPRK's qualified technicians—technicians whose skills are currently deployed in military industries—could be deployed, and the U.S. firms could pay a generous, or at least fair, compensation for such productive work. For the United States to implement such a project, the obstacles preventing U.S. businesses from engaging the DPRK must be removed.

Is this approach naive?<sup>64</sup> Perhaps any approach to dealing with the DPRK will be naive to some extent simply because of the lack of information required to evaluate the likelihood of success. This applies as well to the approaches of the previous and the current U.S. administrations. Let's identify some positive outcomes from each of the previously attempted naive approaches.

The 1994 Agreed Framework launched an intensive and wide-ranging set of contacts between the United States and the DPRK. The KEDO process, although deemed a failure and a waste of South Korea's and other contributors' funds in excess of \$1 billion, did engage the DPRK in intensive legal negotiations that gave rise to protocols governing a wide range of engagement activities.<sup>65</sup> Further, during the years the KEDO project remained active, continued contacts among U.S., South Korean, and DPRK representatives established a layer of familiarity that could be built upon for future projects. The DPRK surely gained valuable experience and knowledge in the process of negotiating legal agreements required for the project.

As to the current administration's widely criticized and recently slightly modified approach of demanding surrender instead of negotiating,<sup>66</sup> we can still find a positive outcome in this sense: Both the United States and the DPRK demonstrated their respective paths of action in the event of relationship deterioration or dispute escalation. The United States showed that it does not need to militarily attack the DPRK in order to damage the DPRK regime. By exerting its prowess and control of the international banking system, the United States demonstrated a tool that hit the DPRK where it really hurts. Meanwhile, the DPRK showed that it could continue to accelerate development of horrifying weapons despite bluster by the United States, sanctions by the UN, and even disapproval from China. Plus, ironically, the deployment of the U.S. financial weapon further locked the DPRK into its reliance on organized criminal networks to do business, thus exacerbating the risk of its successful transfer of horrifying weapons. Both sides showed their toughest hands. So, we have that information now and don't need to wonder or speculate about the ultimate consequences of failure to resolve the current issues.

Adopting the full-embrace approach in no way implies a need to reduce scrutiny and aggressive containment of the DPRK's extensive criminal activities or to abandon the promotion of human rights protection. But it does suggest separating those scrutiny and containment efforts from an attempt to engage to the fullest possible degree in legal and legal institution-growing activities. If anything, normalization that includes establishing a physical presence in Pyongyang will increase information-gathering effectiveness for all purposes. Success in strengthening the DPRK's legal institutions and increasing its capacity for normal international business operations should absorb the resources it currently devotes to unproductive military activities and to illicit activities. Consequently, the DPRK's overall economic performance stands to improve remarkably, as projected by Nicholas Eberstadt.<sup>67</sup>

The DPRK seems to be trying to build legal systems that will improve the operation of its economy.<sup>68</sup> If it is already doing this for its own reasons, it follows that it will do so faster and better if given a practical incentive. Engagement in the global economy by hosting U.S. businesses with their compulsive attention to legalities would be a fine way to accelerate legal infrastructure. Individual human rights will ironically gain protection by this process in the sense that DPRK law already provides special protections for its workers at foreign-invested firms that are not necessarily extended to workers in DPRK firms. Finally, but not before a legal system emerges that has the capacity to systematically and predictably protect the rights of business enterprises, the DPRK's capacity to protect its citizens' basic human rights from itself could evolve into a true rule-of-law system.

## Endnotes

1. Ambassador Jay Lefkowitz, interview, Asia Source, 20 June 2006, [www.asiasource.org/news/special\\_reports/lefkowitz.cfm](http://www.asiasource.org/news/special_reports/lefkowitz.cfm). In the interview, the ambassador, who was special envoy on human rights in DPRK, a position to which he was appointed by President George W. Bush on 19 August 2005 following the North Korean Human Rights Act of 2004, calls the DPRK "lawless."

2. Nicholas Eberstadt (presentation entitled "A Fair Deal with North Korea?" sponsored by the American Enterprise Institute, 5 April 2007), [www.aei.org/events/eventID.1487.filter.all/event\\_detail.asp](http://www.aei.org/events/eventID.1487.filter.all/event_detail.asp).

