

THE BROOKINGS INSTITUTION
CENTER FOR EAST ASIA POLICY STUDIES

**HUMAN RIGHTS IN NORTH
KOREA:
AN ADDRESS BY MICHAEL KIRBY**

The Honorable Michael Kirby
Chair, United Nations Commission of Inquiry on Human Rights in
North Korea

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PROCEEDINGS

TED PICCONE: Hi, good afternoon, everyone. Welcome to Brookings. I'm Ted Piccone. I'm the acting vice president and director of the Foreign Policy Program here and I'm very pleased to welcome you for this event on human rights in North Korea, which is co-hosted by our Center for East Asia Policy Studies and the Committee on Human Rights in North Korea. And special thanks to Greg Scarlatoiu, executive director - where did Greg go? There you are -- for your partnership on this event.

We are honored to welcome Justice Michael Kirby, who is chair of the United Nations Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, for a keynote address describing the commission and its report which was submitted to the U.N. last month. The North Korean state's appalling human rights record is well known around the world. What is new is the critical role played by the Commission of Inquiry in systematically and openly collecting and documenting testimony on human rights abuses.

As Justice Kirby will tell us, eyewitness accounts describe a wide range of violations, including freedom of expression and of movement, violations of the right to food, arbitrary detentions, torture, and forced disappearances. Notably the commission's report found that the body of testimony and other information it receives establishes that crimes against humanity have been committed in the Democratic People's Republic of Korea pursuant to policies established at the highest level of the state.

In addition to this documentation, the report includes an extensive list of recommendations for North Korea, for the people of the Korean peninsulas, for civil society, for China, and for other states and, of course, for the United Nations and the international community, and we'll be hearing more about those recommendations. But a theme running throughout the report's recommendations is to promote more contact between North Korea and the international community, not less. And policymakers in the U.S. Government should consider this as they approach their policy towards that part of the world.

The report has already led to adoption of a Human Rights Council resolution on March 28th, which takes steps to enable enhanced monitoring and continued visibility of human rights of the North Korean people. Today, Justice Kirby will discuss the findings and recommendations of the report.

Justice Kirby had a long and distinguished career as a jurist in Australia. He served for 13 years on the High Court between 1996 and 2009, and was Acting Chief Justice of Australia on two occasions. He served on other courts in Australia and also on several university governing bodies. He's also held numerous leadership roles in a long list of international organizations, including the World Health Organization's Global Commission on AIDS, the International Commission of Jurists, headquartered in Geneva. He served as U.N. Special Rapporteur on Human Rights in Cambodia and the UNESCO

International Bioethics Committee.

His knowledge and experience are suited perfectly for the leading role he played on the Commission of Inquiry on Human Rights in North Korea. Following his remarks, Marcus Noland, executive vice president and director of studies at the Peterson Institute for International Economics across the street, who is also a board member of the Committee on Human Rights in North Korea, will make some comments on the report and discuss policy implications for the United Nations and its member states.

My colleague then, Richard Bush, who is senior fellow and director of our Center on East Asia Policy Studies, will moderate a question-and-answer session. And we will conclude with remarks by Roberta Cohen, a Brookings nonresident senior fellow and our former director of the Project on Internal Displacement; long-time involved in North Korea affairs, including as co-chair of the Human Rights Committee.

I'm honored to welcome Justice Kirby to Brookings and invite him to the podium. Thank you. (Applause)

MICHAEL KIRBY: Thank you very much for having me at this famous institution. And it's a great pleasure to be with all of you today and to have this opportunity to speak of the recent report of the Commission of Inquiry on Human Rights violations in North Korea.

The commission was established by the resolution of the Human Rights Council in March of 2013 and it was actually formed as soon as the commissioners were appointed by the president of the Human Rights Council in May 2013. The first meeting of the commission took place in July of 2013, and so because the report had to be written in time for delivery to the Human Rights Council in March of 2014, effectively the report had to be written by the end of 2013. So when I see in the media that we had a year to write our report, I think if only. If only we had had more time. But isn't it amazing -- and I imagine many intelligent people in this room find the same thing -- that when you have a deadline, it does marvelously concentrate the mind. All those students preparing their essays, they've just got to get them in, and that is what the Commission of Inquiry did.

We brought our report in on time, in budget, readable, and without a bitter, hopeful plea that our mandate would be extended and that we would remain in office for a long time thereafter. We demitted office and I am no longer to be described as a chairman of the Commission of Inquiry. The Commission of Inquiry has finished its task, but this week I am in the United States for a meeting of the Arria Procedure of the members of the Security Council, which will convene in New York on Thursday of this week. So that is the purpose of my visit here, my principle purpose of the visit to North America this week.

I'm going to talk to you today about the lessons that I learned as chair of the Commission of Inquiry, but first I should tell you something about what the commission found. The commission had a nine point mandate. The nine points of the mandate took us

into the areas of the alleged human rights violations in North Korea. That took us into subjects such as discrimination against women, discrimination against religious minorities, discrimination against people on the grounds of their social caste -- the *Songbun* system -- by which in North Korea people are divided into a social category by reason of the perceived loyalty to the regime.

It took us into arbitrary arrests, detention, and torture, and to examine the prison camps -- both the political prison camps and the ordinary prison camps -- where terrible wrongs are done to the prisoners. We had to examine the situation as it emerged in terms of freedom of expression and as it emerged in respect of freedom of movement, both within North Korea and outside North Korea. And we were also asked to examine the position of abductees because abduction of people for reasons of state by the government of North Korea was a policy which was given effect in relation particularly to Japanese nationals and also to nationals of South Korea, who were seized in the closing phases of the Korean War, but also in relation to citizens of Lebanon, Romania, and other countries who were -- Thailand -- who were seized for reasons of state of North Korea.

The commission was asked to answer four questions and it's very important to concentrate one's mind upon the questions we were asked to answer because sometimes one sees in media exaggerated statements of our role. Essentially, we were an investigator. We had to investigate and report on a limited mandate. The limited mandate set out our jurisdiction. We did not exceed our jurisdiction and we did not want to exceed our jurisdiction because of the time limits on us and because that just wouldn't have been proper. We concentrated on what we were asked by the Human Rights Council to report upon.

