CENTER FOR KOREAN LEGAL STUDIES AT COLUMBIA LAW SCHOOL-KOREA INSTITUTE FOR NATIONAL UNIFICATION

“INTER-KOREAN RELATIONS AND THE UNIFICATION PROCESS IN REGIONAL AND GLOBAL CONTEXTS”
2015 CONFERENCE SUMMARY

October 22, 2015
Columbia Law School
New York, NY
The Center for Korean Legal Studies at Columbia Law School (CKLS) and the Korea Institute for National Unification (KINU) are midway through a 5-year project to establish a permanent public policy institute in the United States, known as the Inter-Korean Law and Policy Institute. Organized under CKLS, the Institute brings together legal scholars, government representatives, renowned public figures and public policy organizations from North America, Europe and Asia to advance the development of inter-Korean cooperation through the production of world-class research from a law and global governance perspective.

On October 22, 2015, CKLS and KINU co-hosted a conference titled “Inter-Korean Relations and the Unification Process in Regional and Global Contexts.” The topics discussed included the prospects for inter-Korean relations after 70 years of division and inter-Korean relations in the context of a globalizing world. Within each of these broad areas of discussion, conference participants explored related subtopics including inter-Korean relations in historical and legal perspective, inter-Korean regional cooperation, implications for the divided nations in view of an increasingly globalized world, issues surrounding international investment and cyber security.

**PANEL SUMMARIES**

**Session I: “Prospects for Inter-Korean Relations after 70 Years of Division: Historical, Regional and Legal Perspectives”**

**Panel 1: “Historical and Legal Perspectives on Inter-Korean Relations in a Regional and Global Context”**

**Jong-Chul Park** (Senior Research Fellow, Korea Institute for National Unification) presented plans for building trust and establishing a peaceful regime on the Korean peninsula. He examined North Korea’s declaration to nullify the Armistice Agreement and its position on a non-aggression pact with the U.S. Park also examined North Korea’s negotiating conditions with respect to denuclearization, concluding that establishing peace on the Korean Peninsula must begin by building trust.

**Jeong-Ho Noh** (Director, Center for Korean Legal Studies, Columbia Law School) analyzed the “Korea Question” in a historical and legal context. The “Korea Question,” he argued, originated in the late 19th century, arising out of the dispute over which country had supreme interests in Korea. After the conclusion of World War II, the “Korea Question” came to mean whether or not Korea could be independent. Today, the “Korea Question” refers to North Korea’s development of a nuclear program. Ultimately the term, as coined and used by outside countries, illustrates that Korea itself has been largely left out of the resolution of the “Question.”
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Chang-Seok Yang (Finance Manager, Kaesong Industrial Complex Support Foundation) reviewed the German reunification process and suggested policies that could be considered by the Korean government going forward. He also reviewed key characteristics of reunification policies carried out under the administrations of Roh Tae Woo and Lee Myung Bak. Yang acknowledged that there are more similarities than differences between Germany and Korea but one key takeaway from the German experience is the need for a consistent reunification policy that would not be affected by a change in government or the National Assembly. Further, there needs to be agreement on issues of humanitarian aid and alliances with other countries.

A discussion followed this panel. Dong Gu Suh (Visiting Fellow, Korea Institute for National Unification) asked about North Korea’s position on South Korea’s participation in peace talks between it (North Korea) and the U.S. Park replied that while there have been instances in which North Korea has recognized South Korea as a partner in peace talks, with the growing strength of its nuclear program, North Korea is now rejecting South Korea as an equal partner in peace talks. Barry Gills (Professor, Helsinki University) stated that with the growing trade between China and North Korea there is a possibility that the Chinese could influence the North Koreans on this matter, and Park countered that the North Koreans see the nuclear program as a way for their nation to assert a place of independence from China, even as their economic dependence upon China grows. Suh concluded the discussion by saying that North Korea’s policy toward South Korea shows that North Korean power is diminishing, vis a vis South Korea. Drawing on the lessons of German reunification, South Korea must continue to grow its national power so that when unification comes, it will be in the more advantageous position.
Panel 2: “Regional Cooperation, Inter-Korean Relations and the Unification Process”

Joseph Harte (Executive Director, Center for Korean Legal Studies, Columbia Law School) analyzed unification and inter-Korean relations from a global governance perspective, meaning taking an institutional approach to viewing international politics. He analyzed the impact of global governance based on the development of domestic and international legal systems.