3. The DPRK published its legal code in 2004, including the full text of 112 laws, and it followed that up with a supplement in January 2006, including 15 new laws and amended versions of 32 laws; see *Cho Sun Min Ju Ju Ui In Min Gong Hwa Guk Bub Jeon: Dae Jong Yong* [Legal code of the Democratic People's Republic of Korea: For public use] (Pyongyang: Legislation Press, 2004); and *Cho Sun Min Ju Ju Ui In Min Gong Hwa Guk Bub Jeon: Dae Jong Yong Jung Bo Pan* [Legal code of the Democratic People's Republic of Korea: For public use; Supplement 2004.7–2005.12] (Pyongyang: Legislation Press, 2006). As the legal code is subtitled "For Public Use," it presumably does not include all laws. Also, in March 2006, the government published a bilingual volume including English and Korean versions of 50 laws and regulations of interest to foreign investors: *Laws and Regulations on Foreign Investment, Democratic People's Republic of Korea* (Pyongyang: Legislation Press, 2006). This is not to say that the number of laws included in these recent publications is large compared with other nations (for example, the Republic of Korea has more than 4,000 laws), but it simply clarifies that the DPRK does deploy laws and regulations and is not simply administered by mysterious whims of a single person. See Appendix A for a list of laws enacted or revised since 1993.

4. The North Korean Provisional People's Committee exercised power in the DPRK prior to the elections it administered in November 1946. Before those elections, the committee passed a land law, a labor law, a gender equality law, and an industry nationalization law. The representatives elected to assemblies in 1946 adopted a constitution on 8 September 1948. This constitution remained in effect until 1972; see Christopher Hale, "DPRK in Evolution: The Correlation between the Legal Framework and the Changing Dynamic of Politics and the Economy," *Korea Observer* 33, no. 3 (Autumn 2002): 368–69. Hale cites as his source for this history Lee Chong-sik, "Stalinism in the East: Communism in DPRK," in *The Communist Revolution in Asia:*

*Tactics, Goals, and Achievements*, 2nd ed., ed. Robert A. Scalapino (Englewood Cliffs, N.J.: Prentice-Hall, 1969).

5. Socialist Constitution of the Democratic People's Republic of Korea, 5 September 1998; Choi Chong-go, *Buk Han Bup* [North Korean law], 2nd ed. (Seoul: Parkyoungsa, 2001), 94–120.

Article 4 states:

The sovereignty of the DPRK resides in the workers, peasants, working intellectuals and all other working people. The working people exercise power through their representative organs—the Supreme People's Assembly and local people's assemblies at all levels.

Article 8 states:

The social system of the DPRK is a people-centered system under which the working people are masters of everything, and everything in society serves the working people.

6. *White Paper on Human Rights in North Korea 2006* (Seoul: Korea Institute for National Unification, Center for North Korean Human Rights Studies, May 2006), [www.kinu.or.kr/eng/kinu/data/paper.asp](http://www.kinu.or.kr/eng/kinu/data/paper.asp); “More Business Than Usual: The Work Which Awaits the Human Rights Council,” Human Rights Watch, 12 March 2007, [www.reliefweb.int/rw/RWB.NSF/db900SID/RMOI-6Z8LWQ?OpenDocument](http://www.reliefweb.int/rw/RWB.NSF/db900SID/RMOI-6Z8LWQ?OpenDocument).

7. Both Kim Il-sung and Kim Jong-il, in their writings about the importance of law as a tool for the order and economic prosperity of society, declared that because the DPRK's socialist law was, by definition, imposed by the people—the masters of their own nation—upon themselves, any violation of law would be an act against the people. In the constitution, rights are not inherent in citizens but are granted to citizens by the state as part of its democratically centralized economic planning process.

8. Determining that the DPRK is not a rule-of-law state does not significantly set it apart from China, which is still debating whether it prefers to stick with rule by law rather than accept the political consequences of evolving toward rule of law; see Zhao Suisheng, ed., *Debating Political Reform in China: Rule of Law vs. Democratization* (Armonk, N.Y.: M. E. Sharpe, 2006). Even South Korea made the transition as late as the 1990s; see Lee Suk-tae, “South Korea: Implementation and Application of Human Rights Covenants,” *Michigan Journal of International Law* (Summer 1993): 705–38.

9. “Buk Han ui Kyung Jae Sa Hoi Sa Bup Jae Do Bun Ya” [North Korea's economy, society and judicial system], North Korea Unification Research Theses (Seoul: Tongilwon Information and Analysis Department, 1992); *Buk Han ui Sa Bup Jae Do Gae Kwan* [Survey of North Korea's judicial system] (Seoul: Court Administration Office, Hanyangdang, 1996); Choi Chong-go, *Buk Han Bup* [North Korean law]; Chang Myung-bong, “Buk Han ui Choi Geun Bup Jae Jung Bi ui Dong Hyang kwa Pyung Ga” [Recent trends and assessment of revisions to the legal system of North Korea], *North Korean Law Research* 8 (2005).

10. James T. Laney and Jason T. Shaplen, “How to Deal with North Korea,” *Foreign Affairs* (March/April 2003), [www.foreignaffairs.org/20030301faessay10336/james-t-laney-jason-t-shaplen/how-to-deal-with-north-korea.html](http://www.foreignaffairs.org/20030301faessay10336/james-t-laney-jason-t-shaplen/how-to-deal-with-north-korea.html).