And the four questions were: Is there evidence of breaches of fundamental human rights? There was plenty of such evidence and we addressed that evidence and we reported on it and that is the substantial part of our report.

Do any of the breaches of fundamental human rights rise to the level of a crime against humanity? There were cases where the human rights violations rose to the levels of crimes against humanity, as, for example, in the persecution of the Christian minority, in the way in which women are often treated, in the abductions of foreign nationals and of nationals of the Republic of Korea, and in the prison camps.

Then the third question was: Can you identify those who are responsible in international law for those crimes? We were able to do that, sometimes by name, but generally by reference to the place and the rank and the office of the person concerned, or persons or institutions concerned.

And the final question was: If there are these crimes, how can we render those who are responsible accountable for them? So there were the questions of the crimes and the questions as to the accountability for the crimes. And that is what we were asked to do. We were not a group of judges. I was in my former life a judge, but I wasn't there

as a judge. I'm not an international judge and I had no right to try the people for crimes against humanity or any other offence against international law. Nor were we there as prosecutors. We had no authority to prosecute anyone.

Our job was to find, on the reasonable grounds basis, whether those persons who were identified could justify having their matters placed before a prosecutor with authority and jurisdiction to put them on trial. And, therefore, we were adjunct to and ancillary to the role of a future prosecutorial process which would be incidental to a future judicial process, and that is what we did.

The Commission of Inquiry asked for permission to enter North Korea at the beginning of its inquiry. We repeated that request when refused by the mission in Geneva. We repeated it to the government and, ultimately, to the Supreme Leader in Pyongyang, but those letters were either ignored or, in some cases, politely answered with the statement that North Korea did not agree to the establishment of a country-specific mandate and it would not cooperate in any way with the inquiry because it regarded the inquiry as having been established by forces hostile to it. And those forces it generally identified as being the forces of the United States of America, the Republic of Korea -- South Korea -- and Japan.

And, therefore, being unable to enter into North Korea, we were faced with a challenge. Can a country, which is a member of the United Nations and which has signed onto a number of the treaties of the United Nations on human rights, can it simply by its own decision opt out of the investigatory process which is established by the United Nations, under the authority of the Human Rights Council? Can it, in effect, conduct a veto on the investigation by the world community? Although it is not a permanent member of the Security Council, is there some form of unmentioned veto which is not there in the charter of the United Nations, which any country can say, well, we don't like the investigation? We're not going to cooperate. We're not going to permit you to enter and your report will be fatally flawed because you can't come into the country and, therefore, it can be ignored.

We didn't accept that that was the privilege of the Democratic People's Republic of Korea and, therefore, we decided at our very first meeting, when we spent a lot of time looking at the methodology of the Commission of Inquiry, to embrace a methodology which has not been the one that has been usually followed by Commissions of Inquiry. In fact, there are lots of things about this Commission of Inquiry which were unique.

We are the only Commission of Inquiry which was established without a vote. When the proposal was before the chair of the president of the Human Rights Council, he twice paused and asked, was there any call for a vote? But there was no call for a vote. The establishment of the Commission of Inquiry on North Korea passed into a resolution of the commission of the Council of Human Rights without a vote. Never been done before or since and it's a sign, I think, of the mood and feeling of the international

community that enough is enough and that steps have to be taken to address the human rights situation in North Korea.

It isn't quite true to say that there had never been a Commission of Inquiry that conducted public hearings. Judge Goldstone, chairing the Commission of Inquiry on the occupied territories did hold public hearings, but because he was not permitted to enter Israel -- one of the effected states -- they had a disability which put a limitation on the conduct of public hearings, whereas the conduct of public hearings was completely central to the investigation by the Commission of Inquiry on North Korea.

We decided to proceed by public hearings and that was natural to me because for 34 years I'd been a judge in the common law tradition. The common law tradition tends to do the gathering of information by public inquiry and it was specially useful for the case of North Korea because it allowed people, if it was safe for them to do so and they were willing to do so, to come forward and give their testimony. And so they did.

We put out a request for people to offer written and oral testimony. We received a large number of responses to that. Eventually, the secretariat staff interviewed potential witnesses and saw, in the space of the few weeks that were remaining in the balance of 2013, 240 witnesses. There was no difficulty getting witnesses. It's important that I tell you this. There were plenty of witnesses. There are, after all, 26,000 North Koreans living in the Republic of Korea alone -- that's in South Korea -- and so there were plenty of potential witnesses. In the end we had to cut off our witnesses because of the fact that we had to get our report written and the analysis done and the matter wrapped up by effectively the end of 2013.

So we had public hearings in Seoul, in Tokyo, in London, and in Washington, D.C. The public hearings here in Washington were held last October and they included expert witnesses, but also lay witnesses. There's something about people who have suffered greatly that is borne out by holocaust studies. People who have suffered greatly often feel guilty about surviving. They often feel that they have to give voice to the suffering which they have witnessed and of which they've been part. And that was certainly true in the case of the people who came forward.

Because we were under a mandate obligation -- first do no harm -- we had to make sure that we didn't call anybody forward who might have family, or for other reasons, might suffer from retaliation because that was certainly on the cards. And we ultimately narrowed the number of people who would come forward to give oral testimony to 84. And those people gave their testimony in the manner that I saw today, when I went to the Holocaust Museum here in Washington. A very matter of fact manner, describing the most dreadful enormities in a very matter of fact way. And when subsequently the commission's report was criticized by North Korea and by other countries who are friends of North Korea, we had the opportunity always to say, well, you go and have a look for yourself because the testimony is online. It's available everywhere in the world. It's

received many, many hits of people looking at the testimony.

The question of reliability of testimony is one of the great puzzles of law and justice. It's a great puzzle in any national legal system, but it's a puzzle which is resolved by mainly looking at consistency with other evidence and, also, at the apparent honesty, the motivation, and the background and reasons for giving testimony of the people involved.

And so this was the way in which we proceeded. When the report was to be written, we had drafts of chapters from an extremely hard-working secretariat that were assigned to us. There were 10 officers of the United Nations and, please, I insist when you hear criticism of the United Nations and its bureaucracy. It's important to tell you that these are people of great professionalism -- the people who worked for us -- great integrity, total honesty, whose only motive was to give a report as the Council on Human Rights had demanded, and with honesty and integrity and independence.

