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UNIVERSITY OF CHICAGO LAW SCHOOL

TUESDAY, 29 MARCH 2016

CHICAGO, UNITED STATES OF AMERICA

NORTH KOREA AND OUR DILEMMA

The Hon. Michael Kirby AC CMG

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In the last month, North Korea has heightened its saber-rattling by carrying out a nuclear test and repeatedly launching missiles, in violation of a UN ban on such activities. The nation's aggression was then further underlined when the government of the so-called Hermit Kingdom released a video showing Washington, DC, under nuclear attack. Such threats are certainly of global concern, but as students and faculty learned at the Law School's annual Schwartz Lecture, what is going on inside North Korea is perhaps of even greater concern.

"This is a country that has been oppressing its population for a long time, while breaching international human rights law," explained the Honorable Michael Kirby. "This is a society with a large, undernourished army, that has nuclear weapons and missiles and is developing submarine technology, but also has a great deal of suppressed unrest by its people. The population is intimidated by fear into not expressing its opposition. Those who do may find themselves being executed publicly."

Kirby, a former Justice of the Australian High Court, was appointed chair of the Commission of Inquiry of the UN Human Rights Council that investigated crimes against humanity in the Democratic People's Republic of Korea from 2013 to 2014. North Korea, which has been largely closed to the global community since the end of the Korean War,

has been denying reports of the government's brutal treatment of its own citizens for nearly six decades. The UN commissioned the investigation in order to establish the truth of what is actually happening inside the DPRK.

Among the many transgressions identified by the Commission were several related to political control of the population in a nation where the Internet is strictly forbidden and "only available to a small elite." They also found evidence that individual movement is strictly controlled. In fact, Kirby pointed out, citizens are not permitted to leave the districts in which they live for any reason without permission from local officials.

"But really one of the worst issues is that they are governed by a command economy that has proved inefficient for providing food for its people. There was a famine in the middle 1990s and a huge number of people died, but access to that number is not available," Kirby explained. At least 400,000 perished, but some who gave testimony to the Commission believe the number was closer to a million. Today, there are still levels of physical and intellectual stunting in children and young people who have been deprived of the necessary nourishment for development.

Proof also came before the commission of interference in the practice of religion—not of any particular religion "but of any ideology that is different than that of the ruling party," Kirby clarified. He noted that in 1945, Christians made up about 24 percent of the population, while today that number is less than one percent.

“There is also a great deal of evidence of Koreans—particularly those who fled during the famine in the hopes of finding food in China—being particularly persecuted upon their return,” Kirby said. “We also found a special persecution of women and the trafficking of women in China for survival.”

Kirby and his co-commissioners, Sonja Biserko of Serbia and Marzuki Darusman of Indonesia, the Special Rapporteur on the situation of human rights in the DPRK, chose a revolutionary path for their investigation. Kirby observed that such investigations are usually conducted in the civil war tradition, with a gathering of information and a deciding of facts that take place in a fairly secretive fashion. “However, we decided to do it in the manner of the Anglo-American legal system, with public hearings and transcripts and with the media present. We put all the testimonies of witnesses –for whom it was safe-- onto the Internet, so that when we were attacked by the DPRK for having enemies of the fatherland speak against them, others could see for themselves that the witnesses were being truthful.”

After completing their inquiry, the Commission wrestled with the question of whether the government of the DPRK has committed, or is committing, genocide. The commissioners consulted the official definition of genocide established after the end of the Second World War, which is that genocide is a state policy of murder that is aimed at a part of the population for race, nationality, ethnicity, or religion. The DPRK government instead takes aim at those it views as enemies. The government fixes the people into 55 classifications based on their perceived political allegiance to the Kim family and the elite in the Korean Workers Party. Those in favor receive benefits, and even

enough food, when others do not. “Those who are untrustworthy are considered hostile and opposed to the regime. They lose out on advancements in technology, economics, education, employment, and end up living in very inhospitable terrain.”

Instead, the commissioners settled on a finding of crimes against humanity, which Kirby explained are crimes of violence by a state against a person or a group. “These are super crimes that shock the conscience of the people and demand accountability.” In fact, the Commission’s findings, which were published in a 400-page volume, caused so much astonishment and distress that it was sent to the U.N. Security Council, which Kirby noted is very unusual for a human rights investigation.

Kirby and his fellow commissioners would like to have their report published on a much larger scale so that ordinary citizens everywhere can read it and understand what its importance. “I’d like to have it available in every airport in the world,” Kirby said. However, they are very pleased that the Security Council is currently taking actions against the DPRK, although ultimately they would like to have those responsible for these atrocities brought up before the International Criminal Court at the Hague. But the most important thing Kirby wants the world to understand is that, “It is essential to put at rest the view that peace and security is separate from human rights.”