

# The EU tolerates the exploitation of North Korean workers in Poland

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**The EU tolerates the exploitation of North Korean workers in Poland despite the UN**

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Since the thaw of the relations between North Korea and the US as well as South Korea, the media have focused their attention on the denuclearization process of the Korean Peninsula and

have largely failed to report about the persisting egregious violations of human rights.

In October, at the European Parliament, HRWF and MEP Laszlo Tökes presented the film “Dollar Heroes” denouncing the exploitation of North Korean Workers by Pyongyang in Poland with the complicity of the Polish authorities.

Watch the video report of the screening of the film, interviews and the panel discussion, moderated by Dr Zsuzsa Anna Ferenczy, with MEP Laszlo Tökes, Tristan Chytroschek (the producer of the movie), Prof. Remco Breuker (University of Leiden), Eun Kyoung Kwon (Open North Korea/ ICNK) and Willy Fautré (HRWF).

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# **What went wrong with human rights**

*The conflation of 'natural law' with 'positive law' handed communism*

*a philosophical victory after the end of the Cold War*

*Interview of Dr Aaron Rhodes (aaronarhodes@gmail.com) in Wall Street Journal*

By James Taranto

Wall Street Journal (17.08.2018) – <https://on.wsj.com/2MC3oS3>  
– When the U.S. withdrew in June from the United Nations Human Rights Council, Ambassador Nikki Haley described the council as “a protector of human-rights abusers, and a cesspool of political bias.” Aaron Rhodes agrees but thinks Ms. Haley was too gentle.

“The Human Rights Council has become a cover for dictatorships,” he says. “They assume the high moral ground of standing for ‘dialogue’ and ‘cooperation,’ a tactic for smothering the truth about denying freedom. Raising human-rights concerns is dismissed as divisive and confrontational, and a threat to ‘stability.’ Most of the debate there is technocratic blah-blah about global social policy-not about human rights at all.”

To U.N. watchers it’s a familiar critique, but Mr. Rhodes, 69, applies it far more broadly. In his recent book, “The Debasement of Human Rights: How Politics Sabotage the Ideal of Freedom,” he argues that virtually the entire human-rights enterprise has been corrupted by a philosophical error enshrined in the U.N.’s 1948 Universal Declaration of Human Rights-and that this explains the travesty of the Human Rights Council.

That error is the conflation of “natural law” with “positive law.” Mr. Rhodes explains the difference: “Natural law is a kind of constraint on positive law.” Think of America’s Bill of Rights, whose opening clause is “Congress shall make no law.” The idea is “that laws have to answer to a higher law,” he says. “This is a vision of law that is very deeply embedded in Western civilization,” finding premodern expression in the ideas of the Greek Stoics and the Roman statesman Cicero, as well as in biblical canon law. Natural law is universal-or at least claims to be.

“Positive law,” Mr. Rhodes continues, “is the law of states and governments.” A statute like the Social Security Act of 1935 creates “positive rights”-government-conferred benefits to which citizens have a legal entitlement. Positive law is particular to a nation or other polity: “I live in Germany,” says Mr. Rhodes, a native of upstate New York whom I met during his U.S. book tour. “I enjoy a lot of economic and social rights there, but they reflect the political values of that community.” The Germans are “keen on being a moral society, where the state helps people. They’re statist. This is their mentality, but I don’t think it’s the same mentality here.”

Not everyone, however, accepts the idea of natural law. Adherents to the doctrine of legal positivism assert, in Mr. Rhodes’s words, “that all law is positive law, and the rest of it is just an illusion.” In this view, there is no difference in kind between, say, the right to free speech and the right to collect a Social Security check. Neither right is intrinsic to human nature, and both are bestowed by government.

Even in the U.S., the boundary between natural and positive law began to blur decades before the U.N.’s founding. Early-20th-century progressives, including Theodore Roosevelt and Woodrow Wilson, “were arguing vociferously against natural rights,” Mr. Rhodes says. “Their thing was that the constitutional rights were something archaic and an obstacle.” Franklin D. Roosevelt enumerated his “Four Freedoms” in January 1941, including two natural rights (freedom of speech and of “worship”) and one positive one (“freedom from want”). The fourth, “freedom from fear,” Mr. Rhodes calls “meaningless,” observing that fear is a “basic instinct.”

In 1944 FDR exhorted Congress to enact a “Second Bill of Rights,” all positive-including the rights to “a useful and remunerative job,” “a decent home,” “adequate medical care” and “a good education.” Four years later his widow, Eleanor, chaired the committee that drafted the Universal Declaration

of Human Rights, which reads like a mashup of America's real Bill of Rights and FDR's aspirational second one. "They tried to have it both ways," Mr. Rhodes says, by acknowledging that positive rights are "not the same as civil and political rights" while also insisting "they're human rights."