The report as written is, I believe, readable. That alone is a great achievement for the United Nations. The United Nations system is known for many wonderful products, but readable reports are not in the highest level of the output of the organization, but this is one report that is, I believe, readable if there is someone out there who has any influence on a large publishing house, who wants an extremely readable and important report that should not be confined only to experts, but should be out in the ordinary general public. About 350 pages, so it's not a blockbuster, but it is in every way a readable report and it's made vivid by the testimony of the witnesses whose actual statement of what they went through is collected on every second or third page of the report. It gives life to the report and allows for the report to speak directly of the sufferings that have been undergone by the people of North Korea.

The report went to the Human Rights Council on the 17th of March. The resolution, as you've heard, was adopted on the 28th of March. And then with great speed a procedure has been invoked to allow the members of the Commission of Inquiry to speak directly to members of the Security Council, which we will do next Thursday.

This isn't formally a meeting of the Security Council. This is a meeting of members of the Security Council who are interested to come along for a briefing and who will be invited to do that on Thursday in the Secretariat Building of the United Nations in New York. It's called an Arria Procedure after a diplomat by name Arria who devised this as a way by which briefings could be given to the Security Council on matters, including human rights matters, that might intertwine with peace and security matters, which are the chief responsibility of the Security Council.

And so, on Thursday of this week, we will reach in the United Nations system, though not in the Security Council chamber, a real moment of truth for the commitment of the international community to make true the statements at the opening passages of the charter of the United Nations. If you look at that document, which is in

brief and relatively eloquent language, it speaks of the purposes of the United Nations as being addressed to issues of peace and security for the world, universal human rights and justice, and issues of economic equity. So they are the objectives of the United Nations and the issue of universal human rights is up there with the rest.

Now, I said I was going to mention the main lessons that I've learned in the inquiry and I've divided it into 10. You've got to be grateful that it's not President Wilson's 14, but it's 10.

The first lesson is the value of transparency. I think it was a very good decision that we made, not only to conduct public hearings, but also always to be open and available to speak to local and international media about what we were doing, why we were doing it this way, how we were doing it, how we were collecting it, how it would have been desirable that it be supplemented by national hearings in North Korea, but in default of that this was a way of getting a lot of evidence quickly and in a very public way that could be seen by the whole world. And we've used other more modern means of gathering and distributing information online through websites and blogs and so on, social media.

The second lesson is the value of letting victims speak. I just saw that at the Holocaust Museum. There is a wonderful exhibition, and if you haven't seen it, I commend it to you. It's about the issue of the neighbors. What did the neighbors do when people were being rounded up? And trying to focus on the reaction of ordinary people to the terrors of the Holocaust and that it wasn't just done by a very small number of committed lunatics. It was an effective participation of very large numbers of the neighbors of the people who were rounded up. And it's a very important lesson and that can be made flesh by the voices of the witnesses.

You know, in my early encounters with the HIV epidemic, there was a wonderful American civil servant, Jonathan Mann, and Jonathan always insisted we should never have an AIDS conference or an AIDS meeting without people living with HIV to speak. Not speak to be spoken about or to be spoken at or to be spoken of, but to speak. And this was a message which we translated into our work in the Commission of Inquiry.

The third lesson was the lesson of the importance of civil society. I think a major reason for the establishment of the Commission of Inquiry was the energetic work of a large number of civil society organizations, some of them were international civil society organizations, like Amnesty International and Human Rights Watch, who agitated for it in Geneva, but also civil society organizations such as those in the United States, such as Human Rights for North Korea and other bodies here. Civil society expresses our freedom as individuals in our own countries to speak up and not to accept the unacceptable, and they played a great part in the formation and in strengthening and in providing witnesses and getting people to us and helping us to do our job successfully.

The fourth was the value of scholars. In our public hearings in London,

Washington, and later consultations in The Hague, we made contact with foundations, institutions, and other bodies to tack the ideas of people, many of whom had been studying North Korea for decades. There's a whole industry of writing books on North Korea. There's an enormous amount that's written on North Korea, much of it is fascinating and intriguing, but it's a huge library. And what we had to do was to get the material together and reduce it and compress it and compact it into a readable whole of about 350 published pages and that was a big challenge to do that and to produce a product that is readable, was a very important challenge.

But in that digested information, including from our public hearings here in Washington, we had extremely talented people whose whole life is devoted to studying aspects of the North Korean situation. And we have been able to use them. Very useful to speak to people who think outside the square. Very useful to speak to people of high intelligence. You've always got to keep your eye on the possibility that they may have a bias or prejudice, but you don't come away from many meetings with such bodies.

We went, for example, in Washington to a meeting I will never forget with the Robert Kennedy Foundation. And the people around the table, all very intelligent people used to dealing with the challenges of human rights, and they spoke to us and spoke of things we should be asking, things we should be thinking about and that was extremely useful.

It was particularly useful when we got to a turning point in our report, such as the turning point of should we go into the issue of genocide? Did the crimes in North Korea rise to the level of genocide? Some people think of genocide as the gold standard, that anything less is really a second class international crime. But there were problems for genocide in the definition that's been adopted by the Genocide Convention, which basically requires that the genocidal act should be addressed to the nationality, race, ethnicity, or religion of the people involved. Whereas in North Korea, overwhelmingly it is addressed to the politics, the political commitment, the commitment to the party and the leadership and the Supreme Leader, and, therefore, it's not within the language of the current definition. And the question was, should we be endeavoring to push that further? If there are questions on that, I'll tell you how we addressed that issue.

The fifth was the value of media. Now, I found this earlier in my work in Cambodia, but we had very good professional advice. When I was in Cambodia and I came to the United Nations, I found they were rather amateuristic at that time -- we're talking about 1993-1996 -- in the use and engagement with the international media. Well, that has improved. It's improved radically during the term of Office of High Commission of the Human Rights, Navi Pillay. She has been much more successful in engaging with media and media, though it can sometimes be a most unpleasant organization, it is absolutely essential as a way of getting out messages to the general population, who will often be outraged at what they hear, and rightly so.