Sue Mi Terry (Managing Director for Korea, Bower Group Asia) examined the effect that a reunified Korea will have on the East Asian region. The U.S. and other countries in East Asia have different expectations of a unified Korea. The Chinese state that they support unification but in reality prefer the status quo, as it stabilizes North Korea. An unstable North Korea would invite U.S. intervention and cost the Chinese a buffer zone between it and South Korea. Though the Japanese also outwardly support unification, they also fear that a unified Korea would intensify anti-Japanese sentiment there. Nonetheless, stakeholders in the region have an interest in a reunified Korea and must prepare for this possibility. Possible scenarios include: the status quo with an even stronger U.S.-South Korea alliance; a unified Korea that engages in an independent foreign policy, possibly no longer allied with current partners; or a unified Korea that leans toward China. The U.S. should act to ensure that a unified Korea will maintain close ties with it.

Jung-Hyun Cho (Hankook University of Foreign Studies Law School) examined how the international community is currently responding to human rights issues in North Korea, looking at the UN COI Report, the Human Rights Office on Seoul, and the issue of foreign works in North Korea. North Korea has responded to the UN COI Report, indicating that the government is concerned with its perception in the international community with respect to its human rights problem.
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A discussion followed the panel. Henri Feron (LL.M. candidate, Columbia Law School) asked about the effect that the collapse of North Korea would have on human rights conditions there, stating that he does not believe that conditions would improve in this event. Terry replied that she believes that when Korea is reunified, it will be because North Korea has collapsed and that in the immediate term there could be chaos, civil war and a humanitarian crisis. But in the long term, the benefits for a free North Korea would be greater. Cho replied that preparations must be made for all the possible human rights issues that could arise following the collapse of North Korea including the mass execution of prisoners. However, he emphasized that the cultural homogeneity of the Korean people could ensure a peaceful reunification. Feron asked that, in the event that North Korea does not collapse, what are the possibilities for an increasingly close relationship between the North and South that might come about through trade, rather than politics? He cited such examples as the trans-Siberian railway project and the Russia-North Korea-South Korea gas pipeline. Harte responded that Russia, China and the U.S. are mentioned too much with respect to unification and that Korea should build a diverse network with respect to issues concerning the Korean Peninsula.

Session II: Inter-Korean Relations in a Globalizing World: Systemic Considerations and Current Issues

Panel I: “Global and Systemic Considerations”

Barry Gills (Professor, Helsinki University) analyzed the North Korean economy which is moving backwards, despite repeated attempts at economic reform. It has been unsuccessful in adapting to changing global politics and economics in part because of the policies of the U.S. and South Korea. Gills also compared political and economic trends in North Korea against global economic trends by analyzing its policies of economic independence and regime continuity. North Korea is at an important crossroads economically and Gills argued that South Korea should propose an aggressive economic policy to North Korea.

Charles Armstrong (Professor, Columbia University) argues that the two Koreas should not be viewed as a “division” resulting from external events during the Cold War, as in Germany, but rather as a “partition” resulting from internal conflict in the aftermath of the end of colonial rule. Armstrong states that it is more instructive to understand inter-Korean relations in the way other post-colonial partitions, such as Israel/Palestine and India/Pakistan, are understood. Partition as a result of de-colonization is historically the most violent and long-lasting, and viewed in this context, the issues concerning the Korean Peninsula are better illuminated.
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A discussion followed this panel. **Suk Hoon Hong** (Associate Research Fellow, Korea Institute for National Unification) asked the panelists to speak to any ideas they had about effecting real change in North Korean economic reform, and in particular to speak to what changes “jangmadang” might bring to the North Korean environment. **Gills** replied that it is important that North Korea form relationships with more nations than the actors in the Six Party Talks if it wants to build a global network. He stated that external actors must prepare consistent long-term policies that can incorporate North Korea into the global production network. **Jangmadang** could be a useful pattern of behavior, likely to follow the Chinese model. **Hong** asked **Armstrong** to comment on what unification would look like from the perspective of post-colonial partitioning. **Armstrong** replied that both North and South Korea must first acknowledge each other’s legitimacy and accept each other as nations in order to begin to move forward.


