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REPUBLIC OF KOREA CONSULATE-GENERAL
MELBOURNE, AUSTRALIA, SEMINAR, 4 AUGUST 2015

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THE DREAM OF ONE KOREA

Every nation has dreams. All people have dreams. It is natural and often beneficial to dream. Especially if the dreams lift our aspirations to perceive a better time in the future to which a nation and a people can work. The dream of one Korea is such a dream.

I discovered this when I served as chair of the Commission of Inquiry (COI) on Human Rights Violations on the Democratic People's Republic of Korea (DPRK) (North Korea). I learned then of the strong yearning that exists in many hearts in the Republic of Korea (ROK). In fact, I was told most powerfully about that yearning when I was received by President Park Geun-hye at the Blue House in Seoul.

The President told me that many Koreans believed that the division of their homeland, and the sad consequences this had inflicted on the Korean people, could be removed if only reunification could be achieved. It should be possible, she said. It was for that reason that ROK had

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appointed a Minister for Reunification. Leaders on both sides of the divide had spoken of reunification as a common goal. The problems revealed in the report of the COI¹ would disappear, the President believed, if only reunification could occur. All the difficulties, including on both sides of the border, could be swiftly dealt with. If only the Korean people could be united once again. This was the dream.

CONTINUING REALITY

I do not doubt the sincerity of the dream to which President Park gave voice. Nor do I doubt that many, perhaps most, nationals of Korea, both in ROK and DPRK, aspire to reunification. Many objective facts support the strength and persistence of this dream:

1. *Long united rule:* The partition of the Korean Peninsula is relatively recent. It is certainly new, if the antiquity of Korean civilization is remembered. For centuries (probably millennia) Korea was a united land governed in a unified way, including to resist the successive invasions by the Chinese, Japanese, Mongols, Manchus and in later years, Russians, French and Americans.² The Korean Emperor presided over a small aristocratic elite. Even when it was occupied in 1910, Japan governed the peninsula as a unity; although it terminated the indigenous monarchy and required the allegiance of the people to the Emperor of Japan.³

¹ United Nations, Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, A/HRC/25/CRP.1 (7 February 2014).

² *Ibid.*, 20 [90].

³ *Ibid.*, 20 [90].

2. *Political division by foreigners:* The division of the Korean Peninsula was not effected to reflect the wishes of the Korean people. As the end of the Pacific War approached, a conference of the Allied powers met in Cairo and agreed to the independence of Korea “in due course”.⁴ In 1945, the United States decided that the Peninsula should be divided at the 38th parallel of latitude between an American sphere of influence and one controlled by its then ally, the Soviet Union. The arrival of American and Soviet troops was met with resistance and opposition.⁵ The separate nations were formally established only in 1948.

3. *Superimposition of Cold War hostility:* The actual division of Korea had to occur very rapidly. Following the explosion of atomic bombs over Hiroshima and Nagasaki, Japan quickly signed the instrument of unconditional surrender on 15 August 1945. It was obliged to withdraw immediately from occupied territories, including Korea. In consequence of this abrupt event, the occupiers, on both sides, had great influence on the shape of the post War society. The Soviet Union removed the popular leader in the North (Cho Man-sik) and replaced him by an alternative, Kim Il-sung who was trusted because of his activities as a guerrilla leader. Kim quickly established a Stalinist form of Government. In the South, where democratic forms were partly observed, Syngman Rhee became President, serving until 1960. Each part of the divided Peninsula was marked by a strong military presence, reflecting mutual antagonisms that were increased by the animosities of the Cold War.

⁴ *Ibid.*, 22 [95].

⁵ *Ibid.*, 22 [90].

4. *War blamed on other nations:* This sharp and unnatural division of the Korean country and people was solidified by the Korean War (1950-53). It was a war that inflicted enormous suffering, bitterness, recriminations and hostility on all participants. It has never formally been terminated by a peace treaty; only a ceasefire and an armistice.⁶ Yet in the propaganda on both sides, the hostility was targeted mainly at the foreign forces who were portrayed as restoring a new form of colonial rule upon the Korean people.

5. *Most such divisions dissolve:* The bitter division of Korea has lasted much longer than most such demarcation lines. That between Germany and France has long since disappeared. That between the different parts of Germany and of Austria, at the end of the Second World War, likewise. The partition of Ireland (1923) and of Bengal and Punjab (1947) have endured; but each had very deep reasons of religion and ethnicity rooted in ancient disagreements. To the extent that the division of Korea grew out of the ideological differences that marked the Cold War, those causes disappeared with the collapse of communism as an idea of world domination in 1989-90.

