

REPUBLIC OF KOREA
NATIONAL ASSEMBLY
SEOUL, THURSDAY, MARCH 2, 2017

ACTION ON HUMAN RIGHTS IN NORTH KOREA

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FIRST CONTEXT: THE UNITED NATIONS

The *Charter* of the United Nations, 1945, established an organisation based on three principles:

1. International peace and security;
2. Universal human rights and justice; and
3. Justice, social progress and larger freedoms.¹

Originally, the *Charter* was intended to contain a Bill of Rights. Time ran out and, instead, the *Universal Declaration of Human Rights* was adopted by the General Assembly, without dissent, in December 1948. When the two Korean states joined the Organisation in 1993, they each signed up to these principles. Each of them ratified human rights treaties. Then, at a later stage, when the Democratic People's Republic

* Former Justice of the High Court of Australia (1996-2009); former President of the International Commission of Jurists (1996-8); chair of the UN Human Rights Council's Commission of Inquiry on Human Rights Violations in the Democratic People's Republic of Korea (2013-14).

¹ UN *Charter* 1945, Preamble.

of Korea (DPRK) (North Korea) sought to withdraw from the *International Covenant on Civil and Political Rights* (ICCPR), it was told (and accepted) that there was no provision for withdrawal. By its own action and by international law it is bound by these principles.

To ensure that such principles were carried out, institutions and machinery have evolved in the United Nations. They include the Human Rights Council (HRC), answerable to the General Assembly. That Council established the mandate of the Special Rapporteur on Human Rights in DPRK (SR). It was the failure of North Korea to admit the SR or to cooperate with him or the Office of the High Commissioner of Human Rights that led to the recommendation that a Commission of Inquiry (COI) be established to investigate reports and complaints of human rights violations, including crimes against humanity and genocide.

Uniquely, when the vote was taken to create the COI, no country voiced dissent. I, a retired judge from Australia was appointed chair of the COI. The SR (Marzuki Darusman) and a third member (Sonja Biserko) and I produced a unanimous report within time, within budget and by transparent and accountable procedures. That report successively secured extremely strong supporting resolutions on the HRC and the General Assembly. It even stimulated the resolution of the Security Council, placing the issues on the agenda of that body.² Human rights and security are interdependent. Countries that do not uphold the human rights of those that were there are commonly destabilising and

² M.D. Kirby, "The United Nations Report on North Korea and the Security Council: Interface of Security and Human Rights" (2015 89 *Australian Law Journal* 714.

dangerous to themselves and their neighbours. So it has proved with DPRK.

My mandate in the COI has concluded. However, a new SR has been appointed by the HRC (Tómas Quintana). His is the primary responsibility for monitoring and seeking to improve the situation in DPRK. But my commitment to the people of North Korea continues. I am a witness to their suffering. The definition of 'crimes against humanity' (which were recorded against DPRK) is that the acts of violence involved affront of the conscience of humanity. They therefore demand accountability. The COI was obliged to report on accountability and it did so. Its report is powerful and readable.

So far, the Security Council of the United Nations has not considered one of the recommendations of the COI on accountability, urging that the circumstance of DPRK (as disclosed in the COI report) should be referred for consideration to a prosecutor of the already established International Criminal Court at The Hague, Netherlands. Inferentially, a potential veto by China and the Russian Federation has restrained presentation of a proposed motion and consideration of this proposal.³

The Security Council (SC) has adopted a series of strong resolutions imposing sanctions on DPRK for its ballistic missile tests and nuclear weapons tests and delivery systems. These SC resolutions of 2006 (#1718), 2009 (#1874), 2013 (#2087), 2013 (#2094), 2016 (#2270) and 2016 (#2321) imposed sanctions with the concurrence, as required by

³ A/HRC/25/CRP.1

the *Charter*, of the five permanent members.⁴ Most recently, on February 13, 2017, following ballistic missile launches into the Sea of Japan on February 11, 2017 the SC resolved in terms of its strongest condemnation. It strengthened the requirements for enforcement of its earlier decisions. According to well sourced reports, China is “deeply frustrated and wants to do something”. By joining in the most recent SC sanctions and condemnation and by suspending all imports of North Korean coal for the rest of 2017, China has cut by approximately 40% the total exports of that country.⁵ This indicates the seriousness with which the international community is addressing the security situation in North Korea.