11. Bradley O. Babson, “Economic Perspectives on Future Directions for Engagement with the DPRK in a Post-Test World,” Stanley Foundation, Policy Analysis Brief, December 2006, 1–2, [www.stanleyfoundation.org/publications/pab/BabsonPAB.pdf](http://www.stanleyfoundation.org/publications/pab/BabsonPAB.pdf).

12. Yoo Ho-Yeol, “North Korea in 2005: A Paradox of Pride and Fear” (paper presented at conference, “Prospects for U.S. Policy toward the Korean Peninsula in the Second Bush Administration,” Center for

Strategic and International Studies, Washington D.C., May 17–18, 2005); Stephan Haggard and Marcus Noland, *Famine in North Korea: Markets, Aid, and Reform* (New York: Columbia University Press, 2007), 180–88.

13. *Buk Han ui Sa Bup Jae Do Gae Kwan* [Survey of North Korea's judicial system]. This excellent reference traces the details of the DPRK's legal system from its beginnings through 1995, showing that while the country has been ruled by law since its founding, its efforts to modify laws and legal systems to cope with increased international contacts have continuously accelerated. Although it is somewhat dated, this work deserves careful study by anyone who wants to become familiar with the DPRK's legal system. It includes earlier versions of laws that have been revised since inclusion in the 2004 code of law. It also includes actual case records for criminal cases showing that the DPRK courts adhere to formalities and cite legal authority as well as reasons for their decisions.

14. Choi Chong-go, *Buk Han Bup* [North Korean law], 652–54.

15. Ibid.

16. “2006 Projects: International Relations, North Korea,” Asia Foundation, [www.asiafoundation.org/Locations/korea\\_projects.html](http://www.asiafoundation.org/Locations/korea_projects.html).

17. *Buk Han ui Sa Bup Jae Do Gae Kwan* [Survey of North Korea's judicial system], 553.

18. Legal Code, 2004, 441–45.

19. Haggard and Noland, *Famine in North Korea*, 165–66; Youn Miryang, Ministry of Unification, Seoul; Public Policy Scholar, Woodrow Wilson International Center for Scholars, Washington, D.C., unpublished manuscript, 2007. Dr. Youn's manuscript traces the treatment of women under DPRK law from the inception of the country through 2004; in addition, it includes excellent examples of the evolution and use of law in the DPRK.

20. Michael Harrold, *Comrades and Strangers* (Hoboken, N.J.: John Wiley & Sons, 2004), 381.

21. Socialist Constitution of the Democratic People's Republic of Korea, 5 September 1998, introduction.

22. Ryu Yi-geun, in “In Reclusive North, Signs of Economic Liberalization,” *Hankyoreh* [English online edition], trans. Daniel Rakove, 31 May 2007, [http://english.hani.co.kr/arti/english\\_edition/e\\_international/212761.html](http://english.hani.co.kr/arti/english_edition/e_international/212761.html), writes:

Street food vendors started appearing quite a while ago, but their numbers are ever-increasing. The fairly tidy vendors can be seen here and there throughout Pyongyang, selling a variety of goods, including soft drinks, ice cream, bread, rice cakes, and so on. Each product runs between 100–300 DPRK won. The local People's Committee gives licenses for the operation of such stands to various companies or the descendants of revolutionaries. A portion of sales is taken by the state and the remainder of the profit goes to the managing company or individual.

23. *Buk Han ui Sa Bup Jae Do Gae Kwan* [Survey of North Korea's judicial system], 669–773.

24. Park Song-wu, “North Korea Enacts Law against Money Laundering,” *Hankook Ilbo*, 20 February 2007, <http://www.nkeconwatch.com/category/energy/nuclear/>.

25. This principle was adopted in South Korea during the 1990s after its accession to the International Covenant on Economic, Social and

Cultural Rights, the International Covenant on Civil and Political Rights (ICCPR), and the Optional Protocol to the ICCPR; see Lee Suk-tae, "South Korea: Implementation and Application of Human Rights Covenants," 716. One observer reports that this principle does not yet prevail in China; see Thomas Weyrauch, "China—Who Rules the Rule of Law?" (speech at the Second International Conference for Global Support of Democratization in China and Asia, European Parliament, Brussels, Belgium, 14–16 May 2007), [www.china-intern.de/page/ci-aktuelles/1179319816.html](http://www.china-intern.de/page/ci-aktuelles/1179319816.html).

26. Liu Ming, "North Korean Economic Reform: An Uncertain Future for a Third-Way Exploration," in *Joint U.S.-Korea Academic Studies: Dynamic Forces on the Korean Peninsula: Strategic & Economic Implications* 17 (2007): 94.

27. The DPRK has already begun to allow some firms to contract directly with employees rather than use labor pools; see Oh Seung-yul, "North Korea's International Economic Relations: Trends and Future Prospects," *Korea's Economy* 2005 21:55.