The sixth lesson was endeavoring to establish, against inclinations to accept

it, the interconnection between human rights and peace and security. It's up there with the charter. It's stated in the very first article of the charter, in the perambulate statements in the charter, they're all there together. But yet there's been a bit of an inclination to say the Security Council deals with peace and security and does not worry about human rights. But self-evidently, if a country has got an extremely violent or angry or upsetting or unjust human rights situation, that can itself contribute to instability of the country and add pressures to the situation of peace and security, as I believe it does in the case of North Korea.

The seventh lesson was the importance that was to be attached in following up the report. There's an awful tendency, not only in the United Nations, it's a tendency in life and academic institutions, to think, well, you write the report, or you write the book and then you put it away and you get on with something else, but we were determined that there would be efforts to get follow-up. To get translation of the report into the Korean language, to have side events at the presentation of the report on North Korea in Geneva, so there would be abductees who would turn up and speak of what the lived experience that they've been through. And similarly, in New York later this week, there will be side events at which people will speak up.

A documentary film was made, partly based on our public hearings and the testimony, extracts from them of vivid moments in the public hearings, but partly, also from people who could add the personal expression of the experience so that that would be understood by ordinary folks. So the follow-up of the report is continuing. It's going to continue later this week with the members of the Security Council and the Arria Proceeding, and there are many future events that are yet to happen in which members of the Commission of Inquiry will be engaging. And this encounter today is one such event and I'm very grateful to The Brookings Institution for giving us this opportunity through me to speak on the follow-up to the report and the importance of getting follow-up.

The eighth lesson I learned was that there are lots of frustrations of being an officer of the United Nations, pity little frustrations, frustrations such as the air tickets. There's a requirement, astonishing though it may sound, that if you want to change an air ticket which has been made you have to give 16 days' notice whereas the very reason for your sometimes having to change it is that you need the change like now, tomorrow, immediately. And that runs into a tremendous obstacle course which even I and other commissioners found it difficult to run.

The ninth is the growing impact of international law. I began my life as a young lawyer, taught international law by a very great Australian professor of international law from Oxford, Professor Julius Stone. And Julius taught many things, but one of them he taught was international law. And at that stage, it was basically a story of the relationship of princes. Well, that's over. It's now a relationship of states and people and it's a relationship that is concerned with the condition of people and with the human rights and justice of people, and this is a big change that's happened in my lifetime. It's not fully yet accomplished, but it has been amazing what has happened. And (inaudible) Justice

Scalia, it's going to ebb and flow into our domestic law simply because this is the world in which we now live. Our domestic law is going to be affected by the growing body of international law and international practice, such as the inquiry which I chaired.

And the tenth lesson I learned was the importance of having a truly effective secretariat, and we had that. We had a very effective group of 10 people from different parts of the world, different linguistic and cultural and legal traditions. All of them very dedicated and very determined to produce a report which would be effective and which would serve the interests of the people of Korea. That will be a question at the end of this week as to whether on Maundy Thursday, 2014, the importance of delivering on the mandate -- we were asked to deliver on a mandate which asked the question how do we render those responsible accountable.

And going to the Holocaust Museum here in Washington, D.C., today brought home to me how important that question is. It's as if you had a report on the dire situation affecting many minorities in Germany at a time when people said they didn't know. Well, now everyone knows. Everyone who has access to the Internet must know or must be able to get and secure information on exactly what is happening. And what they've been told in the report of the Commission of Inquiry is reliable; it's confirmed by other testimony. And if you have doubts, just switch and have a look at the witnesses. They're just ordinary people who are telling most extraordinary stories of the most terrible and atrocious sufferings over an unforgivably long period of time, and the time has come for action.

I said that Julius Stone taught many things and one thing he taught me as a young lawyer in Australia, in Sydney, Australia, studying international law, was an instruction that it's appropriate to mention today on the first day of the Passover here in Washington, D.C., because Julius was Jewish. I'm an Anglican Christian. But he said the Talmud scholars have long written that it isn't given to any generation of human beings to correct every wrong and every injustice, but neither are we excused from our obligation to try.

And that is the challenge as an international community we face this week. It isn't given to any generation of members of the Security Council or the great offices of the world to right every wrong, but we are surely not excused from our obligation to make a genuine effort now that we have the report of the Commission of Inquiry on human rights violations in North Korea. (Applause)

RICHARD BUSH: Thank you, Justice Kirby, for that compelling account of the work of the commission and the moral power of its findings and the challenge that it imposes on each and every one of us. We're now going to move to the second part of our program. Before I do, I want to acknowledge the presence of my friend and former Capitol Hill colleague, Ambassador Robert King, who is the U.S. Government's special envoy on North Korea and human rights. We're very pleased to have you with us today, Bob.

Our next speaker is Marcus Noland, who has come across Massachusetts Avenue from the Peterson Institute of International Economics. Marc is the executive vice president and the director of research. He's also one of the keenest observers of social and economic trends in North Korea and we're pleased to have his commentary. Because of that word "executive" in his title, he's going to have to slip away just a tad early, but we understand.

So, Marc, if you'd like to come to the podium.

MARCUS NOLAND: Thank you very much. I am deeply honored to participate in this gathering this afternoon. It's customary to speak such words at gatherings such as this one, but today I mean this utterly sincerely.

The accomplishment of the Commission of Inquiry cannot be overstated. After their report, there can be no question about the nature and scale of human rights abuses in the DPRK. And beyond the report itself, the commission's website constitutes an archive of hundreds of hours of direct eyewitness testimony and expert testimony easily accessible to the public that will live on well after the rest of us have passed from this earth. The commission's work is an extraordinary accomplishment and we are all deeply indebted to Justice Kirby and his colleagues.

I was asked to provide a bit of commentary, and what I would like to do is spend a few minutes placing the commission's work in a broader context and sketching out some ideas of where we go from here, especially here in the United States.

North Korean human rights issues can be divided into two parts. The first concerns refugees, the visible tip of the iceberg, and which largely involves policies that are implemented outside of North Korea because the refugees have fled the country. The second part concerns the large subsurface component of the iceberg, and that is to say human rights issues within North Korea. The commission's work constitutes a magisterial sounding of that vast iceberg that lies below the visible surface.