Mr. Rhodes is careful to add that he doesn't intend his argument "as an attack on welfare states, or even on socialism." Those arrangements are fine by him as long as they are chosen freely and democratically. What, then, is wrong with an expansive concept of human rights? For one thing, it leads to a kind of inflation that devalues natural rights. "The European Union, and its Charter of Fundamental Rights, says that the right to have free employment counseling is a human right," he notes. That "equates something as banal as employment counseling with something like the right to be free from torture, or the right to be free from slavery."

The corollary is that abolishing torture and slavery-or protecting the freedoms enumerated in America's Bill of Rights-is no more important than employment counseling. Which brings us back to the U.N. Human Rights Council. Mr. Rhodes describes it as "controlled" by "Islamic theocracies" and "heavily under the influence of China." Those unfree countries "are forming a human-rights vision of their own," he says. "It's human rights without freedom. It's human rights based on economic and social rights, where freedoms are restricted in the interest of 'peace' and 'stability' and power-their power."

That in turn has "instilled a kind of passivity among people" living in unfree countries, Mr. Rhodes says: "They expect that they can fix their society through human rights. But the human-rights system is impotent; it doesn't have any teeth. There's an illusion of 'the U.N. is going to force my government to protect me.' No, it doesn't do this. So civil society puts all of its energies into this structure, which can't do anything."

The problem has worsened since the end of the Cold War, which provided the clarity of "an ideological battle about human rights," as Mr. Rhodes puts it. The communists, like today's repressive regimes, embraced "this fraud of economic and social rights, which provided this derisory standard of living" but was actually "a cover for their power." Some Western diplomats argued in favor of natural law. And the Soviet Union and its satellites abstained from the U.N. General Assembly's vote on the 1948 Universal Declaration—because, Mrs. Roosevelt believed, they couldn't abide Article 13's provision that "everyone has the right to leave any country, including his own."

Natural rights enjoyed something of a renaissance beginning with the 1975 Helsinki Accords, in which the Soviet bloc joined the West in pledging to "respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief." Helsinki included positive rights too, "but nobody paid attention to them especially," Mr. Rhodes says.

"The importance of the Helsinki Accords was to stimulate civil society behind the Iron Curtain," he says. That took the form of national "Helsinki committees," whose members would go to international conferences for the purpose of "talking about human rights and embarrassing these dictatorial states." In 1982, at the suggestion of Soviet dissident Andrei Sakharov, the committees formed an umbrella nongovernmental organization, the Vienna-based International Helsinki Federation. The Berlin Wall fell in 1989, the Soviet Union collapsed in 1991, and Mr. Rhodes became the IHF's executive director in 1993. He held that position until 2007, when the federation dissolved.

His work in post-communist states could be dispiriting. "Some of the new governments—they didn't want NGOs around. They'd say, we are human rights; we don't need civil society to tell us what to do," Mr. Rhodes recalls. "But of course they needed

criticism, especially with regard to minorities, and civil liberties as well. They needed to be observed and constrained in their policies.” Among citizens of the newly liberated lands, Mr. Rhodes observed what he calls “the notorious mentality problems”: “As a result of living under these communist systems, people are very subdued. There’s a lack of their panache has been removed from them.”

The end of the Cold War felt like a victory for the free world, but in Mr. Rhodes’s view it proved a “disaster” for the concept of human rights. The U.N. held its World Conference on Human Rights in Vienna in 1993, the same year he began his work at the Helsinki Federation. It was “a period of chaos,” he says: “You have all of these ridiculous theories, like the ‘end of history’ and ‘new world order’-and meanwhile, wars in Tajikistan and Yugoslavia and Georgia.”

To which the U.N. answered, in Mr. Rhodes’s paraphrase: “Let’s call everything a human-rights problem.” The Vienna Declaration concerned itself not only with natural rights and the familiar positive ones, but also with policing private conduct and attitudes, including crimes like domestic assault, civil offenses like sexual harassment, and “socially determined barriers,” even “psychological” ones, that exclude the disabled from “full participation in society.”

“The irony of it is, with the end of these communist regimes, their theory of human rights was victorious,” Mr. Rhodes says. “The Soviet idea of human rights found legitimacy in the international system.”

Can anything be done? “I wish that the Trump administration would talk about human rights once in a while,” Mr. Rhodes says. “They should talk about freedom.” He adds: “I think the only administration that really promoted natural rights was Reagan.”

***Mr. Taranto is the Journal’s editorial features editor.***

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# **NETHERLAND/ UN/ IRAQ/SYRIA: Netherlands joins UN Security Council to shine light on IS genocide**

World Watch Monitor (11.01.2018) – <http://bit.ly/2r10m0c> – The Netherlands has just joined the UN Security Council as a temporary member for a year. Ten days before, its Foreign Minister, Halbe Zijlstra, published a letter explaining the Dutch government's response on the use by politicians of the term "genocide".

