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# **Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development**

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**EVIDENCE**

**Tuesday, June 9, 2015**

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**Chair**

**Mr. Scott Reid**



## Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development

Tuesday, June 9, 2015

• (1300)

[Translation]

**The Chair (Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC)):** Order.

Welcome to the 76th meeting of the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development. Today is June 9, 2015, and the meeting is televised.

[English]

We have with us today on the subject of human rights in North Korea the Honourable Michael Kirby, who has, among many other accomplishments, been a 13-year veteran of the High Court of Australia, the equivalent of our Supreme Court. In February 2014, colleagues, Mr. Kirby and other commissioners produced the report of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, which was, I think, to say the least, scathing and which may have changed the nature of the international debate on human rights in North Korea.

Mr. Kirby, I invite you to begin your presentation. Once you've finished doing your presentation, we'll look at the amount of time remaining and divide that into six equal parts for questions from each of the six participating members of Parliament.

So with that said, I invite you to begin your testimony. Thank you.

**Hon. Michael Kirby (Former Chair, Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, As an Individual):** Thank you very much, Chair. I offer my respects to the Parliament of Canada. It's a great privilege for an Australian and a former Australian judge to come here and to be in the House of the people and in the presence of elected members of Parliament. This is a privilege that Canada has and that Australia also enjoys, which is a great historical tradition that, sadly, the people of North Korea do not enjoy.

The United Nations commission of inquiry was set up in March 2013 for the purpose of examining human rights abuses, news of which was trickling out into the international community from North Korea.

I should say at the beginning with regard to the notice of meeting that whilst I would be proud to be Michael J. L. Kirby, who is of course a very distinguished Canadian and former senator, his middle initials are different from mine. My middle initial is D, after my

father Donald. I feel that out of respect for my father, I have to mention the difference.

I also want to acknowledge the presence here today of the Honourable Hugh Segal, a former senator of Canada. We worked together as members of the eminent persons group on the future of the Commonwealth of Nations. I'm very glad he's here. He hasn't been well, but he's gotten to the bottom of the problems and he's looking fine. He will continue to give his enormous service to Canada, the Commonwealth of Nations, and the world.

With regard to the report of the commission of inquiry, we had a very large mandate. It was a mandate of 10 items, ranging over issues such as the starvation of the population during the great famine of the 1990s, the denigration of women, the inability to move about the country, the control of information, the lack of a free press, and the detention camps in which people who were thought to be enemies of the regime and their families were detained. All of those were committed to us with the obligation to report, effectively, in seven months.

We reported in seven months. We reported on time, within budget, and unanimously. We went about our report in a different way. We adopted the anglo-Canadian-Australian methodology of public hearings. That is not the normal way the United Nations conducts its inquiries, but we thought transparency was the way to get the evidence and to place the evidence before the world.

We knew from the beginning that we would not get into North Korea. They protect their secrets by not engaging. Therefore, we opened public hearings and called for witnesses to come forward. There are 28,000 refugees from North Korea living in South Korea, and so, for our inquiries in the public hearings in Seoul, Tokyo, London, Washington, and Bangkok, we had no difficulty getting testimony. In the end, we had to cut the testimony off to be able to report on time.

We found many grave violations of human rights, many rising to the level of crimes against humanity. Crimes against humanity are extremely serious international crimes. If the country itself will not respond to the crimes, it is the duty of the international community to respond by protecting the people from crimes against humanity.

● (1305)

As a footnote, I'd mention that we had considered whether genocide had been found. We ultimately did not find genocide, leaving that to any future investigation, because genocide is defined in the genocide convention of 1948 as destroying a population or part of a population on the grounds of race, nationality, ethnicity and religion.

In North Korea, the destruction of people is on the basis of their assumed political allegiance and belief. We therefore held back from finding genocide, but we found crimes against humanity and we called for action by the international community to fulfill the R2P, the responsibility to protect, the people of North Korea from the crimes that are being committed against them.