28. My favorite is Christopher Hale, "DPRK in Evolution," in which the author tracks the development of DPRK's laws from establishment of the DPRK to 2002.

29. *International Law Dictionary* (Pyongyang: Social Science Publishing, 2002).

30. *Ibid.*, 2.

31. Incoterms are internationally accepted commercial terms defining the respective roles of the buyer and seller in the arrangement of transportation and other responsibilities and clarify when the ownership of the merchandise takes place. Incoterms, published by the International Chamber of Commerce in Paris, are similar to the definitions provided in the UN Convention on Contracts for the International Sale of Goods (CISG), to which 70 countries have acceded as of December 2006. The DPRK, along with Japan and the United Kingdom, has not yet acceded to the CISG.

32. *International Law Dictionary*, 367.

33. *Ibid.*, 381.

34. *Civil Law Dictionary* (Pyongyang: Social Science Publishing, 2002).

35. Kim Il-sung, "On the Land Law" (Pyongyang: Foreign Languages Publishing House, 1977), 2, 19.

36. Kim Il-sung, "Let Us Further Strengthen the People's Government" (Pyongyang: Foreign Languages Publishing House, 1977), 24–25.

37. Kim Jong-il, "On Increasing Obedience to Socialist Laws" (Pyongyang: Foreign Languages Press, 1986), 2.

38. See transcript of Kim Jong-il's conversation with Huh Jong-man and Suh Man-sul, two top leaders of the General Association of the Koreans Resident in Japan (Chongryun), a pro-DPRK organization. The conversation took place on the evening of 25 April 1998 at Kim Jong-il's villa. <http://www.kimsoft.com/2003/kji-tape.htm>. The full text of this transcript is Appendix B of this paper.

39. "Truth about Suppression of People by Force of NSL Disclosed in S. Korea," Korean Central News Agency (KCNA), 23 May 2007; "Japanese Reactionaries' Moves for Retrogressive Revision of Constitution under Fire," KCNA, 23 May 2007; "Kim Young Sam's

Shameless Sophism," KCNA, 15 January 1997, [www.kcna.co.jp/calendar-e/frame.htm](http://www.kcna.co.jp/calendar-e/frame.htm).

40. "Letters to International Organizations," KCNA, 24 January 1997. There are numerous examples of this type of "reach out" commentary on other countries' laws. Although this particular example is from a few years back, I selected it because of its ironic topic. But the good news is that the DPRK recognizes the authority of international organizations over the activities of nations.

41. In May 2007, however, I saw excerpts and outlines from Kim Jong-il's essay on obedience to law painted on the wall of the office of a hospital administrator in Pyung An North Province in the DPRK.

42. *O Nul ui Buk Han, Buk Han ui Nae Il* [Today's North Korea, North Korea's tomorrow] (Seoul: Good Friends (Jungto Publishing), 2006), 44.

43. *North Korea Today*, November 2006, 24.

44. Five years have passed since the 1 July 2002 DPRK government economic measures that raised wages as well as the value of the currency. In addition, the prices for rice and other necessities were increased and a system of incentives and limited independent capital was expanded. Only a very few people in the DPRK have even heard of the 7.1 measures. Only after talking for a significant length of time will people mention the notion of "utility" that has been pursued during the past few years; see Ryu Yi-geun, "In Reclusive North, Signs of Economic Liberalization."

45. Official of the Ministry of Public Health, discussion with the author, Pyongyang, 9 May 2007.

46. Ryu Yi-geun, in "In Reclusive North, Signs of Economic Liberalization" The article reports that, after visiting Pyongyang's 2007 international trade show, "one Daewoo source explained [to the *Hankyoreh* reporter], '[We told the North Koreans that] there must be assurances before we invest. They have to provide the same conditions that China does.'" At this point, there is probably not a single person who could make such assurances on behalf of the North Koreans. The country is still unprepared to take advantage of the money available to it from the South through the economic cooperation program. The six-party talks also must make some progress on the nuclear issue. Furthermore, if North Korea–U.S. relations do not improve, free trade between North and South will remain uncertain indefinitely.

47. For an interesting recap of the recent experience of South Korean firms in the DPRK, see Lim Wonhyuk, "Inter-Korean Economic Cooperation at a Crossroads," in *Joint U.S.-Korea Academic Studies: Dynamic Forces on the Korean Peninsula: Strategic & Economic Implications* 17 (2007): 139–64.

48. "Koreas Wrangle over Rice Aid, Nuclear Disarmament," *Hankyoreh* [English online edition], 31 May 2007, [http://english.hani.co.kr/arti/english\\_edition/e\\_international/213162.html](http://english.hani.co.kr/arti/english_edition/e_international/213162.html).