The Dutch Parliament had had several debates on the "genocide" committed by members of the Islamic State group (IS), and came to a consensus that it was not for politicians but for the international judicial system to make such a determination.

The Dutch government's response – the main points of which can be viewed at the bottom of the article – followed a joint legal opinion from the Advisory Committee on International Law Issues (CAVV) and the External Adjudication Adviser (EVA), which it had requested at the end of 2016.

"The Dutch government must be commended for its work on this topic. Hopefully those promises are translated into action and will be visible over the next year."

The Dutch government supported this legal opinion, and confirmed its reluctance to use the word "genocide" where such a determination had not been previously made by an international court or UN body.

However, concerning the atrocities perpetrated by IS against Christians and Yazidis, the Dutch government confirmed that it “is the opinion that sufficient facts have been established to judge that [IS] is most likely guilty of genocide and crimes against humanity”. It added that the obligations under the 1948 UN Convention on Prevention and Punishment of the Crime of Genocide apply to IS’s atrocities.

This declaration is late, in comparison with other actors. The opinion published by the Dutch government, relying on the joint legal opinion of CAVV and EVA, clarifies the approach to be taken by government and parliamentary officials concerning mass atrocities that may amount to genocide.

Additionally, the Dutch government indicated in its letter the possible direction of work, including: referral of the situation in Syria to the ICC; supporting the work of the International, Impartial and Independent Mechanism, a new mechanism established by the UN General Assembly resolution to collect evidence of atrocities in Syria; and assisting the Investigative Team, a new mechanism established by the UN Security Council to collect evidence of IS atrocities in Iraq.

The Dutch government mentioned that it would further advocate focussing on atrocities perpetrated by other actors in addition to IS. Concerning Iraq, this position has been abandoned by other states for the sake of achieving consensus on the issue of IS.

But the Dutch government emphasised that the atrocities perpetrated by other parties must not be neglected and forgotten.

The Dutch government must be commended for its work on this topic. Hopefully those promises are translated into action and will be visible over the next year.

It should also be emphasised that apart from the commendable joint opinion of the CAVV and EVA, the Dutch government has

had great assistance on the topic from MP Pieter Omtzigt, who represents the Netherlands at the Parliamentary Assembly of the Council of Europe and became a rapporteur on bringing IS to justice in late 2016.

His mandate included preparing a report outlining the options to bring IS to justice, and a resolution proposing recommendations to member states to the Council of Europe. The report and the resolution were adopted by the EU in late 2017.

Omtzigt will continue to hold his mandate for another year to follow up on the recommendations made in the EU resolution, as he looks to ensure the Dutch government makes a firm stance at the UN Security Council.

He has said he wants to ensure IS militants are prosecuted for their involvement and complicity through an international or hybrid tribunal (a domestic court with significant support of international expert and judges).

The UK recently claimed that it was not “crucial” to make such a determination of genocide, and that it has fulfilled its international obligations by working with the Iraqi government on UN Security Council Resolution 2379, establishing the Investigative Team to collect the evidence of IS atrocities in Iraq, and has been providing humanitarian assistance. However, there is more to the story.

Indeed, the determination of genocide should not be crucial to trigger the obligations under the 1948 UN Convention on Prevention and Punishment of the Crime of Genocide; historically, however, this has been done first after the use of the word “genocide”.

The UK was the leading force behind the UN Security Council Resolution 2379 that passed successfully on 21 September 2017. However, the resolution proposes that Iraqi courts will deal with prosecutions of the perpetrators. The question is whether Iraqi courts can do so.

British peer David Alton questioned the UK government on what checks it had done before proposing, by way of Resolution 2379, Iraqi courts prosecute IS militants. The UK government responded that it was currently considering the issue, namely after the resolution was adopted and not in preparation of the resolution, to allow it to propose the best solution for bringing IS to justice.

If, in fact, Iraqi courts do not have the capacity, it means that an international or a hybrid tribunal will need to be established, as proposed by Omtzigt. Furthermore, the UK has failed to prosecute returning IS fighters. According to the information submitted by the UK to the Council of Europe, as of early 2017 only 101 individuals connected with IS atrocities have been convicted, which may be just the tip of the iceberg, considering that 425 are said to have returned to the UK.

The UK has been actively supporting the work of the Global Coalition against IS, a coalition of 74 countries with the aim to tackle IS on all fronts. However, at the same time, the assistance provided to the victims of the IS genocide is concerning. The UK government confirmed that it is funding 171 projects in the Christian areas affected by IS atrocities and 80 projects in the Yazidi areas. While this may sound reassuring, the extent, impact, and benefit of these projects is unclear. I attempted to obtain this information by way of Freedom of Information request but have not received word back yet.

However, as indicated in the letter from the Dutch government, the determination of genocide is a vital step towards the fulfilment of the obligations to prevent and punish.

\*Ewelina Ochab is a human-rights advocate and author of 'Never Again: Legal Responses to a Broken Promise in the Middle East'