In the pursuit of our report the United Nations did everything that could reasonably have been expected. I have to pay a tribute to the secretariat that worked for us and to the officers of the Canadian missions overseas. I'm thinking in particular of Ambassador Golberg, the ambassador of Canada in Geneva, who was outstandingly helpful in organizing our meetings with members of the delegations from Latin America.

By these procedures we gathered together at every stage in the consideration of our report extremely strong votes in the committees and organs of the United Nations. In the Human Rights Council we gathered support from 30 members of the council, 30 of 45, and only six members voted against: China, the Russian Federation, Venezuela, Cuba, Pakistan, and Vietnam. But all the other substantial members voted, some 30 members, and a number abstained.

The report then went to the General Assembly of the United Nations, where there was a repetition of this voting pattern. In the end we gathered the support of 116 countries to vote for the report to send it further, with 20 voting against it, and 55 abstaining. That is an extremely strong vote in the General Assembly.

Then, most unusually and exceptionally, the General Assembly adopted the resolution sending the report to the Security Council. It is very rare for the Security Council to become involved in human rights matters, but we were able to convince the General Assembly and the Human Rights Council that this is a case where peace and security is bound up in the issues of human rights. If you have a violent country doing terrible wrongs to its people, that is an unstable situation for peace and security.

The report was sent to the Security Council and by reason of an initiative taken by France, the United States of America, and Australia, then a non-permanent member of the council, the Security Council ultimately voted 11 to 2 in favour of placing our report and the issues of human rights in North Korea on the agenda of the Security Council. The two against were China and the Russian Federation, and two, Chad and Nigeria, abstained.

That vote by China and the Russian Federation did not amount to a veto because there is a provision in the Charter of the United Nations, copied interestingly from the Covenant of the League of Nations, whereby for procedural votes you need only a two-thirds majority and no veto is applicable.

That is where the report stands at the moment. It has gone through the procedures of the United Nations to the very highest level and, exceptionally, it is on the table of the Security Council awaiting a time when the countries of the Security Council decide they will consider it.

I do hope that Canada in its representation in New York will take such initiatives as are appropriate to ensure that on or before the 12-month anniversary, which means December 22, 2015, some steps will be taken in the Security Council to consider the matter, which is on their agenda.

● (1310)

It's appropriate to say, I think, that the big challenge for the international community now is, what's next? How do we move this matter, where there is such a huge expression of concern in countries that often don't come together, particularly on human rights matters, within the United Nations system?

The commission of inquiry recommended that the Security Council refer the case of North Korea to the International Criminal Court. Under the Rome treaty, which set up the International Criminal Court, only countries that are members of the Rome treaty are subject to its jurisdiction. But again, there is an exception, and the exception is where the Security Council refers the matter to the International Criminal Court. Such a decision would not be a procedural decision. It would be a substantive decision, and it would therefore have to run the gauntlet of the permanent five veto. That is the position we now face.

I think it would probably be most useful if the members of the committee questioned me about the problems, the difficulties, the challenges, and the frustrations that we faced on our path. I do think that, as a consequence of the work of the commission of inquiry, North Korea has to some extent been required to examine itself in a way that it had not done before.

Some very unusual things have happened in North Korea and in their response to the international community. It's not a bad thing that North Korea has begun to take part in the universal periodic review procedures, but it still will not allow the special rapporteur to come into North Korea, and it is still not engaging fully with the United Nations human rights machinery.

But insofar as the commission of inquiry could secure a response from the United Nations, I have to speak in praise of the United Nations. This is one occasion where, I think in part because of the different procedure we adopted—procedures that would be much more familiar in Canada—we have made North Korea an issue in the international community, and that has been a good thing. I hope it will lead on to action, including ultimately referral of the matters of North Korea to the International Criminal Court.