6. *Common language, culture, cuisine:* The common features of the Korea people remain substantially intact to this day. The Korean language is common throughout the Peninsula. Korean cuisine, as an ideal, remains common. Music, ballet, literature and history

⁶ *Ibid*, 25 [105].

are shared. Families are separated by the division but exist on both sides of the DMZ.

7. *Common national characteristics:* There are some characteristics on both sides of the border that tend to distinguish the Korean people from their neighbours. They are distinctive - hardy and stoical. They tend to endure burdens without complaining. These characteristics may grow out of the testing topography and climate of the Korean Peninsula. Ironically, before the division of Korea in 1945, heavy industry was based in the North and South Korea was the agricultural 'bread basket' of the land. To the extent that the philosophy expounded by Kim Il-sung (*Juche*) espouses self-sufficiency, it probably draws for its roots upon deep seated Korean notions derived from geographic isolation, Confucian ideals and the responses to invasions.⁷
8. *Similar social norms:* Both parts of the Korean Peninsula have inherited patriarchal traditions and social rigidities. Respect for elders and for social hierarchy, based on age and male dominance, influence common attitudes towards the inequality of women and younger people.⁸
9. *Experience of autocratic government:* Both parts of the Korean Peninsula since 1945 have undergone periods of severe military dictatorship and the harsh suppression of individual freedoms and fundamental human rights. The situation in DPRK is described in the COI report and it is grim and enduring. Although great

⁷ *Ibid.*, 33 [126].

⁸ *Ibid.*, 20 [89].

improvements have been achieved in respect of human rights in ROK, it retains some harsh security laws about which democrats complain and foreigners urge changes. This too is a feature of social organisation that draws on deep seated and common national traditions.

10. *Common sporting and cultural feelings:* For all this, the sense of unity has survived 70 years of division. Just as it did in Germany, although the division there was shorter.⁹ A vivid instance of the enduring common sentiment arose during a football match in the Asian Games in 2014. The final of the football competition saw a match between teams from ROK and DPRK, held in a stadium in Incheon, ROK.¹⁰ Rivalry there was. But bitterness between the teams and supporters was absent. The rules of the game were punctiliously observed by both teams. When a player was accidentally bumped and fell over, he was helped to his feet by a player from the opposite team. ROK won the medal. But the crowd cheered both sides and repeatedly called out: 'We are one'.

This is the deep feeling to which President Park Guen-Hye referred. It has not been eliminated by 70 years of political division. Nor has it been erased by hostile politics; military threats; or official animosities. Commentators assert that young people in ROK have lost interest in reunification or are fearful of the costs that would be involved. However,

⁹ The reference is to the division of post War Germany between the Federal German Republic (allied with the West) and the German Democratic Republic, established in 1949 after separation in 1946 (aligned with the Soviet Union and Eastern Bloc). This division collapsed with the dismantlement of the Berlin Wall and the opening of other borders between Eastern and Western Europe after October 1989.

¹⁰ *Agence France Presse*, 'Asian Games: Top North Korean Leaders to Attend Closing Ceremony', *NDTV Sports*, last updated: 4 October 2014, available at: <http://sports.ndtv.com/asian-games-2014/news/230881-asian-games-top-north-korean-leaders-to-attend-clsoing-ceremony>.

Korea remains a land that has been artificially divided by others. Essentially, it must find the elements that will produce reunification from within. Some ingredients are undoubtedly present.

REALITY CHECK

Having recounted the continuing elements of aspiration and empathy on both sides of the Korean Demilitarised Zone, it is necessary to remember the features of the two Korean states that are different. Unless consideration of reunification is founded on a realistic approach, as well as candid acknowledgment of errors and wrongs, the dream of reunification will remain just that. It will be a dream, without prospects of realistic achievement. It is therefore essential that any consideration of reunification into “one Korea” should grapple with the radical differences that now exist between DPRK and ROK. An attempt to paper over these differences would not be successful. It would collapse into the dust of shattered illusions.

So what are the essential differences between these two adjoining member states of the United Nations? What are the features of DPRK, revealed in the UN COI report, that render reunification extremely difficult to achieve: impossible without radical changes that DPRK seems unwilling to make?