49. *Ibid.*

50. This incident was related to me by the representative of a DPRK trading company with offices in Beijing, and parts of the details were confirmed to me by Jerome A. Cohen, professor of law, New York University Law School.

51. I have not been able to obtain details of the Hong Kong arbitration. It was briefly described to me by the representative of a DPRK trading company.

52. *Laws and Regulations on Foreign Investment, Democratic People's Republic of Korea*, 13, 97, 477.
53. *Ibid.*, 105, 125.
54. Bradley O. Babson, "Visualizing a North Korean 'Bold Switchover': International Financial Institutions and Economic Development in the DPRK," *Asia Policy* (National Bureau of Asian Research), no. 2 (July 2006), 11, [www.nbr.org/publications/asia\\_policy/AP2/AP2\\_North%20Korea%20RT.pdf](http://www.nbr.org/publications/asia_policy/AP2/AP2_North%20Korea%20RT.pdf).
55. "Background Note: North Korea," U.S. Department of State, Bureau of East Asian and Pacific Affairs, April 2007, [www.state.gov/r/pa/ei/bgn/2792.htm](http://www.state.gov/r/pa/ei/bgn/2792.htm).
56. "Democratic People's Republic of Korea," U.S. Department of State, Country Reports on Human Rights Practices 2002, 31 March 2003, [www.state.gov/g/drl/rls/hrrpt/2002/18249.htm](http://www.state.gov/g/drl/rls/hrrpt/2002/18249.htm).
57. Alexander Vorontsov, "Current Russia-North Korea Relations: Challenges and Achievements," Brookings Institution, Center for Northeast Asian Policy Studies, Washington, D.C., February 2007, [www.brookings.edu/fp/cnaps/papers/vorontsov2007.pdf](http://www.brookings.edu/fp/cnaps/papers/vorontsov2007.pdf).
58. Membership in the International Monetary Fund (IMF) is required for access to the World Bank programs, but membership to the IMF requires an 85 percent vote of IMF member shares. The United States holds 17 percent; in addition, Japan would be expected to oppose IMF membership for the DPRK. In practice, the Asian Development Bank would not extend assistance ahead of the DPRK's entry into the IMF and World Bank even if it is technically able to do so, according to Bradley O. Babson, formerly of the World Bank, on 8 June 2007.
59. A comprehensive catalog, including an analysis, of these provisions has been compiled; see Kenneth Katzman, *U.S.-North Korean Relations: An Analytic Compendium of U.S. Policies, Laws and Regulations* (Washington D.C.: The Atlantic Council of the United States, March 2007), [www.acus.org/docs/070413\\_US-North\\_Relations\\_Analytic\\_Compndium.pdf](http://www.acus.org/docs/070413_US-North_Relations_Analytic_Compndium.pdf). Don Gross managed the project for the Atlantic Council.
60. Raphael F. Perl, "Drug Trafficking and North Korea: Issues for U.S. Policy," Report no. RL32167 (Washington, D.C.: Congressional Research Service, 25 January 2007), 2, [www.fas.org/sgp/crs/row/RL32167.pdf](http://www.fas.org/sgp/crs/row/RL32167.pdf).
61. Jay Murphy, *Legal Profession in Korea: The Judicial Scrivener and Others* (Seoul: Seoul National University, Korea Law Research Institute, 1967), 114.
62. "North Korea Missile Milestones—1969–2005," *The Risk Report* (Wisconsin Project on Nuclear Arms Control) 11, no. 5 (September–October 2005), [www.wisconsinproject.org/countries/nkorea/north-korea-miles.html](http://www.wisconsinproject.org/countries/nkorea/north-korea-miles.html).
63. One exception is the interesting contribution made by the U.S. tobacco industry in discovering and exposing the DPRK's involvement in manufacturing and exporting counterfeit cigarettes; see David L. Asher, "The Illicit Activities of the Kim Jong Il Regime" (paper prepared for the Seoul-Washington Forum, Brookings Institution and Sejong Institute, Washington, D.C., 1–2 May 2006), [www.brookings.edu/comm/events/20060501\\_asher.pdf](http://www.brookings.edu/comm/events/20060501_asher.pdf). Also, there is a reference to a contract between Cargill, Inc., a U.S. firm, and the Korean Committee for the Promotion of International Trade of the DPRK to exchange 20,000 tons of wheat for zinc in April 1997. The agreement appears to have broken down, perhaps because the DPRK received sufficient humanitarian assistance to cause the DPRK negotiators to want to rediscuss the terms. Also, because of the relaxation of restrictions following the 1994 Agreed Framework, companies were authorized to participate in light-water reactor development projects in the DPRK, and one company seems to have obtained permission to import DPRK magnesite into the United States.
64. I am pleased to find that a prominent Korean scholar concurs in the view that "change through rapprochement" might promote human rights more effectively than the policy of "naming and shaming"; see Lim, "Inter-Korean Economic Cooperation at a Crossroads," 161.
65. KEDO agreements (including the KEDO establishment agreement; light-water reactor agreement; KEDO/DPRK communications protocol; KEDO juridical status; KEDO transportation protocol; KEDO labor protocol; KEDO nonpayment protocol; and the KEDO site access, takeover, and use protocol) can be found on the Web site of Nautilus Institute at <http://www.nautilus.org/DPRKBriefingBook/agreements/index.html>.
66. Vice President Dick Cheney reportedly has said, "We don't negotiate with evil. We defeat it." And Secretary of State Condoleezza Rice has stated, "When North Koreans have dismantled their nuclear weapons and other nuclear programs verifiably and are indeed nuclear-free . . . I suppose we can discuss anything." See Leon V. Sigal, "An Instinct for the Capillaries" (paper prepared for the Seoul-Washington Forum, Brookings Institution and Sejong Institute, Washington, D.C., 1–2 May 2006), [http://www.brookings.edu/comm/events/20060501\\_sigal.pdf](http://www.brookings.edu/comm/events/20060501_sigal.pdf).
67. Nicholas Eberstadt, "Economic Implications of a 'Bold Switchover' in DPRK Security Policy," *Korean Journal of Defense Analysis* 17, no. 1 (Spring 2005): 53–84.
68. With all due respect to Nick Eberstadt, whose work I admire, and without quibbling with his definition that the only valid indicators of change in the DPRK would be outward opening, military demobilization, and normalization of relations with the ROK (Nicholas Eberstadt, *The North Korean Economy: Between Crisis and Catastrophe* [New Brunswick, N.J.: Transaction Publishers, 2007], 304–6), I disagree with his conclusion that there is no sign of movement on any of these. I take the changes of laws to be an unavoidable step in outward opening, and I believe that the inter-Korean economic activity is a testament to the de facto normalization of the relationship between the two Koreas. Military demobilization and formal recognition of the ROK's status, like human rights protection, will be by-products of a successful reform of the society. It is true that the tragedy of the DPRK is that these two items are simply too entangled in the perceived legitimacy of the government to be tackled head on in the absence of the emergence of alternative legitimacy.