The United Nations often speaks of accountability for crimes against humanity. Well, now we know. Now we have the information. We have a lot of evidence. It's online. It's available to the whole world. The question is what the world will do with it. I am very reassured and heartened by the fact that the Canadian Parliament, elected by the people of Canada, has been sufficiently concerned and involved in the issues of North Korea to invite me to come along today to tell you about the work of the commission of inquiry on North Korea.

I'd add one final observation. I'm not now a mandate holder of the United Nations. The United Nations commission of inquiry completed its report on time and delivered it to the Human Rights Council in March of 2014. The mandate holder is now Mr. Darusman, who was a member of the commission of inquiry, and he continues his obligations as special rapporteur, but with his knowledge and agreement, I am here today explaining the steps that were taken by the commission of inquiry.

So long as I have breath, I will continue to speak up for the people of North Korea, who have suffered grievously and who deserve the attention of freedom-loving people all around the world, including in Canada.

• (1315)

**The Chair:** Thank you very much for that.

Given the amount of time we have, I think we can safely get away with six-minute rounds for each question and answer group.

Are we beginning with you this time, Mr. Sweet?

**Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC):** I want to note something procedural before my time, Mr. Chair. There are two points. One is that it might be wise for you to remind the general public of the policy on photography while we're in session, if you would. Also, I would ask for consent from my colleagues that Mr. Devolin take Mr. Hillyer's time.

**The Chair:** I gather that was an agreement, so, Mr. Devolin, you will be the third on the government side. I recognize you're a member of the government, but that's where your spot will fit in, just after Professor Cotler.

And as Mr. Sweet was pointing out, I would note for members of the public who are here that there's a policy against any photography while the committee is sitting.

All right, Mr. Sweet, please.

**Mr. David Sweet:** Thank you very much, Mr. Chair, and thank you very much, Mr. Kirby, for your testimony, but more importantly, thank you very much for the personal sacrifice and investment that you've made in the cause of human rights in North Korea. We greatly appreciate the thorough work that you've done.

I wanted to ask you, particularly because in your concluding remarks you mentioned how you were dedicated to human rights in North Korea, about how in mid-2014 there seemed to be a new openness on North Korea's part. Of course, you mentioned that there was a decision where your findings might possibly be referred to the International Criminal Court, and they responded very harshly in that regard and closed down their openness. I'll lead off with these two questions and let you deal with them.

First, have there been any renewed signs of openness, particularly because they know that this is pending in the Security Council?

Second, China a few months ago made some overtures to correct some of North Korea's international behaviour. I'm wondering if that has chastened North Korea at all to change its behaviour in regard to human rights?

• (1320)

**Hon. Michael Kirby:** Thank you for that question.

There were very high hopes with the arrival of the new supreme leader, Kim Jong-un, that the position in North Korea would improve. He was a young man. He'd had education in Europe. He was said to be interested in digital technology and modern celebrities. However, the fact is that after his arrival, what followed pretty quickly was the violent execution of his uncle by marriage, Jang Song-thaek. Many of the hopes were dashed.

The endeavour of North Korea to prevent the issues being referred to the Security Council was a major focus of their diplomatic efforts during 2014 and 2015. At the end of 2014, when the matter ended up on the Security Council, everything changed very quickly. I don't think we can say that any changes since then have been hopeful. I can't see in the developments any sign that the apparent so-called charm offensive, the production of the so-called rosy report, and the engagement with Universal Periodic Review really evidenced a significant change of heart. I think these were simply steps in the hope of staving off the referral of the matter to the Security Council with the risk it carried that there might ultimately be a referral of the case of North Korea and their supreme leader to the International Criminal Court.

So I can't say that there have been signs of improvement. On the contrary, things have remained much as they were before the charm offensive.

As far as China is concerned, it's not possible to be certain about the relationships between North Korea and China. You can infer something from the fact that the president of China invited the president of the Republic of Korea, or South Korea, to come to China in advance of any invitation to the president of DPRK, and that the supreme leader of the fraternal party in North Korea to this day has not been invited to China. That does appear to be a significant fact and a significant omission. Jang Song-thaek, the uncle, was a politician who was believed to be favourable to the so-called China path of engagement, of economic progress, and of taking a new opening to the western countries, but his murderous execution and the violence that was involved in that would appear to be an indication that this path is not currently favoured by the regime in North Korea.