1. *Democracy v autocracy*: Although both parts of the Korean Peninsula have suffered undemocratic rule, with military dominance, ROK is, and has been for decades, a functioning parliamentary democracy. It has elections that are fought out by competing parties and candidates. DPRK has elections, but as in

any Stalinist model the ruling party repeatedly wins near unanimous votes from the electorate. DPRK has been ruled since its beginning by the Korean Workers' Party and a small cadre or elite. ROK has undergone successfully a number of changes of administration. Its recent elections have been pronounced free and fair by international observers.

2. *Free v controlled information:* ROK has certain restrictions on political free speech, at least where it involves contact with, or approbation of, DPRK. But these features, which are sometimes justified on the grounds of national security in a country still technically in a state of war, pale into insignificance beside the intrusive control in DPRK of political speech, freedom of thought and expression, access to diverse media and connection with the internet. These features of a free society are present, indeed vibrant, in ROK. They are not present in DPRK, as the COI report repeatedly explains.¹¹

3. *Rule of law v totalitarian state:* The political ideology of ROK is that of a civilian republic in which the people's will is respected and upheld by the law in independent courts. The arrest on corruption charges and the imprisonment of past leaders of ROK signal more clearly than anything else could, that no one (including leaders) is above the law in ROK. Judges and prosecutors apply the law in ROK without fear or favour. Sometimes the law is imperfect. But it is normally applied, and can be changed, by the legislature. DPRK, on the other hand, is

¹¹ Report of the COI, 45 [163-264].

a totalitarian State.¹² It describes itself as “democratic”, based in the “people” and as a “republic”. However, in fact, power has successively been passed to the family of Kim III-sung: a guerrilla leader who was chosen by the Soviet Union. As it functions, DPRK is an absolute monarchy. It has none of the checks and balances that are features of constitutional monarchies where they exist (Australia, Japan, Netherlands etc). The Supreme Leader is imposed on the political system and with this imposition has come the *Suryong* system of Leader-worship. The classification of the population along feudal lines may be found in the *Songbun* system. These are outmoded mechanisms of political control. They deprive the people in DPRK of an effective say in their own governance.¹³

4. *Civilian v military state*: The military in ROK is, as in a functioning democracy, subject to the civilian power. It is true that in ROK, the military is supported by the presence of armed forces of the United States of America. They have been based in ROK, since the end of the Korean War, by agreement with the government of that country. However, relatively speaking, the military in ROK is modest in size and power, given the proximity of dangers, the occurrence of provocations and the massive armed power of DPRK. DPRK has a military force which is completely disproportionate to its population (24 million). It supports the fifth largest standing army in the world. It reportedly controls a number of armed nuclear warheads. It has developed miniaturised nuclear weapons and a sophisticated missile delivery

¹² COI Report, 365 [1212].

¹³ As for the *Suryong* system see COI Report, 27 [110-124]. As for the *Songbun* system see *ibid*, 74 [265-354].

system. Reportedly, it is developing submarine technology. It has threatened neighbours, and even the United States of America, with nuclear annihilation. Although its ally, the United States, provides an ostensible nuclear ‘umbrella’, ROK does not itself have nuclear weapons. The military pervades life and society in DPRK. When one of the leaders of DPRK Jang Song-thaek (uncle by marriage of the Supreme Leader, Kim Jong-un) was accused of anti-State activity, he was tried before a military tribunal whose judges denounced his treason and sentenced him to death. He was reportedly executed by military firing squad. Other executions, public and secret, have occurred.

5. *Ordinary prisons v extra judicial detention:* Personal liberty is an essential litmus test of democratic governance. In ROK, there are no reports of extra judicial detention on political grounds. In DPRK, arbitrary detention, torture and executions of detainees, enforced disappearances into detention camps and the establishment of political prison camps are established features of society.¹⁴ The detention of persons in camps for that purpose is denied by DPRK. However, the existence of such camps is established by satellite images referred to in the COI report.¹⁵ Detainees are subjected to forms of torture that are inhumane and vividly illustrated by drawings provided by witnesses.¹⁶ Additionally, detention in such camps is not confined to individuals considered to be hostile to the regime in DPRK. It includes the family of the prisoner. They are regarded as a potential corrupting force in society who need to be eliminated

¹⁴ COI Report, 208 [693 ff].