**Appendix A: Laws Published in the DPRK, with Dates of Most Recent Revision, 1993–2006**

| <b>Law</b>                                       | <b>Most recent revision</b> |
|--|-----------------------------|
| Commercial Banking                               | 1/25/2006                   |
| Food Sanitation                                  | 12/13/2005                  |
| Grain Policy                                     | 12/13/2005                  |
| National Land Environment Protection Control     | 12/13/2005                  |
| Prevention of Infectious Disease                 | 12/13/2005                  |
| Science & Technology                             | 12/13/2005                  |
| Government Officials Qualifications Adjudication | 11/23/2005                  |
| Organic Chemical Industry                        | 11/23/2005                  |
| Environment Impact Evaluation                    | 11/9/2005                   |
| Explosive Materials Handling                     | 11/9/2005                   |
| Weather  | 11/9/2005                   |
| Civil Procedure                                  | 10/25/2005                  |
| Insurance  | 9/13/2005                   |
| Standard   | 9/13/2005                   |
| Civil Aviation                                   | 8/9/2005                    |
| Forest   | 8/2/2005                    |
| Industrial Designs                               | 8/2/2005                    |
| Trademark  | 8/2/2005                    |
| Criminal   | 7/26/2005                   |
| Criminal Litigation                              | 7/26/2005                   |
| Tidelands  | 7/20/2005                   |
| Tobacco Control                                  | 7/20/2005                   |
| Taedong River Pollution Prevention               | 7/19/2005                   |
| National Estimated Income                        | 7/6/2005                    |
| North South Economic Cooperation                 | 7/6/2005                    |
| Narcotics Management                             | 5/17/2005                   |
| Wholly Foreign-Owned Enterprises.                | 5/17/2005                   |
| Environmental Protection                         | 4/19/2005                   |
| Loss Compensation                                | 4/19/2005                   |
| Rason Economic and Trade Zone                    | 4/19/2005                   |
| Fire Fighting                                    | 2/24/2005                   |
| Medicinal Herb                                   | 12/29/2004                  |
| Underground Resources                            | 12/28/2004                  |
| Genetically Derived Life Forms Safety            | 12/22/2004                  |
| Road   | 12/14/2004                  |
| Education  | 12/7/2004                   |
| Family   | 12/7/2004                   |
| Foreign Trade                                    | 12/7/2004                   |
| Notary Public                                    | 12/7/2004                   |
| Contractual Joint Venture                        | 11/30/2004                  |
| Equity Joint Venture                             | 11/30/2004                  |
| Foreign Investment                               | 11/30/2004                  |
| Foreign Exchange Control                         | 11/16/2004                  |

