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THE BRISBANE TIMES

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TRUTH

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MICHAEL KIRBY \*

*CONGRATULATIONS TO GRADUATES*

It is a great privilege to be the occasional speaker at this graduation ceremony. For many of the graduates, this will be their last formal university lecture. It is designed to interrupt celebrations and family festivities with some serious thoughts. Universities are full of joy mixed with pain.

We must reflect on the importance of this day in the lives of the new graduates and the communities they will proceed to serve. Photographs and films will immortalise the day. They will be remembered many years hence when a number of us (myself included) have passed on.

The graduates must remember to thank their parents, partners, siblings and teachers. Indeed, everyone who helped them to this attainment.

On behalf of the University, I express thanks for the contributions of those wonderful people, without whom no graduation would be possible.

I gave my first graduation address at this University a year ago, when I had the honour to receive the honorary Doctorate of the University.

A month ago, the University requested that I to return for this occasion. I do so because it is first time, in Rockhampton, that graduates in the new

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\* Chair of the UN Commission of Inquiry on North Korea. Justice of the High Court of Australia (1996-2009).

CQU Law School are coming forward for their degrees. I congratulate them and I am proud of them. The new Law School is interesting and special in its use of online courses and in its outreach to regional, remote and rural Australia.<sup>1</sup>

Necessarily, my words today cannot be addressed only to the law students. This address must be addressed to every graduate. Indeed to all citizens and visitors. A University of the 21<sup>st</sup> Century cannot retreat behind its walls. It must acknowledge the universality of knowledge. Today's graduates and today's citizens are linked by technology to the entire planet, its biosphere, its peace and security, its universal human rights and the justice that belongs to us all as human beings.

### *DEFENDING UNIVERSAL HUMAN RIGHTS*

Since I was last at the University I was appointed by the United Nations Human Rights Council, in Geneva, to serve as chair of the Council's Commission of Inquiry on North Korea. Along with two colleagues and a Secretariat staff of ten, we have investigated nine subject headings: ranging from abuses in North Korean prison camps; official violence and public executions; starvation; discrimination; and international abductions. Our report was placed online three weeks ago. It contains a damning evaluation of terrible wrongs to the people of North Korea, rising in some cases to international crimes against humanity.

Generally speaking, the report received a good response from governments and the media in most countries of the world. North Korea

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<sup>1</sup> Cf. M.D. Kirby, "Online Legal Education in Australia: The New CQU Law Degree" (2011) 34 *Australian Bar Review* 237.

says that the Commission has acted gullibly, relying on false testimony given by “human scum”. The Chinese Foreign Minister is reported as saying that the report contains “unreasonable” criticisms of the North Korean regime. I do not accept these assessments.

However, two recent media articles from unexpected sources contained unexpected criticisms. In my life as a judge and now in the service of international human rights I uphold the right of critics to have their say. But that does not mean that they are correct or wise in their assessments. Or that they should be unanswered.

The first report in question was an editorial in *The Guardian* newspaper. Its headline declared that the recent UN report was guilty of “Demonising the DPRK”. DPRK are the initials of the official title of North Korea. So I read the headline with concern. The text declared that “from the day of its foundation” the DPRK “hasn’t had a moment’s rest from outside interference. Sabotage, invasion, mass destruction, germ warfare, nuclear threat, encirclement and crippling economic blockade have all been used in the US-led attempt to remove this impediment to regional domination...”<sup>2</sup> The editorial denounced my analogies to the Nazi atrocities. It said that I had drawn a “long bow”. But it made no reference to the witness, quoted in the report, who complained of having to burn hundreds of bodies of prisoners who had starved to death, and how he buried the ashes and remains in the nearby fields as fertiliser. Nor was reference made to other horrors recounted on virtually every page of the report.

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1. Alf Sharp, “Demonising the DPRK”, *The Guardian: The Workers Weekly*, issue #1628 (February 26, 2014), available online

When I looked more closely, I found that this *Guardian* was published by the Communist Party of Australia. Actually, I thought that CPA had been wound up in 1990s, when the fall of the Berlin Wall put an end to the defence of Stalinist oppression in the face of overwhelming evidence of wrongdoing. But not so. This was not, after all, the English *Guardian* newspaper: successor to the *Manchester Guardian*: a professional journal with a generally liberal tradition. I gave a sigh of relief.

Of greater concern was an article published by *The Age* newspaper in Melbourne, written by Nicholas Stuart, described as a Canberra writer. Under the headline “Whistling in the Wind on North Korea” Mr Stuart begins by asking: “What do you do when someone you respect begins talking rubbish?” It turned out that this “someone” was me. He described the presentation of the UN report, when it was launched online in Geneva a few days earlier, as a moment “when intelligent people don’t know where to look”.