¹⁵ []

¹⁶ COI Report, 218 [717].

lest they spread contagion. This is contrary to fundamental human rights. It frequently results in the death of detainees who are also exposed to severe conditions, including severe malnourishment and starvation.

6. *Vibrant v collapsed economy*: The economy of the Korean Peninsula at the time of partition generally favoured DPRK. Today, the contrast between the vibrant economy of ROK and the economy of DPRK could not be more stark. It is illustrated by the graphic images of the Korean Peninsula views by satellite from space. ROK, China, Japan and other countries of the region are awash with light and the signs of modernity and prosperity. DPRK is a dark unlit space with only tiny points of light around Pyongyang. The economy of DPRK has seriously deteriorated since partition. Professor Lankov has estimated that it is beginning to rise to 1.5-2% per annum.¹⁷ By way of contrast, ROK has one of the most dynamic, inventive and prosperous economies in the world. Although there are inequalities and defects, the contrast with DPRK is stark.

7. *Plentiful food v famine and starvation*: Food is constantly scarce in DPRK, since the end of subsidisation by 'fraternal' countries after the fall of the Berlin Wall. The famine that gripped DPRK from the middle of the 1990s resulted in the deaths of between 500,000 and 800,000 Koreans. Food remains scarce in DPRK with current reports of severe shortages. In ROK, food is plentiful, varied and includes the traditional Korean diet of great quality and abundance.

¹⁷ The ROK Central Bank estimates 1%. See *The Economist*, 8 August 2015 (Vol 416; no 8950) 19 at 20.

8. *International engagement v non engagement:* DPRK has a history of non-cooperation with the United Nations, although it is a member state. In the first round of Universal Periodic Review (UPR), it did not accept a single recommendation made to it by the Human Rights Council. Subsequently, its position ‘evolved’. It then accepted a minority of the proposals. It has declined to permit the COI or the Special Rapporteur to enter its territory. It has a general policy of non-cooperation with the international media. It refuses access by international agencies and NGOs to monitor the distribution of food aid, resulting in the partial withdrawal of its provision.¹⁸ Its conduct on the international stage is frequently belligerent, menacing and militaristic. ROK, on the other hand, is a conforming member of the United Nations. It has been elected a non-permanent member of the Security Council. It cooperated fully with the COI after it was established by the Human Rights Council. ROK has supported the recommendations of the COI. It agreed to a recommendation of the COI that a field office should be established in Seoul, to continue the gathering of evidence of human rights violations (including crimes against humanity).¹⁹ The Government of ROK participates constructively in UN activities and supports peacekeeping and humanitarian aid. It is the major donor of humanitarian support for DPRK.

9. *Open v closed society:* DPRK is a closed society. It punishes those who have access to news from foreign sources, particularly

¹⁸ *Ibid*, 144 [493].

¹⁹ *Ibid*, 371 [225(c)]. See also 369 [1220(s) addressed to DPRK].

ROK. Even possession of recorded entertainment and dramas from ROK is a grave offence. DPRK has a poorly developed civil society. Its subjection to decades of one party propaganda and adulation of the successive Supreme Leaders has reduced it to an apparently passive and uncritical community with little civil engagement.²⁰ Restrictions of movement within DPRK and beyond its borders are severe and tightly controlled. In ROK, there is entire freedom of movement. Tourism both to and from ROK is substantial. If there is a criticism of politics and civil society in ROK, it relates to the highly polarised nature of many political differences. However, ROK is the antithesis to a 'totalitarian' society. Its population have a vigorous connection to the world through the internet. In DPRK, access to the internet is restricted to a small elite, although there has been a growth in access to a controlled in-country intranet in recent years.

10. *Free worship v control of religion*: DPRK's official statistics acknowledge that religious allegiance in the country is now smaller than 1%. This contrasts with the level of approximately 23% at the time of partition. This is still the approximate state of religious engagement in ROK. The COI was unable to determine the reasons for this radical fall off in religious belief. Is it because of the death or detention of religious believers? Is it because of the political hostility of the regime in DPRK to religion as an 'opiate of the people'?²¹ Certainly it appears clear that the practice of religion, at least outside churches created and controlled in Pyongyang, is extremely difficult in DPRK.

²⁰ *Ibid*, 99 [355].

²¹ COI Report, 71 [253].

Attempting refugees, who make contact with ROK religious groups in China, are severely punished if they are returned to DPRK.