| <b>Law</b>  | <b>Most recent revision</b> |
|---|-----------------------------|
| National Land Plan  | 10/26/2004                  |
| Road Transportation   | 10/6/2004                   |
| Central Bank  | 9/29/2004                   |
| Sea Transport   | 9/27/2004                   |
| Software Industry   | 6/30/2004                   |
| Maritime Supervision  | 6/24/2004                   |
| Rivers  | 6/24/2004                   |
| Socialist Commerce  | 6/24/2004                   |
| City Management   | 4/22/2004                   |
| Financial Policy  | 4/22/2004                   |
| Ship Lane Marking   | 3/17/2004                   |
| Waterways   | 3/10/2004                   |
| Copyright   | 2/1/2004                    |
| Place Name of Origin  | 8/23/2003                   |
| Product Quality Supervision                                 | 8/21/2003                   |
| Protection of Persons with Disabilities                     | 6/18/2003                   |
| Protection of Computer Software                             | 6/11/2003                   |
| Currency Circulation  | 6/5/2003                    |
| Kaesong Industrial Zone                                     | 4/24/2003                   |
| Kumgang Mt. Tourism Area                                    | 4/24/2003                   |
| Accounting  | 3/5/2003                    |
| City Planning   | 3/5/2003                    |
| Fruit Tree  | 12/4/2002                   |
| Foreign-Invested Banks                                      | 11/7/2002                   |
| Tax for Foreign-Invested Businesses and Foreign Individuals | 11/7/2002                   |
| National Flag   | 10/24/2002                  |
| Product Production Permission                               | 7/3/2002                    |
| Construction  | 6/24/2002                   |
| Farming   | 6/13/2002                   |
| Succession  | 3/13/2002                   |
| Communication   | 9/27/2001                   |
| Electric Energy   | 9/27/2001                   |
| Customs   | 6/26/2001                   |
| People's Economy Planning                                   | 5/17/2001                   |
| Fisheries   | 4/12/2001                   |
| Floodgate   | 3/21/2001                   |
| People's Health   | 2/1/2001                    |
| Processing Trade  | 12/26/2000                  |
| Medical Treatment   | 8/10/2000                   |
| Citizen Registration  | 7/24/2000                   |
| Grievance Petition  | 7/24/2000                   |
| National Seal   | 7/24/2000                   |
| Useful Animals Protection                                   | 7/24/2000                   |
| Bankruptcy for Foreign-Invested Enterprises                 | 4/19/2000                   |

| Law  | Most recent revision |
|--|----------------------|
| Railroad   | 2/3/2000             |
| Export/ Import Merchandise Inspection                      | 8/19/1999            |
| External Economic Arbitration                              | 7/21/1999            |
| Land   | 6/16/1999            |
| Socialist Labor  | 6/16/1999            |
| Civil  | 3/24/1999            |
| Nuclear Power  | 3/18/1999            |
| Harbors  | 3/11/1999            |
| Invention  | 3/11/1999            |
| Technology Export/Import                                   | 3/11/1999            |
| Nursing and Upbringing of Children                         | 3/4/1999             |
| External Economic Contracts                                | 2/26/1999            |
| Land Lease   | 2/26/1999            |
| Nationality  | 2/26/1999            |
| Marine Products  | 2/4/1999             |
| Immigration  | 1/28/1999            |
| Local Government Jurisdiction Organization                 | 1/28/1999            |
| Cultural Relics Protection                                 | 1/21/1999            |
| Automobile Operation                                       | 1/14/1999            |
| Cremation  | 1/14/1999            |
| Library  | 1/14/1999            |
| Prevention of Seawater Pollution                           | 1/14/1999            |
| Scenic Places & Natural Monuments Protection               | 1/14/1999            |
| Water Resources  | 1/14/1999            |
| Election of Delegates to People's Assemblies at Each Level | 12/29/1998           |
| Residential Fuel   | 12/18/1998           |
| Treaty   | 12/18/1998           |
| External Civil Relations                                   | 12/10/1998           |
| Measurement  | 12/10/1998           |
| Pharmaceuticals Management                                 | 12/10/1998           |
| Physical Exercise  | 12/10/1998           |
| Public Sanitation  | 12/10/1998           |
| Energy Management  | 12/3/1998            |
| Quarantine of Animals & Plants at the National Borders     | 12/3/1998            |
| Sanitation Quarantine at the National Borders              | 12/3/1998            |
| Veterinary Medicine Control                                | 12/3/1998            |
| Veterinary Prevention of Epidemic                          | 12/3/1998            |
| Capital Pyongyang Management                               | 11/26/1998           |
| Socialist Constitution of the DPRK                         | 9/5/1998             |
| Lawyers  | 12/23/1993           |

Sources: Compiled by the author from the following publications: *Cho Sun Min Ju Ju Ui In Min Gong Hwa Guk Bub Jeon: Dae Jong Yong* [Legal code of the Democratic People's Republic of Korea: For public use] (Pyongyang: Legislation Press, 2004); *Cho Sun Min Ju Ju Ui In Min Gong Hwa Guk Bub Jeon: Dae Jong Yong Jung Bo Pan* [Legal code of the Democratic People's Republic of Korea: For public use; Supplement 2004.7–2005.12] (Pyongyang: Legislation Press, 2006); and *Laws and Regulations on Foreign Investment, Democratic People's Republic of Korea* (Pyongyang: Legislation Press, 2006).