So to answer your questions, I don't see much progress, and the China situation is something of a riddle. There doesn't appear to be any improvement in China's expression of strong admonition to North Korea to engage with other countries in the region and the world, not only on the issue of human rights but also on the nuclear issue, which must be of concern to everybody.

**Mr. David Sweet:** Certainly from our Iran Accountability Week, we see that those two issues are intertwined, and something that North Korea shares with Iran.

Finally, we have heard testimony from those who've escaped from North Korea. They are fearful to even admit or talk about where they came from, about their family or anything, for fear that there are operatives from North Korea in South Korea who could get information back and not only capture them but also harm their families.

I'm wondering if you've found any evidence that they export that terror—for lack of better words—and that North Korean operatives are outside of South Korea, in other countries, looking for those who've escaped North Korea.

• (1325)

**Hon. Michael Kirby:** There have been cases of violence from North Korean sources reported in South Korea; however, that is not the source of the problem. The source of the problem is that if families can be linked to people who are friendly to the Republic of Korea, it is definitely not a good development from the point of view of the family left in North Korea. Keep in mind that the border is a completely artificial line placed arbitrarily along the parallel in the Korean peninsula, and families have been separated and have been unable to make contact with each other.

We were under instructions from the United Nations to first do no harm; therefore, we interviewed about 300 witnesses before we had to cut off the number of witnesses. We reached a conclusion that of the 300, about 80 could safely be interviewed in public. Even some who wanted to be interviewed in public we did not interview in public, because we wanted to protect the families. Nonetheless, some had already been open about their engagement with the human rights movement, and some we judged not to have a family that would be at any risk in the north. That was the caution we observed. We were very strict on this, and that was our mandate. It was what was required anyway in fair dealing with the people who came before us.

But we had no difficulty getting witnesses. It's very important to say that there was no problem getting evidence. You may have seen in the media one witness, Mr. Shin Dong-hyuk, who retracted part of his testimony. North Korea made a great fuss about this. As a judge of 34 years, I know that sometimes people overstate their case and overstate their testimony. The fact is that much of Mr. Shin's testimony is strongly corroborated by other witnesses. The part that he gave relating to his escape from a particular camp—Camp 14, a higher-security camp—has to be excised from our reasoning. But even when that is done, there is so much overwhelming and acceptable evidence from other witnesses, and still believable and acceptable evidence from Mr. Shin himself, that adds to the full picture of oppression, hostility, and cruelty of the totalitarian regime that has been established for 70 years in North Korea.

**The Chair:** Mr. Marston, please.

**Mr. Wayne Marston (Hamilton East—Stoney Creek, NDP):** Thank you, Mr. Chair, and welcome, Mr. Kirby. I'm very pleased to have you here.

I've been on this committee for 10 years now, and often we've discussed the situation in North Korea. I had the good fortune to visit the DMZ, as I was telling you earlier. It was shocking that the military from the north were so fragile and undernourished. They feed their armies first, so the people had to really be suffering.

I've had conversations with people, and I'm not sure whether we had the actual testimony here, but the belief is that there might be a regime collapse within five years, that there are internal disputes and problems happening that are not really seen that clearly outside. First, I'd ask if you'd consider that question.

Also, when Kim Jong-un first came in, as you say he was seen as almost a playboy to some extent, and very superficial.

Do you believe he's actually in charge of the country? I certainly question that.

**Hon. Michael Kirby:** First of all, in relation to regime collapse or regime change, please keep in mind that we were officers of the United Nations. North Korea, DPRK, is a member of the United Nations. It has signed the Charter of the United Nations, with its strong commitments to peace and security, economic equity, and universal human rights. North Korea has also signed a large number of the treaties of the United Nations on human rights.

