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UNIVERSITY OF TASMANIA  
Q & A ON NORTH KOREA

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The Hon. Michael Kirby AC CMG

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*Question 1.*

*Prior to your report being published, there are academics who have suggested that the current information towards North Korea are not accurate and denigrates the country to a situation not as terrible as it is. For example, Hazel Smith in her article “Crimes against humanity?” cites the example of malnutrition in North Korea as being 5%. This meant that children were much less likely to be facing starvation than if they lived in India, where the equivalent figure was 20%, or Indonesia at 13%. In short, do you feel that the media have painted an inaccurate picture of the situation in North Korea to the world, so much so that North Korea is getting too much flax than it actually deserves?*

*Answer*

I read the article by Hazel Smith. It is out of line with the majority of evidence, certainly that which was placed before the COI. For example, figures ultimately traced to government information in DPRK, indicate that, even today, newborns and young children are 27% stunted in DPRK. That means that, even now, more than a quarter of neonates are stunted. This is a gravely serious situation with life-long health consequences for those affected. And it says nothing about the great famine of 1995-2000 in which an estimated (at least) 1 million in a population of 23 million perished from starvation. They did so at the very time when DPRK was expending huge funds on maintaining the 4th

largest standing army in the world; securing 20 nuclear warheads; and developing a sophisticated missile delivery system which can threaten ROK, Japan, even China and Russia and shortly, the West Coast of the United States of America. The first duty of a government is to feed its people. Even if DPRK had been open and honest about its food catastrophe and sought foreign aid (and submitted to the normal requirements of international monitoring) food would have been forthcoming to prevent such a disaster. Just imagine if Australia, with a roughly comparable population, had suffered a loss of 1 million of its citizens in 1995-2000. It would take a century for us to get over it. Resignation and acceptance are what are expected of the people of DPRK. What do those leaders think of when they go to sleep each night? How could their rule (as currently maintained) be in the interests of the people whom they govern and oppress?

*Question 2.*

*Secondly, my personal opinion on the matter is that the situation in North Korea needs to be understood in light of its context, taking into account the tribulations the country had to undergo from being invaded by the Japanese to post Korean War. Along the sentiments of academics in this area, the solutions that have generally be suggested, points towards a softer approach such as through the use of constant pressure through political arena and outside the political arena, governments to work closely with NGOS and groups in providing efficient aid. Would you feel that the referral of the ICC as an avenue for enforcement of human rights would be too adversarial for a situation such as North Korea? Diplomatically, it only further aggravates the situation and tension between North Korea and the world.*

## *Answer*

A softer approach towards DPRK has dismally failed. The so-called "Sunshine" policy of that great liberal democrat, President Kim Dae Jung , was misused by the DPRK regime to take the ROK and Japanese money, secure the hand shake in Pyongyang and to build the nuclear arsenal and missile delivery system. This is a duplicitous regime. Soft-peddalling has never worked with them. They take it as a sign of weakness and submission. This is why, to differing degrees, both sides of politics in ROK have concluded that the pure Sunshine policy was a failure. Just as the hopes and prayers that Kim Jong un, as a young man educated in Switzerland, interested in international celebrities and sports, utilising digital technology, would bring a completely new and modern approach. On the contrary, he has been more violent than his father. Just look at the way he despatched Jang Song- taek in 4 days last December. And this was the 2nd or 3rd most powerful man in the land. His real sin appears to have been suggesting an opening up of markets and an embrace of the China approach to the economy. (Also failing to show sufficient deference to his nephew by marriage). I think it is important that you should not be starry eyed about the DPRK. The only foundation for progress in dealing with that country is factual honesty and complete realism. Everything else is self-deception and wishful thinking. The plain fact is that some regimes in our world are brutal and evil. The Nazis and Stalinists were in this category. We now have the *Charter* of the United Nations and universal human rights. We should not write off the people of DPRK as less worthy of enjoying true universal human rights and international peace and security. In any case, the role of the COI was subordinate. We were obliged to leave diplomacy to diplomats. Our function was fact-finding and making some recommendations and conclusions on the basis of the facts as found.