11. *Civilized v uncivilized conduct*: DPRK, certainly at earlier stages, had a state policy of abduction of people considered useful to the regime. This is a primitive and heinous offence against human rights principles and international law. Evidence before the COI demonstrated that large numbers of prisoners of war were retained (and their existence denied) by DPRK, following the ceasefire in the Korean War. Access to such POWs has been refused to their families. Similarly, the state policy of seizing overseas nationals (particularly Japanese) was a grave affront to international law. Effectively, it was admitted by Kim Jong-ill in conversations with Japanese Prime Minister, Junichiro Koizumi in 2002 and 2004. This is an affront to civilized behaviour between states that has never been fully repaired. The persons responsible have not been brought to justice. It remains a deep wound inflicted by DPRK on the victims and their families but also on their countries.²²

12. *Accountability v crimes against humanity*: The foregoing and many other wrongs are collected in the report of the COI on DPRK. Some of the wrongs constitute crimes against humanity, as the COI concluded.²³ The COI did not find sufficient evidence to establish genocide, as that crime has been defined by the

²² COI Report, 270 [846].

²³ COI Report, 351 [1160].

Genocide Convention 1948.²⁴ However, the COI left the possibility of such a finding open, in the event that the United Nations could gain access to the territory of DPRK and make further investigations, particularly in relation to the radical decline of the religious communities in DPRK.²⁵ It was because of these grave findings that the COI recommended that ‘the Security Council should refer the situation in the [DPRK] to the International Criminal Court for action in accordance with that court’s jurisdiction.’ The COI also recommended that the Security Council should adopt targeted sanctions against those who appear to be most responsible for the crimes against humanity.²⁶ However, the COI did not support sanctions imposed by the Security Council or introduced bilaterally that were targeted against the population or economy of DPRK as a whole.

REUNIFICATION?

The report of the COI was successively endorsed by strong majority votes in the UN Human Rights Council; the Third Committee of the General Assembly; and the plenary meeting of the General Assembly. It was referred, exceptionally, to the Security Council by a strong procedural vote, adopted by the Security Council on 22 December 2014.²⁷ It is now impossible for the international community to claim that it is unaware of the grave violations of human rights and crimes against humanity that have occurred in DPRK. The international community should not ignore these findings. Where a state party of the United

²⁴ COI Report, 350 [1155].

²⁵ *Ibid*, 351 [1159].

²⁶ COI report, *ibid* 370 [1225(a)].

²⁷ The vote in the Security Council was 12 pro; 2 con (China and Russian Federation); and 2 abstentions (Chad, Nigeria).

Nations fails in its duty to redress and prevent such serious crimes, it is the responsibility of the international community to step in.

In light of the situation of human rights reported by the COI, can we expect reunification, so that One Korea is attained? The notion of unifying two States that are so utterly different in their constitutions, law, governance, societies and respect for human rights is extremely unlikely without urgent changes. The COI on DPRK urged DPRK to ‘undertake profound political and institutional reforms without delay to introduce genuine checks and balances upon the powers of the Supreme Leader and Workers’ Party of Korea.’ Other changes were called for, including ‘creation of an independent and impartial judiciary; a multiparty political system; and elected assemblies for local and central levels that allow genuine, free and fair elections.’ The many other changes essential before reunification could have any hope of succeeding are set out in the COI report.²⁸

Any reunification without appropriate measures to render accountable those responsible for violations of human rights and crimes against humanity, would ignore the obligations applicable under international law. These are not minor, technical offences. They are amongst the most grave known to humanity. They are akin to the egregious wrongs of the Nazis in their terror campaigns; of by the Stalinists in their gulags; and of the Khmer Rouge in their killing fields.

The United Nations *Charter* rests on the principles of international peace and security; universal human rights; and justice. Substantially, an effective response to the report of the COI on DPRK is still awaited from

²⁸ COI Report, 365-366 [1212].

DPRK and the international community. The response from the Korean people must be a demand for honest acknowledgement of grave wrongs by DPRK and accountability to those who have suffered these wrongs. The dreams of reunification will continue. But they must be enlarged to dreams of justice, universal rights and accountability.

We do not know when it will happen or how it will occur. But we can be sure that one day the Korean Peninsula will be reunited. Its people will be one again. They will enjoy peace without danger and of fundamental human rights with fear or denial.