Policies directed at that latter problem can, in turn, be divided into two components. The first consists of policies that go through typical diplomatic channels and often requires the cooperation of the North Korean government. That would include many of the U.N.-based processes, such as the one that created the commission in the first place. I am neither a lawyer nor a diplomat, and at this point I have to admit that, honestly, I do not understand the intricacies of the United Nations. Fortunately, Roberta Cohen is here, so she can explain it all to you.

The second set of policies are policies that can be implemented unilaterally with or without the cooperation or acquiescence of the North Korean government. These would include things like broadcasting news and information into North Korea, documenting human rights abuses for future work, and so on.

A striking aspect of the commission's work is that it straddles that divide. It provides both a basis for ongoing diplomatic activity, as Justice Kirby alluded to in his comments, as well as providing a foundation for work outside the system, so to speak. Tactically moving forward with that indirect agenda, for example increasing information flows or providing scholarships to refugees, could increase tension with North Korea and make progress on the direct or inside agenda more difficult, but I believe that risk is warranted.

In terms of U.S. policy, we have one existing piece of legislation, the North Korean Human Rights Act. Implementation of that act could be strengthened in a number of ways. We can improve implementation at the level of U.S. embassies, particularly in Asia. There is a need to educate embassy personnel in countries where North Korean refugees have fled to understand their rights under this legislation and increase staffing of Korean speakers in the relevant diplomatic facilities where North Koreans have made asylum claims.

We should do a better job of publicizing support within the North -- the availability of support within the Korean-American community, so that people with North Korean family members or friends or others who might want to seek asylum in the United States know where to turn.

We could establish a hotline together with UNHCR in South Korea as recommended by the Committee for Human Rights in North Korea, so that North Korean refugees in danger have some way of establishing contact with those who can offer them immediate protection.

We should be providing scholarships to refugees. Apart from this is a justifiable humanitarian gesture, such an action could contribute to the formation of a post-Kim regime elite. As governments begin extending scholarships to North Koreans selected by their governments, refugees should not be left behind. In the case of the United States, such scholarships could be modeled after those provided to South Africans during the apartheid period. With respect to other countries, an informal division of labor could be worked out. For example, if Sweden grants scholarships to North Koreans selected by their government, perhaps Norway might provide them to refugees.

In parallel, the United States and other countries should seek to persuade China to establish some process of regularization that would permit the refugees to remain in China on a temporary protected basis as an interim solution to permanent resettlement. And we should make that permanent resettlement as easy as possible for the Chinese. We should make it clear that we will take these people off of their hands.

Although it would be preferable to have sustained cooperation with North Korea on humanitarian and human rights issues, the current regime's unwillingness to engage on these issues leaves the international community with little choice but to consider policies that do not require its assent. These measures naturally place the international community in a more confrontational stance vis-à-vis the North Korean regime. But given

the lack of success in engaging North Korea in the seriousness of the issues in question, I believe that the risks are warranted.

Efforts should be made -- expanded to provide information directly to the North Korean people. In the United States, the administration should seek additional funding under the North Korean Human Rights Act to bolster existing activities of Radio Free Asia and Voice of America. In addition, the current shortwave broadcast in the United States should redouble its efforts to persuade North Korea's neighbors to host transmission facilities for more easily accessed, medium-wave or AM broadcasting, as well as explore transmission technologies that would allow us to exploit the increasing ubiquity of smart phones in North Korea. We can broadcast straight into the telephones.

Legislation currently before Congress, H.R. 1771, the North Korean Sanctions Enforcement Act, introduced by Congressman Royce with more than 100 co-sponsors, both Democrat and Republican, contains provisions to support such activities, as well as establishing a fund to support activities under the existing North Korean Human Rights Act.

We should have no illusions that the provision of information will lead to fundamental political change in North Korea, but it should have some effect of undercutting the North Korean propaganda machine and thus increasing the pressure on the North Korean government for greater accountability.

Likewise, as economic engagement proceeds, it is important to ensure, to the extent possible, that it is a mechanism of transformation and not simply an instrument to reinforce the status quo. One possibility would be to encourage the development of voluntary labor codes for foreign companies investing in North Korea, similar to that of the Sullivan Principles that were used in South Africa during that country's apartheid period, the MacBride Principles used in Northern Ireland, or the global Sullivan Principles for formulated by the late Reverend Leon Sullivan and former U.N. Secretary-General Kofi Annan.

I recently wrote a paper on this issue that was released via the U.S.-Korea Institute at SAIS. I have additional material on this topic forthcoming from the Peterson Institute and the East-West Center.

In short, what we should be doing is encouraging what in another context the sociologist James C. Scott termed "everyday forms of resistance." The expansion of the market internally, the exposure of North Koreans to new sources of information, new ways of doing business and organizing their lives, even exposure to foreign countries will, to use a Marxist phrase, begin to intensify the contradictions and start to exert some constraints on the behavior of an effectively unaccountable regime. And this is ultimately the tragedy of North Korea that the Commission of Inquiry has so ably documented. It is a state that has virtually untrammelled capacity to inflict misery on its citizenry.

I thank you for your attention. I would again like to thank Justice Kirby and his colleagues for their monumental work, and I look forward to our discussions. Thank you. (Applause)

DR. BUSH: Thank you very much, Marc. We now have about half an hour for an exchange between you, the audience, and our panelists. Before I call on the first questioner, please keep the following in mind.

First of all, wait for the microphone. Second, identify yourself. Third, keep your question brief. We have very intelligent people on this platform, so they don't need a paragraph to understand what your point is.

So with that, I see a hand over here, the woman on the outside or by the wall. The mic's coming through.

QUESTION: Hi. My name is Contessa Bourbon from the New York Times.

I'd like to ask Mr. Kirby what are your specific recommendations for the U.N. Security Council? Would you call for greater sanctions or tougher sanctions and other actions against North Korea?