SECOND CONTEXT KOREAN DEVELOPMENTS

Foreign observers must never forget that Korean Peninsula was never divided by decision of the Korean people. Their right to self-determination was never respected. The division was imposed by the increasingly successful allies, as the Second World War moved to its conclusion. It was ultimately effected by outsiders, following the defeat and surrender of Japan. It was a product, and became a symbol, of the Cold War. It represents a type of historical time capsule. It is an affront to the people of Korea on both sides of the DMZ. They yearn for reunification.

Formally, both Korean states are committed on both sides of the DMZ to reunification. The Korean people yearn for it. However, that achievement seems a long way off. The Korean War (1950-53) was

⁴ UN *Charter*, art 27.3.

⁵ H. Beech, “China’s North Korea Problem”, *The New Yorker*, February 23, 2017.

concluded in an armistice, not a peace treaty. The Six Party Talks to follow that armistice are stalled. Animosity between the two parts of Korea has increased. The dangers for the Korean people appear to be increasing. They arise out of:

- * The establishment by DPRK of one of the largest standing national armies in the world;
- * The recent conduct of nuclear weapons tests contrary to Security Council resolutions; and
- * The development of missile systems (including submarine launch missiles) that endanger the Peninsula and its neighbours.

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The reported murder by exposure to the nerve agent VX in Kuala Lumpur, Malaysia, of Kim Jong-nam, half-brother of the Supreme Leader of DPRK,⁶ by operatives of DPRK on February 13, 2017 is an apparent indication of a revival of a past practice of DPRK in sending agents to other countries (particularly Japan) to perform criminal acts in those other states. As the COI report explained (#924), in 2002 the then Supreme Leader of DPRK, Kim Jong-il admitted to Japan's Prime Minister Koizumi that DPRK agents had abducted 13 Japanese nationals. They forcefully kidnapped them. An apology was offered in 2002 by Kim Jong-il. An assurance was given that "These regrettable incidents that took place under the abnormal bilateral relationship would never happen in the future". Prior to this admission, DPRK had denied all allegations connected with disappeared persons and abductions.

⁶ COI report, page 43, para 157.

The incident involving Kim Jong-nam is, in part, similar to the abductions of Japanese nationals (#924) and in part similar to the humiliating public arrest of another family member of the present Supreme Leader, his uncle by marriage, Jang Song-thaek in December 2013.⁷ In particular, the apparent acts in Malaysia appear to be the actions of a member of the international community that does not respect the rights of other UN member countries in their own territory.⁸ These should be accountable for such apparent lawlessness under international and national law.

THIRD CONTEXT: NORTH KOREAN HUMAN RIGHTS ACT

These dangerous and disturbing developments are made the more worrying by other changes that have happened at an international level.⁹ Nevertheless, some developments have occurred which constitute positive steps affecting the Republic of Korea (ROK) (South Korea).

In accordance with a recommendation of the COI and pursuant to a resolution of the UNHRC and concurrence of ROK, a field office has been established in Seoul to continue the work of the COI on human rights in DPRK (#1225(b) and (c)). I honour the work being performed by the field office and its Director, Signe Poulsen. It extends and expands the earlier work of the COI. It continues the task of gathering testimony of serious human rights abuses and crimes against humanity. It should continue to do this as accurately and impartially as is possible.

⁷ COI report, page 43, para 157.

⁸ Many other such incidents are recorded in the COI report, including the incident in 1983 in Rangoon (Yangon) Burma (Myanmar) where a bomb attack killed 17 ROK officials.

⁹ Prince Zeid Ra'ad Al Hussein (UN HCHR), address at US Institute of Peace, Georgetown University, Washington, USA, February 16, 2017.

Additionally, a new SR has been appointed and has taken up his duties, seeking to reach out to DPRK to explore as far as possible, positive attitudes to engagement and cooperation.

Most importantly, the ROK National Assembly, on March 2, 2016 enacted the *North Korean Human Rights Act* after many years of deliberation. In the end, there was not a single objection to the adoption of the Act in the National Assembly. I honour and praise the National Assembly for taking this initiative. Human rights ought not be the subject of partisan political disagreement. It ought to be a matter upon which a high degree of cooperation and engagement can be achieved.

Other steps have been taken in harmony with this development. On September 4, 2016, the Act was brought into effect. On September 28, 2016, the Center for Investigation and Documentation on Human Rights in North Korea was established. In October 2016, the ambassador for North Korean Human Rights (Ambassador Lee Jung-hoon) was appointed. And in January 2017, the North Korean Human Rights Advisory Committee was established to commence the performance of its duties.