That is all we were asked to do. We were not negotiators with DPRK. That must be left to nation states and their politicians. It was not our function. We would have been failing in our duty and function if we had soft peddled or distorted the conclusions that arose from the evidence placed before us, in the false belief that our job was concessionary diplomacy. We had to leave that to others.

*Question 3.*

*Finally, I understand that the emphasis in your report for the solution to the North Korea situation is in the referral to the ICC and I vision it to be an appropriate long term goal. Do you feel that stronger emphasis should be placed on short term goals of increasing aid assistance to North Korea as a band aid to ameliorate the human rights suffering, as I understand this to be part of the recommendation of the detailed report but seems to be often overlooked. Along this train of thought, would you think that as some academics suggest, that human rights reforms are more likely to be successful and durable if their attainment is by way of struggle from within?*

*Answer*

Can it be said that the only lasting change in DPRK will be achieved by change from within? And that recommendations for referral to the ICC are an excessively combative and adversarial approach? I do not agree with this interpretation. Change will certainly be needed from within. Nowhere in the COI report will you see a reference to or recommendation of, international military intervention from outside. Nonetheless, it is the duty of the international community to observe universal human rights. It is the requirement of the United Nations to respect its responsibility to protect the people of DPRK (R2P). They

cannot take on their government with the 4th largest army in the world. They are entitled to look to the rest of us to apply whatever peaceful and lawful pressure is available to us to advance the cause of human rights. On present indications, the DPRK will not do this. They have refused to distribute the report of the COI. They have declined to allow the COI to enter DPRK. They have rejected our request to come to Pyongyang to explain our report and conclusions and to answer questions. They deny their citizens access to the Internet (where they might read our report, see our public hearings and hear our witnesses). They reject international radio, television and postage. They severely punish possession of popular soap operas from South Korea because, in the background to the images, are the signs of economic prosperity and a high level of personal freedom of action and belief. Potentially all of the leaders in DPRK (as people with the power and obligation to remove the obstacles) could be tried, convicted and punished for such human rights abuses as are proved against them. You may say that this is a pipedream. But that would have been said of the brutal SS leaders and politicians in Nazi Germany as late as 1942. Yet, by 1946, many of them were on trial. The COI did not recommend regime change in DPRK. It accepted DPRK as a member of the United Nations, under whom our mandate was established by the Human Rights Council. However, the COI insisted, as was its duty, that DPRK should comply with the human rights provisions of the *Charter*, the *Universal Declaration of Human Rights* and human rights law (to much of which DPRK is a treaty signatory). If diplomats and nation states (including China and the Russian Federation which enjoy a 'veto' in the Security Council) choose to soft pedal, hope for internal change and wait for internal protest and unrest, they may do so. But the COI did not have that privilege. In any case, realism requires the nation states to recognise that there is an

oppressive totalitarian regime at work here. It conducts public machine gun executions to which school children are brought compulsorily to get the message of subservience. All citizens are required effectively to worship the Kim family and to remove from their minds any contrary loyalties, such as to universal human rights. Food remains in scarce supply for some. Those who show even intellectual hostility or scepticism are commonly imprisoned in large detention camps, together with their families. DPRK denies the existence of those camps. But they are affirmed by witnesses; visible from international satellites; and DPRK will not permit independent bodies to enter the country to check on their existence. In such circumstances (which parallel some of the human rights situations that existed at first in post 1948 China) it is scarcely surprising that a downtrodden people do not rise up, weaponless, against their oppressors who are armed to the teeth. It is therefore the duty of the international community, particularly since the adoption in 2005 of R2P by a unanimous vote of the General Assembly of the United Nations, to do everything that can be done within international law to bring about an end to the human rights abuses that have been found by the COI. They have been allowed to go on far too long. They are an affront to universal human rights.