JUSTICE KIRBY: In the report of the Commission of Inquiry there are proposals for further targeted sanctions. There is, of course, already in place a series of sanctions addressed to leaders in North Korea and military hardware and so on. But we have suggested that there are particular areas, such as the movement of funds, that could lead to appropriate, more clearly targeted sanctions. We did not favor sanctions that would burden the ordinary citizens of North Korea because they are already suffering enough and suffering too much. And some evidence that is now coming in rather indicates that the problems of famine are far from passed and a shortage of food supply is something which is still a serious issue. Twenty-eight percent of children born in North Korea to this time are stunted. That is to say their mothers have been malnourished during pregnancy and they are going to go through life with very serious health issues. So added burdens on the people are not our suggestion, but some targeted sanctions are.

One of the primary recommendations that requires the intervention of the Security Council was addressing the issue of accountability, and that was the suggestion that the case of North Korea should be referred to the International Criminal Court. When we went through the possibilities, Truth and Reconciliation Commission, joint national and international tribunal as in Cambodia, this and that, and a prosecutor without a court, we came to the view that the most effective, efficient, professional, available body is the International Criminal Court. It has a prosecutor, it has jurisdiction, and can embrace the matter even though North Korea is not a party to the Rome Statute setting up the International Criminal Court. But it does need a resolution of the Security Council, so that's another matter.

There's a whole long list of steps that are included in the report, but getting this matter on to the agenda of the Security Council and having the Security Council acknowledge, admit, and accept that human rights is intertwined, at least in the case of North Korea and at least in the gross and grim circumstances outlined in the report, with international peace and security in the region. That is a very important request and it's the request that's there in the report of the Commission of Inquiry. And I hope it will produce a good outcome either this week or in due course when the matter comes back to the Security Council in formal session.

And we have to resist the idea that there should be diplomatic arrangements made behind closed doors and a failure to allow the charter to operate as it is expected to operate. That is that the P5 members, the permanent 5 members, have a special voting mandate without which the United Nations would probably not have survived. But the price of utilizing that mandate for the veto, as it's called, is that it should be done openly and should be accountable not only before the bar of history, but before the international community. And so that is another matter that I've been urging upon all who will listen, that this is an important time for the Security Council to step up and consider its obligations as the guardian of peace and security, which includes peace and security which is at risk in a country that executes the second or third highest officeholder in the country within a space of three or four days.

DR. BUSH: Roberta or Marc, any comments?

ROBERTA COHEN: No.

DR. BUSH: Okay. We'll go right here and then I'll go to the back.

QUESTION: I'm Peter Humphrey. I'm an intelligence analyst.

I think if India went nuts and decided to kill millions of Harijans then the U.N. would not hesitate to call that a genocide even though it is a class distinction, nothing more. These people have the same DNA and the same religion. And so I'm troubled by the hesitancy. HRNK came out with an incredible report describing the class structure in North Korea, and this is very much genocide against a class, no different than slaughtering the Harijans.

I see no one --

JUSTICE KIRBY: Can I just say there that your inclination is the same as the three commissioners. We said we think it may be that international law has developed to the point that if you take religion as a reason, religion is not something born in your, religion is a view of the world, of your place in the world, of your relationship to moral forces and to God, and, therefore, it's much more analogous to politics. And we, the three commissioners, were inclined to agree with your view. But the plain fact is that when the

Genocide Convention was being written it did not extend to politics. Cuba, then I think the Batista regime, proposed that it should be expanded to politics. The United States of America opposed that expansion and it was defeated in the *travaux* and it didn't happen.

So this is an area of international law that is evolving and we think it should evolve in the direction you think is appropriate. We don't think this is very conceptual at the moment, but we had so much evidence of crimes against humanity that we didn't want to push the envelope when we could deal with the matter with perfect satisfaction under the crimes against humanity, and that's how we decided to take it.

QUESTION: The question is quick. I see no one in the world working to topple the Kim regime before this idiot has a son of his own. So let me ask the big question: *Cui bono?*

JUSTICE KIRBY: Well, I'm old enough to have gone to lots of meetings before the Baltic states were free. And, you know, I'm old enough for people to have said, well, nothing will happen. You can never say never in this life. And everyone has to do what they can to secure universal human rights. We never took the step in the Commission of Inquiry to urge regime change. That was not part of our mandate. We did not suggest it.

What we said is if you want to join up to the United Nations, as you have, and if you want to sign on to all the great world human rights treaties, as they have, and if you want to go to the Human Rights Council and participate, as they do, then you have to do better than you've been doing. They are the only country in the world that took part in the universal periodic review of the Human Rights Council, which goes through the standards that are being observed. They received 167 proposals for improvements that they should adopt and they rejected them all. They did not accept one. They are the only country in the world that has refused to accept a single recommendation. They are not participating in the United Nations system as it is intended to participate and they have to be told by the world community that this is not acceptable, that their standards are not acceptable.

And it won't happen maybe overnight, but do not despair. I mean, at least this can be said, and we were told this by ambassadors from Albania and from the Czech Republic and other countries of Eastern Europe, all of which voted in the Human Rights Council in favor of the recommendations of the Commission of Inquiry, we were told to never think that what you have done has been without value. You have shown that at this moment in history the united nations of the world has taken their suffering seriously, has conducted a very serious investigation, has done it promptly, and has put it before the appropriate organs of the United Nations. And I believe that ultimately the rationality which is inherent in our DNA will reach a conclusion that will make for change. How it will happen, when exactly it will happen, not clear, but it will happen.

DR. BUSH: A question in the back in the corner. Wait for the mic, please,

and try to make your question brief.

QUESTION: Sure. My name is Grace Kahng and I'm a writer. I also want to congratulate Judge Kirby for the historic and extremely monumental work that you've accomplished.

I particularly value how you consider the evolution of international law as an important part of what you've done, in addition to addressing the specific case of North Korea. And I want to ask if you might consider trying to advance international law further by stating, perhaps through the U.N. General Assembly because of the political issues of the Security Council, that if DPRK does not follow the map you've laid out on how they need to fundamentally change their way of governing to respect basic human rights that the question of their legitimacy must be addressed because the 1948 issue of which government controls the Korean Peninsula was never adequately addressed.

Obviously, everyone knows there was a major war that broke out and it ended in an armistice, not a peace agreement. So to this day, you have the Republic of Korea constitution stating that its sovereignty is that of the entire Korean Peninsula, including the northern part. And DPRK, of course, would make the opposite sort of claim. But given what has happened over the decades and how the DPRK is founded upon atrocity crimes, it has lost whatever legitimacy it may have wanted to claim to be a separate, sovereign state.