**Session A: “Inter-Korean Investment Development and International Cooperation”**

**Kyu-Chang Lee** (Research Fellow, Korea Institute for National Unification) discussed the significance of North Korea’s strategy to secure foreign investment and its uncertain outlook by evaluating recently revised foreign trade laws. He stated that the revised investment laws emphasize international norms and standards. North Korea has been trying to attract foreign investment in special economic zones and by amending related laws but there are limits to its foreign capital expansion and economic growth. Moreover, North Korea must denuclearize if it wishes to gain the trust of the international community and effectively attract foreign investment.

**Michael Hay** (Principal, Hay, Kalb & Associates) discussed the recent changes in North Korea’s investment laws and mediation procedures and the effects of those changes on foreign investment. Despite these changes, countries other than China, Russia and Mongolia are reluctant to make investments because of the ongoing economic sanctions and the sanctions surrounding the nuclear issue.
Session B: “International Cooperation and the North Korean Cyber Security Threat”

Kyung-Ok Do (Research Fellow, Korea Institute for National Unification) analyzed the North Korean hack of Sony Pictures’ network from an international legal perspective. She argued that under existing international law, the hack cannot be viewed as an illegal act infringing on territorial sovereignty, nor can it be considered an act of war. In the absence of legal regulations related to cyber attacks, this is likely to be an area of continued legal interest.

Rhea Siers (Professor, George Washington University) began by stating that it would be interesting to analyze the factors that exist with respect to sanctions for North Korea’s cyber-activities and what effect the development of international standards would have on North Korea’s activities in this regard. There are many obstacles to applying international law to cyber attacks and there are currently no regulations in this area. Even when it is clear who is responsible for a cyber attack, it is very difficult to hold the party responsible. Insofar as China is North Korea’s cyber-mentor, other nations should pay attention to the interaction between China and North Korea.

A discussion followed this panel. Henri Feron asked Hay if North Korea could be understood to be following China’s model in pursuing foreign investment. Hay replied that the relationship between China and North Korea is not what it once was. He believes that China is trying to catch the South Korean economy, rather than following China’s model. Chang stated that in his view, North Korea’s foreign investment laws were greatly influenced by China. Feron stated that sanctions in response to violations of international law are a sensitive matter, especially in the case of cyber crimes where it is difficult to determine responsibility. Sanctions without evidence will lead to more conflict. Given that, Feron asked the panelists if it is right to respond strongly under international law against state-sponsored cyber crimes, such as the hacking of Sony. Siers replied that there is no ambiguity as to who was responsible for the Sony hack. The U.S. had been monitoring North Korean cyber activities, as it does with many other countries. Given the importance of cyber security, the U.S. revealed the extent of their monitoring to alert other nations. Do stated that the Sony hack prompted other responses to cyber attacks on private companies on an international level.
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PARTICIPANTS

Charles K. Armstrong
Korea Foundation Professor of Korean Studies in the Social Science, Columbia University
“Divided Nations in an Integrated World: Explaining the Post-War Continuity of the Korean Division”

Douglas W. Arner
Professor, Faculty of Law, University of Hong Kong
“Regional Financial Governance: East Asia”

Jung-Hyun Cho
Professor of International Law, Hankuk University of Foreign Studies Law School
“Recent International Responses to the North Korean Human Rights Situation”

Kyung-Ok Do
Research Fellow, Korea Institute for National Unification

Henri Feron
LL.M. candidate, Columbia Law School

Barry K. Gills
Professor, Development Studies, Helsinki University
The Global South in a Globalizing World: Implications for North Korean Development and Inter-Korean Relations”

Joseph Harte
Executive Director, Center for Korean Legal Studies at Columbia Law School
“Developing a Law and Global Governance Approach to Korean Unification and Inter-Korean Relations”

Michael A. Hay
Principal, Hay, Kalb & Associates
New Investment Laws and Arbitration in the DPRK: What Impact for Inter-Korean Relations and Unification Efforts?”

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“The Aftermath of Sony: Threat, Retaliation, Deterrence and International Cyber Norms”

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Sue Mi Terry
Managing Director for Korea, Bower Group Asia
“Novus Ordo Seclorum: United Korea and the Regional Balance of Power”

Chang Seok Yang
Auditor, Kaesong Industrial Foundation
“Review on the Previous ROK Government Policies for Unification and Future Policy Options in View of German Unification”