One of the chief ingredients in this mixture of law and policy, the North Korean Human Rights Foundation, has not yet been formed. I would hope that appointments of members of the Foundation, as envisaged by the Act, could be achieved without undue delay. The dire situation revealed by the COI report and by subsequent developments is such that an agreement should be forthcoming.

In the COI report, concern was expressed (#COI, para 1225(f)) that:

“The [HRC] should ensure that the conclusions and recommendations of the Commission do not pass from the active attention of the international community. Where so much suffering has occurred, and is still occurring, action is the shared responsibility of the entire international community”.

These words apply equally to the Korean people and to their representative institutions. What the COI report revealed was not a list of standard or common human rights abuses, frequent in autocratic countries. Instead (COI, #1211). The COI concluded that North Korea was exceptional:

“Systematic, widespread and gross human rights violations have been, and are being, committed by [DPRK], its institutions and officials. In many instances the violations of human rights... constitute crimes against humanity. They are not mere excesses of the state. They are essential components of a political system that has moved far from the ideals on which it claims to be founded. The gravity, scale and nature of these violations reveal a state that does not have any parallel in the contemporary world.”

Whilst strongly held political disagreements are healthy and the essence of democratic governance, where such grave violations, of such variety,

intensity and duration appear established, human beings should come together above politics to provide responses to those affected. They should, so far as possible, work to prevent the continuance. They should secure appropriate accountability.

CONCLUSION: FOLLOW UP TO COI REPORT

The categories of human rights violations recounted in the report of the COI call out for action on:

- * Violations of the freedoms of thought, expression and religion;
- * Discrimination on the basis of state-assigned social class (*songbun*);
- * Violations of freedom of movement and residence;
- * Violations of the right to food and the related aspects of the right to life;
- * Arbitrary detention, torture, executions, enforced disappearance and political prison camps;
- * Enforced disappearance of persons from other countries through abduction; and
- * Crimes against humanity including against religious beliefs, refugees, women and minorities.

The COI made many recommendations that have not been seriously considered and certainly not taken up by DPRK. Nor have many of them even been covered in the international media. These include:

- * The need to permit independent media to have access to DPRK to see and report accurately conditions on the ground (COI report #1225(e))
- * The introduction by DPRK of human rights education and technical assistance for that purpose (COI report #1225(f));
- * Steps taken by DPRK to allow meetings of abducted families (COI report #1225(n), (o))
- * Launch of a people-driven process to establish the truth about continuing violations (COI report #1220(p));
- * Improvement in exchanges between civil society organisations including national Red Cross societies; contacts between professional organisations and women's groups; development of 'sister city' relationships and eventually the establishment of modern transport and communication links (COI report #1222);
- * Improvement in culture, science, sports, good governance and economic development with improved links between North and South (COI report #1223);
- * Development of business interactions and an agenda for reconciliation, inter-Korean dialogue, friendly sporting events and other contacts (COI report #1222);
- * Creation of a contact group in the United Nations of countries with historic friendly ties with DPRK to promote engagement (COI report #1225(h));
- * Provision of food and essential humanitarian assistance and protection and maintenance of that aid (COI report #1225(i));
- * Convening of a high level political conference to consider the final peaceful settlement to the Korean War that commits the parties to

the *Charter* of the United Nations and respect for human rights and fundamental freedoms (COI report #1225(j)).

An agenda for reconciliation and peace is an urgent priority. It is written on the hearts of most Korean people on both sides of the border. It must be advanced. Yet it cannot ignore the need for accountability for the great wrongs collected in the COI report. They remain unaddressed and unresolved. We cannot ignore them. That is why the UN Human Rights Council in 2016 created a Committee of Experts to follow up on the issue of accountability. It will report to the HRC in Geneva in March 2017.

I most respectfully encourage the National Assembly of the Republic of Korea to attend to the report of the COI. The voices of our witnesses are available online in the recordings of our public hearings. People everywhere on our planet can view those hearings. They can reach their own conclusions. Those who have suffered call out to us. They appeal to our sense of justice, human rights and respect for the dignity of all. I hope that the National Assembly of ROK will find ways to respond effectively to these voices.

An end to violence and respect for human rights are the true foundation for the ultimate reconciliation and reunification of the Korean Peninsula. I hope that I will live to witness such reconciliation and reunification on the foundation of universal human rights.