DR. BUSH: Okay. I think we have your question.

JUSTICE KIRBY: Well, it's interesting, I haven't heard a challenge to credentials argument before. It no doubt exists in the literature, but I haven't had that raised before. As you know, it was the challenge to the credentials of China, then in the hands of China and Taiwan, that led to the Soviet Union being absent from the Security Council at the time of the crucial vote that was taken to respond to the Korean invasion, the North Korean invasion of the South with the United Nations force. And so the Soviet Union rushed back into the Security Council, but the motion had already been passed. And then when the Security Council became locked when the Soviet Union was returned, there was the famous Uniting for Peace resolutions, which followed later in that year, when the General Assembly asserted a power to do things as uniting for peace, to maintain the United Nations' presence in the Korean War.

As to whether they would be wise or useful events, my answer is in a sense that is not my responsibility and I've got to be careful not to exceed my responsibility and authority. My responsibility and that of the COI was to produce a report, make findings, make recommendations, and then leave it to the political branches, as it should be left. But the matter that you've raised is no doubt something that will be considered in various quarters and I don't think I'd like to comment on it, but it's an interesting question. You just have to make sure that a permanent member of the Security Council always remains in its seat. (Laughter)

DR. BUSH: Next question, the woman back there.

QUESTION: Yeah, thank you. Claudia Rosett with the Foundation for Defense of Democracies. Thank you for a spectacular report.

Question for Judge Kirby on going to the U.N. Security Council. I've been listening for 20 years to statements saying we're taking things to the U.N. I've also listened to a North Korean refugee on the run in Russia 20 years ago saying to me they turn us away. In fact, we go to U.N. agencies and we get arrested as we go.

Anyone who's been to the U.N. -- I'm getting to a question quickly, but this is the point. Anyone who's been to the UNHCR office in Beijing is aware that it's guarded by the same Chinese who return them to North Korea. It's unsafe, desperately, to go there. And in going to the U.N., which admitted North Korea to membership in 1991, if this does not work, how many years go by before something else should be done? How much longer does this go on? What's the next resort?

Because this is this great collection of information, but a lot of it has been known for many years now already. What do you do if Russia, China look back at you and either say we'll do something, but then lie and do nothing, or say, sorry, go away? Or if you can't extradite Kim Jong-un or, or, or, what then? Do we just wait until this works through another generation? Thank you.

JUSTICE KIRBY: Well, I refuse to take a negative view. Certainly this week I'm not going to contemplate what-if. I think the correct attitude of mind, if I can say so before an American audience, is a very positive -- the power of positive thinking, the power of determination, and the power inherent in Winston Churchill's motto: Never give up, never give up, never give up. And I think that's what we have to resolve as free people and people who have the privilege of human rights and liberty and independent courts to uphold them and independent legislatures to change things where things are wrong. We have to have a positive attitude and not to be thinking, well, we're wasting our time. I refuse to think that nine months of my life has been a complete waste of time and I'm not going to be thinking that this week.

QUESTION: I'm not asking if you wasted your time. I don't think you did. I'm asking you if (inaudible) effect in the relatively near term. Is there something further?

JUSTICE KIRBY: Well, of course there are many things. There are many fallback positions, but the position of the Commission of Inquiry is that certain steps should be taken: targeted sanctions; referral of the matter to the ICC, the International Criminal Court, as was done in the case of Darfur, as was done in the case of Libya. There are precedents on this, two cases, egregious though they were, falling far short of the horrors that are revealed over so many decades in the report of the COI on North Korea,

and that that would be the proper thing for the international community now to do. And in this week especially that is what we should all be focusing our attention on.

What is the proper thing? So far I must insist the United Nations in this matter has acted with great propriety, with great determination, and with integrity. It adopted, in the Council on Human Rights, it adopted the resolution setting up the Commission of Inquiry. They chose three people, all very independent-minded people, who could be counted on to provide a completely honest report, and that has been done. And that report was then voted on by the Human Rights Council. It voted 30-6-11; 30-6-11: 30 for, 6 against, 11 abstaining. The six against were the Russian Federation, the People's Republic of China, Venezuela, Cuba, Vietnam, and Pakistan. Amongst the abstainers, surprisingly perhaps, were India, which at this moment is conducting the greatest exercise in democracy and liberty on the planet; South Africa, led by Nelson Mandela, whose funeral we've all just witnessed, a great champion of human rights and freedom; and Indonesia, which was also a battleground for respect for its own dignity and for its human rights.

So there's still work to be done, but the United Nations on this occasion has acted with great energy, propriety, and effectiveness. And now it's handed over to the political branch and that's as it should be. And now we've got to see what happens. If it doesn't happen this week, it may happen next week or next month or in a month or so's time. We must not take a negative view. We must remain positive and insistent. And as democratic people, we must all make it clear what our views on this matter are to our respective governments.

DR. BUSH: The gentleman towards the back with the glasses, on the right. Yeah, right there. Yes.

QUESTION: Thank you for doing this. Jai Min Sun with JoongAng Daily News, South Korean media.

Your recommendation is mainly focused on the legal aspect, but you also added some political recommendations in your report to improve the North Korean human rights situation gradually or decrease the pains, imminent pains, of the people, which is inter-Korean talks and peace talks and humanitarian assistance. Did you put that political recommendation as just a customary thing or how much weight to you put on those things?

JUSTICE KIRBY: Well, it's true that there are in our proposal recommendations which you could classify as political. In the matter of international law and in the matter of the developing world of international law, and particularly when you're dealing with matters such as crimes against humanity, which are defined in international law as crimes which shock the conscience of humanity, that can be categorized as law, but it can also be categorized as politics. And, therefore, the two are not entirely separated, that is assuming that in our own countries they are entirely separated. Law and politics are other sides of the same coin.

