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THE INTERNATIONAL CONVENTION CENTER JEJU

THURSDAY, 1 JUNE 2017

HUMAN RIGHTS, PEACE AND NORTH KOREA

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Michael Kirby^{*}

North Korea is worthy of the attention of all of us because it is a country that has undoubtedly reached a very dangerous moment. From the point of view of peace and security and the future of humanity and its own people it is therefore appropriate that we should examine the preconditions for international peace and security. These include the observance of universal human rights and accountability for crimes against humanity.

I am not, and never have been, an expert in military matters. I am not, and never have been, an expert in geopolitical analysis. My expertise relevant to North Korea is the expertise that led to my appointment by the President of the United Nations Human Rights Council (UNHRC) to be the Chair of the Commission of Inquiry (COI) on Human Rights in the Democratic People's Republic of Korea (DPRK). It is an expertise in international human rights law and an experience in United Nations human rights activities and policy.

The COI was given the task to examine a mandate which had nine headings relating to particular issues which were thought to require examination from the human rights point of view. We were not at large. We were not authorised to examine the geopolitical or security concerns of North Korea for the world. Our focus was narrow and particular. It was the human rights focus.

We met as a COI for the first time in July 2013. We had to get our report written by January 2014. The report was completed in just over six months. It was delivered within budget

^{*} Chair of the Human Rights Council's Commission of Inquiry on Human Rights Violations in Democratic People's Republic of Korea (DPRK) (North Korea) (2013-14).

and on time. It was unanimous. It is readable and that was its strength. It recounted the COI's findings on the human rights situation in DPRK. It identified the human rights violations which amounted to crimes against humanity. These included: the violations of freedom of thought, opinion and religion; the violation of the right to food and widespread starvation despite the development of new weapons; the imposition of a classification of social class that impedes and restricts human equality; the restrictions on freedom of movement; the arbitrary detention, torture and executions of alleged enemies of the people and their families, the enforced disappearance and abduction of Koreans and foreign nationals – including of many Japanese nationals admitted by DPRK in 2002.

The report created something of a sensation in the UNHRC. It then attracted very strong supportive votes in the UN institutions. Generally, the Human Rights Council is deeply divided about human rights issues and there is often a geopolitical alignment of countries concerning how they should respond. But the votes on the report of the COI on DPRK were extremely strong. They supported the report. They sent it off to the General Assembly (GA) with a proposal that the GA should pick up the COI's suggestion and send the matter to the Security Council. This is a very rare thing to do in the case of human rights concerns because they are inevitably political and divisive. However, the GA voted very strongly to support the recommendations of the COI. There were relatively few (20) negative votes when it came to the proposal for follow up action on the report.

It was at that stage that the DPRK at last began to be very concerned about the report. We had recommended, in the report, that the case of North Korea should be referred to a prosecutor at the International Criminal Court (ICC). So far, there has been no resolution placed before the Security Council to secure that end. That is because it has been made reasonably clear that China, and possibly the Russian Federation, would not agree. Therefore, that form of accountability has been effectively vetoed, at least until now.

The failure to secure accountability in this way led to a new recommendation of the OHCHR to the UNHRC for a new committee of experts to look again at how this could be done. The report by the new committee of experts was delivered to the UNHRC in February 2017. The committee recommended that there should be further exploration of the possibility of a

special tribunal and of educative means, including amongst the North Korean community in South Korea, to review what has been happening in DPRK. This was accepted by the UNHRC which has also recommended that the UNHRC field office in South Korea should continue the collection of testimony from people who have suffered in North Korea and should do that in a form that could ultimately become the basis of a brief for a prosecutor, in whatever tribunal the matter may ultimately end up, whether the ICC or some different body.

On the presentation the report to the UNHRC in March 2014, the COI's mandate formally finished. However, there have been many occasions to continue my involvement, because DPRK is a great puzzle that is of deep concern to people in many countries of the world. A puzzle of what can be done in the face of such intransigence on the part of the country concerned. And what can be done that will not open up the risks of even greater security dangers and the possible use of weapons which will be extremely dangerous for the DPRK itself, and for the Republic of Korea, China and the surrounding countries.

In March 2017 I was invited to attend a meeting in the National Assembly of the Republic of Korea. What was specially interesting at the session at the National Assembly was the response of those people who were present who had links with then Opposition parties in ROK concerning the question of what should now be done. This could be very important because, as expected, the Opposition parties won the ROK presidential election on 9 May 2017 to replace former President Park Guen-Hye. She had been removed from office following constitutional impeachment. President Moon Sae-in has now assumed office. He has promised a fresh and different approach and greater engagement with DPRK.

The view that was expressed in March 2017 by one of the Opposition supporters at the National Assembly was that the role of South Korea was not to harass North Korea over its human rights record. It was to improve the outlook of human rights in North Korea and to assist North Korea to come to a realisation about human rights for itself. It was said that it would be quite wrong for South Korea to do more than that.

The problem, as it seemed to me (and I expressed it at the time), is that North Korea is a country without access for its nationals to the internet and without access to civil society

organisations that are not controlled by the government. It is therefore very difficult to conceive of how the people of DPRK could reach their own views except the views that are given to them by the authorities in power.

Other things were said at the National Assembly about how the Opposition might approach the issue if elected to government. Still, it is a familiar phenomenon, which we have seen in our own countries, that once people are elected to government they then have the responsibilities of government. The people of DPRK can be expected to react accordingly. One hopes then that, when governmental responsibilities descend upon new people, they will trouble to read the report of the UN COI and find out what has happened in North Korea, according to the painstaking and careful report of the UN COI on DPRK. If they do that, they will surely come to the conclusion that leaving things alone is not really a sensible policy. Even from the point of view of security, it is potentially a dangerous policy. Something has to be done to respond to the human rights situation in North Korea.

A difficulty that the COI experienced in dialogue within South Korea, has been that, until now, there has been such a strong antipathy between Government and Opposition. This made it difficult, in the past, to persuade members of the Opposition to come along and engage on these issues. However, that is the value of the report. The report collects material. It respects the people who have suffered. It brings their words, recounting their suffering, to the attention of their own government and to the attention of the international community. How we respond to those concerns is going to be a test for our fidelity to the immediate post World War II decision that crimes against humanity should always be dealt with and that it is the obligation of the United Nations to do so where the country concerned refuses, or fails, to do so.

The UN High Commissioner for Human Rights, Prince Zeid Ra'ad Al Hussein, in his speech at the opening of the most recent session of the UNHRC in February 2017, pointed out that, in the *Charter* of the UN, the Preamble contains the three great principles for the formation and work of the United Nations. The first of them is observance of universal human rights. He explained that it was important to realise that respect for universal human rights is interconnected with peace and security. That is undoubtedly so. Without protection and

accountability for human rights, the dream of peace and security for the Korean Peninsula will remain illusory. The present situation in North Korea is dangerous to the human rights of the people of that country. But it is also dangerous for the peace and security of the region and the world because of the nuclear weapons, missiles and army facilities DPRK can now deploy. That is why the world, in its understandable desire to secure a peaceful resolution of the dangers of North Korea, must not forget the report of the UN inquiry into human rights in that country. No human rights accountability. No peace. No stability, except on a basis of fear and terror. Dangers of conflict. But even greater dangers of accidents, mistakes and miscalculation. A new approach may bring new ideas. However, the new ideas must include the ideas based on the *Charter* of the United Nations and the principles expressed in the *Universal Declaration of Human Rights*.