Note: Appendix A uses shortened names for the longer, full names of the laws.

## Appendix B: Transcript of Kim Jong-il Conversation about Law, 1998

“We admire the capitalist legal system.

“In a capitalist nation, people abide by the law from cradle to grave. All persons must obey the law and the law is enforced universally. Our people have incorrect understanding of how our laws should work. In a socialist country, Party organs, government officials, and social groups are keen on political indoctrination but little attention is paid to the laws of the land. Revisionists utilize this weakness and weaken socialist systems by over-emphasizing laws and ignoring political indoctrination. Gorbachev brought down the Soviet Union using this tactic. Today, the Chinese leaders are on the same path.

“As you comrades know so well, having lived in a capitalist nation for so long, people in a capitalist society must obey the law no matter where they live. Chongryun, too, must obey the Japanese laws, otherwise the Japanese police will crack down. Civil laws are stronger than Party rules but we have no civil laws here. Some people in our country claim to be socialists but they commit criminal acts. This is a glaring weakness of our system.

“In a capitalist nation, police go around wielding clubs and give the impression that people fear the police. The truth is that it is the prosecutors that people fear the most. Our people don’t know which is which, they don’t know who has more authority. This is one of the shortcomings of a socialist nation.

“It is important that Chongryun study the Japanese laws and take advantage of them. At the same time, Chongryun must embrace fellow Koreans of all social strata and new generations of Koreans, and educate them effectively. I hear that our cruise ship *Mangyong 92* has to cater to Japanese businessmen and bribe the police with large sums of money in order to get anything loaded. In our country, a few hundred dollars are enough to bribe some security officers. This shows in a way how bad our judicial system is in comparison to that of a capitalist nation.

“In our nation today, people are at the center of the society and enjoy free creative living. But we must make our nation into a nation governed by laws. Today, Party cadres and security officers operate outside the law without exception. Party members are citizens of our Republic and they too must obey the laws.

“In a capitalist nation, money talks and everything involves money. We don’t want this aspect of a capitalist system. But one thing we admire in a capitalist system is the law, which all citizens obey and which maintains the social order. Recently, some Western devils came to China on joint ventures. After a few months in China, they left complaining that the Chinese laws changed so often that it was impossible to do business in China. In China, there are layers of legal entities that pass laws: thus, the Beijing city government passes a law, a few days later, the Chinese joint venture partners make changes in the agreement, and on top of these, the central government in Beijing issues a new law. The laws are then revamped within a year. A Swiss textile company was so exasperated with the Chinese laws, it abandoned its investments in China and left in disgust. The Swiss partner asked our ambassador to China: ‘What’s so great about socialism?’

“In a capitalist nation, even the prime minister and the president are prosecuted if they break the law. We must study how to strengthen our legal system. Japanese police fear the prosecutors. Who do the prosecutors fear? Do they fear the police? You said that the police will go after any prosecutor who breaks the law. Few prosecutors have been arrested in Japan. The main reason is the strict selection process of a prosecutor. Law graduates take tough exams to become lawyers, judges or prosecutors. Thus only the best get to become prosecutors or judges.”

Source: “Kim Jong Il’s Candid Talk Caught on Tape,” *Wolgan Chosun*, 25 April 1998, <http://www.kimsoft.com/2003/kji-tape.htm>.



## **KEI Editorial Board**

Editor-in-Chief: James M. Lister  
Contract Editor: Mary Marik  
Assistant Editors: Florence Lowe-Lee  
Julia Cunico

*The Korea Economic Institute is registered under the Foreign Agents Registration Act as an agent of the Korea Institute for International Economic Policy, a public corporation established by the Government of the Republic of Korea. This material is filed with the Department of Justice, where the required registration statement is available for public inspection. Registration does not indicate U.S. Government approval of the contents of this document.*

KEI is not engaged in the practice of law, does not render legal services, and is not a lobbying organization.

The views expressed in this publication are those of the author. While this publication is part of the overall program of the Korea Economic Institute, as endorsed by its Board of Directors and Advisory Council, its contents do not necessarily reflect the views of individual members of the Board or the Advisory Council.

Copyright © 2007 by the Korea Economic Institute of America.  
Printed in the United States of America.  
All Rights Reserved.