What one learns when one enters the world of Korea, my connection with Korea was very minimal. The top of the street where I lived in Sydney, Australia, there was a large Methodist Church, the Wesley Methodist Church, Concord, Sydney, Australia. It is now a Korean Methodist Church, and that's about all of Korea that I really knew about. I did not come to this either with the great advantage of a lifetime's study of the situation in Korea or the disadvantage of prejudice or hatred. I have no prejudice or hatred against anyone on the Korean Peninsula. I have great respect for everyone on the Korean Peninsula.

And the one lesson you learn when you encounter Korea is the enormous suffering of the people of Korea, in the North and in the South, in the Korean War, and the tremendous trauma that this suffering did to the psyche of a whole people who had been united for millennia. And suddenly they are subjected to carpet bombing and terrible suffering and tremendous upheaval and the grabbing of the hundreds of thousands and troops all over the place. It was horrendous.

The Commission of Inquiry says in its report how it knows that the wounds have not yet healed. And until they have been helped to heal -- we know what happens with armistices. We saw it at Versailles. We're shortly to celebrate the centenary -- if "celebrate" is the word -- of the First World War. And that finished not in a peace treaty, but in an armistice at the end of it. And, ultimately, there was the Treaty of Versailles, but there's never been a treaty to finish the Korean War.

And so that in a sense, unless you address these issues and, above all, encourage people-to-people context and do the sort of things that Professor Noland has suggested -- your country is probably the world leader or certainly one of the two world leaders in information technology and in getting messages around and getting them across borders. We haven't yet been able to secure an accepted, authorized Korean version of our short 20-page report, and this is the report for the Korean people. I want to see as quickly as possible -- your newspapers should do it, your media should do it. It should be publishing our report for the people of Korea and getting that report, as Marcus has said, into North Korea. It could be done, if there is a will.

There's a certain ambivalence about this. On the day our report came out, it was number one news item for a day and a half on the BBC, the number one news item on CNN, the number one news item on Al Jazeera. It was the number five news item in South Korea. (Laughter) This is not a funny -- this is not a joking matter. This is a serious matter. It was the number -- it came behind a building collapse in South Korea. Talk about the errors of the modern media, concentrating only on your own pathetic physical backyard when you had a report telling of what was told in this United Nations inquiry.

So I do hope you will take it upon yourself to make sure that the message of how to get to our report and how to get it in Korean language is addressed as quickly as possible. It is not acceptable that a Korean language version is not yet available, and I

made that clear to the Korean ambassador, the Republic of Korea ambassador to the United States, when I saw him on Saturday.

DR. BUSH: I'd like to take the prerogative of the moderator to ask a question. I agree with your long-term perspective that at some point the Korean Peninsula will be reunified and the DPRK will come to an end. I suspect that it will probably happen through a series of convulsive events that we can't predict. But it does raise a question looking forward, that what would be the best way, at that point, to build a structure in North Korea that would facilitate over the long term the protection of internationally guaranteed human rights? This is a little bit outside your responsibilities and feel free to decline to answer, but I think you could provide some good advice.

JUSTICE KIRBY: Well, I could certainly provide some good advice and I acknowledge your prerogative to ask the question. (Laughter) But it's often been said by the representatives of DPRK that we are part of the hostile forces. We are not part of the hostile forces. As it happens, my grandmother married the treasurer, the national treasurer, of the Australian Communist Party. And I, therefore, grew up as a young boy in Sydney, Australia, surrounded by propaganda of the Soviet Union. I am not hostile to North Korea and I understand that a lot of original Communists were idealists. That was their notion of a better society, but North Korea has strayed greatly from that.

But in the United Nations system they are a member of the United Nations and it is not my prerogative to step into the situation of planning, participating, contributing to their termination. And I've not done it up till now and even in the illustrious circumstances of The Brookings Institution I'm just going to hold my tongue. (Laughter)

DR. BUSH: Okay, point taken. With that, we come to the end of our exchange. And finally, I would like to invite Roberta Cohen to make a few remarks.

Roberta has worked throughout her whole career to promote internationally recognized human rights. Most recently, she was the director of our Center on Internationally Displaced. Roberta?

ROBERTA COHEN: Oh, thank you. I'd like to congratulate Justice Kirby because, as you know, this is the very first report issued by the United Nations that finds North Korea guilty of crimes against humanity and also calls for accountability and also implicates China directly in possibly aiding and abetting crimes against humanity. This is a tremendous change from what has been in the past.

Now, the report describes North Korea, the human rights situation, as being one without parallel in the contemporary world. Now, this situation has gone on for decades and the report notes that. It's not the kind of atrocities that one sees in a wartime situation, such as Syria. But the report shows that this is a veritable human rights emergency going on in this country of North Korea with tremendous crimes and also

sometimes atrocities going on.

The gap between the findings in the report and the capacity and willingness of the international community to do something need to be bridged, and here the report calls on a very wide array of actors. It calls on governments, it calls on the United Nations, it calls on regional organizations, nongovernmental groups, civil society, foundations, business enterprises, concerned institutions, and experts to raise the priority of what has been found in this report in their own policies and their programs. So it's really up to all of us to try to do something.

The challenges are obvious: the political hurdles, the Security Council question, the complicated legal issues with courts, the noncooperation of North Korea, and the role of China. But there is this report and it's about 350 pages. More than 300 people, witnesses, have been interviewed, have given their testimonies. So it makes it very difficult for everyone to continue to ignore the nature of this regime.

Now, I think that we have to thank Justice Kirby for doing what nobody else has done and that is to raise the visibility of this issue to such an extent that it becomes very difficult not to do something. This is not an issue where you say, well, what now should we do or tell us what to do. You have to look at the report, look at the recommendations, and see how this fits into the policies and programs you're associated with. That has to cover all the actors that I mentioned.

And in a way, the report is a challenge to everyone and it also sets forth the goals and the recommendations that should guide us all to taking this issue forward. So let us all thank Justice Kirby for coming from Australia and spending a year of his life in one of the more horrendous situations and coming up with conclusions, findings, and really very fine recommendations for the whole international community. Thank you.
(Applause)

DR. BUSH: Thank you very much, Roberta. Roberta is also a co-chair of the Committee on Human Rights in North Korea. And thanks to her and the committee and Greg Scarlatoiu for co-sponsoring this event. And finally, thank you again, Justice Kirby.

JUSTICE KIRBY: Thank you, Richard.

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