The writer complains are that those writing, and supporting, the UN report on North Korea are “trapped in paper rules and theoretical legal paradigms”. They are displaying a monstrous sense of naiveté “that would be touching if it wasn’t so dangerous”. He suggests that the report effectively endorses a “strategic strike of missiles to target the [North Korean] regime’s leaders”. This, he suggests, invites another disaster, like the invasion of Iraq. Or “a new blockade starving already emaciated people and adding to the misery they already have to bear”.<sup>3</sup>

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<sup>3</sup> Nicholas Stuart, *The Age Online*, 22 February 2014, <http://www.theage.com.au/comment/michael-kirby-is-whistling-in-the-wind-on-north-korea-20140221-337ne.html>.

Nothing could be further from the truth. The Commission on North Korea made it absolutely clear that no new sanctions should be imposed upon the suffering people of North Korea. Real progress on the Korean Peninsula, if declared, would require many well-tuned “people to people” contacts. These should include meetings of professional bodies. Apprenticeships and scholarships for the young. Unimpeded access to fully-monitored food aid. Increased humanitarian aid. Sister city relationships. UN technical assistance. The final negotiation of a peaceful end to the Korean War that has blighted both Koreas for sixty long years.

Far from being locked into a formalistic approach, as Nicholas Stuart claimed, the UN Commission faithfully discharged obligations imposed on it by the international community. It made findings on the nine point mandate it was handed by the Human Rights Council. It is for politicians, diplomats and other officials to decide if and how to take the findings further.

The Commission was asked four clear questions by the Human Rights Council and now it has answered them. Is there evidence of human rights violations? The evidence is overwhelming. There is. Are there cases of crimes against humanity? Powerful evidence leads to one compelling and affirmative answer. Who are accountable for these crimes in international law? Many such offenders are identified in the report by their positions and circumstances. Some are known by name and are already on the INTERPOL watch list. And because all control comes together in the Supreme Leader of North Korea, he too may be liable in international law for “aiding and abetting” such crimes. The first obligation to stop and to repair crimes against humanity rests on the

nation concerned. But if that nation's leaders do nothing, international law recognises an international duty to protect those people who are voiceless and who are suffering. Are we now to turn our back on these conclusions and look the other way?

It would have been a serious excess of the Commission's brief for it to wander, as Mr Stuart seems to wish, into larger political and diplomatic questions. Then it might be guilty of dreaming "dangerous dreams", the sin that finally brought down Kim Jong-un's uncle, Jang Song-thaek, summarily executed after a trial before a military court in Pyongyang, although previously the second highest leader in the land.

#### *BUT WILL THERE BE ACTION?*

But what if a permanent member of the Security Council were to use its veto to stop any prosecution of those responsible? Would the whole UN inquiry have been a waste of time? I think not. Now in the one compact document is a comprehensive examination of the horrors faced by human beings over many decades in North Korea. If vetos are used, and no prosecutions ensue immediately, this does not mean that the effort has been in vain. Hundreds of victims have been given a voice. Their testimony is online so all the world can see and hear them. We can all judge whether they are "human scum", as North Korea claims. Or whether, instead, they are brave people who have gone to hell and come back and are determined to tell of the grave wrongs happening in their country.

The United Nations, which was built on a foundation of universal human rights, is doing its job for humanity, properly and professionally. It is shining light into very dark corners in North Korea. History, including recent history, shows that doing this is not in vain. Who, even a few years back, would have expected the liberation of the Baltic States? Of East Timor? Of Ukraine, whose position changes by the day? Even if accountability of those accused of crimes against humanity is not secured soon, the day may yet come when the testimony being gathered will be put to good use. Then oppressors will be made to answer to the oppressed. This is not a pipedream, as the critic seems to think. It is not rubbish. It can happen. And it should happen.

Still what if it does *not* happen? Has the UN inquiry then truly been a waste of money? Certainly not. We now have a snapshot of North Korea as it is today and as it has been for decades. The Commission of Inquiry has borne witness. It has allowed the voices of the oppressed to be heard. The antidote to serious human rights violations in our world is, ultimately, knowledge. Out of knowledge comes the resolve of good people to secure change. Already blogs in China and most other countries are demanding action. Even in State-sensitive media in China, detailed reports are appearing: recounting the grave crimes against humanity of North Korea. Now there is nowhere for the oppressors to hide. Business as usual is not an option. Human rights abuses in North Korea have reached a moment of truth.

*ENGAGEMENT WITH THE WORLD*



Those who graduate on this day from this Australian University are privileged. Yet with privilege comes obligations. They must be concerned with human rights violations of all human beings everywhere. They must be engaged throughout their lives in building peace and security and upholding the universal values of human rights. Such endeavours may not at first succeed. They may initially fail. But the world is a dangerous place. Protecting universal human rights is essential to securing universal peace and justice. For the sake of the planet, the graduates know that this is so. By their lives, the graduates must contribute whenever they can to upholding the justice to international law and the ideals on which the United Nations was founded.

On a day like today the graduates truly become citizens of the world. So I challenge them to live up to that ideal.