It was not part of our work, nor did we ever suggest, that there should be a regime change as a precondition for change. The simple point we made was that nobody has to be a member of the United Nations—it's not obligatory—but if you do become a member, you are subject to the obligations of the charter and of the Universal Declaration of Human Rights and of the human rights treaties that you join. Therefore, we were extremely careful never to suggest or speak about regime change, because that would have been disrespectful to a member state of the United Nations.

As to what will happen in the future, that is a matter on which whole libraries of books have been written; there's a great interest in it. However, our recommendations are addressed to getting North Korea to change itself, to accept the principles of the international instruments. If they don't, then the R2P principle, which was adopted in 2005 by all the member states, heads of government, and heads of state who were present at the General Assembly of the United Nations, commits other member states of the United Nations to take over where the relevant country is failing and to do what can be done to ensure that accountability for great crimes and improvements in human rights can be achieved.

There have been tiny improvements. For example, North Korea has signed, but not yet executed the disability convention. As well, prior to that, North Korea did not have any people with disabilities evident in Pyongyang. It was to be the perfect city, a model city; whereas now you will see people in wheelchairs in Pyongyang. So there are small changes, including engagement with the universal periodic review. If that continues, that's an improvement.

The Russian ambassador said to us, when we called on him in Geneva, that where there is credit due, give credit. We always gave credit where we could see it. I have to confess that it was small pickings. There were not many instances where we could sincerely say that we saw any improvement in the human rights situation in North Korea. Our report is a melancholy tale of serious abuses in terms of all of the 10 heads of our mandate, and crimes against humanity on a number of them, which demand action by the international community.

• (1330)

**Mr. Wayne Marston:** Do I have some time, Mr. Chair?

**The Chair:** One minute.

**Mr. Wayne Marston:** I've had occasion to meet a couple of people who escaped, and they do tell some pretty horrific stories. One of the things that struck me when you started your remarks was the fact that when you presented your report there were a number of countries that flat out opposed it.

Could you expand on that a bit? Did they disbelieve the testimony? Did they think it was a flawed report—the methodology—or did they give any rationale at all?

**Hon. Michael Kirby:** Most of the countries that voted “no” in the Human Rights Council and the General Assembly, and even in the Security Council, took no issue with the content of the report of the commission of inquiry. They objected, as they put it, to specification inquiries. They said that had been the fault of the former Human Rights Commission and that in establishing the Human Rights Council, with the procedure of universal periodic review, the way forward in international pursuit of human rights was not finger-wagging or naming-and-shaming, but engagement and mutual criticism of each other, and that view was expressed by countries such as Cuba, the Russian Federation, China, and so on.

However, once you have a report, which was commissioned by the Human Rights Council of the United Nations, and the report is performed honestly and with integrity and with transparency, and you have it on your table, it takes a very high level of formalism for you then to say, you don't care what the report contains, that you're just against country-specific mandates and, therefore, that you're not even going to open the pages.

That surely cannot be the way the United Nations' system operates, and the very large votes in the Human Rights Council, the General Assembly Third Committee, the plenary of the General Assembly, and now in the Security Council on a procedural motion, is an indication that people are, I think, really fed up with the non-engagement of North Korea, its refusal to cooperate, and its charm offensive so long as it hoped that that would stave off referral to the Security Council, and then its almost total reversion to non-engagement, which has happened since the decision of the Security Council to place this matter on their agenda.

So that's where we stand at the moment, and the real challenge is how this matter will be pressed forward in the Security Council, given the position adopted by China and the Russian Federation, two P5 members.

One step that was recommended by the commission of inquiry was the establishment of a field office in Seoul. The objective of that

was to continue the work of the commission of inquiry, collecting testimony and getting the statements of people who have been victims of grave crimes against humanity, so that when in due course it becomes possible, either in the International Criminal Court or in some other tribunal, that testimony will be placed before an independent decision-maker and people will be held accountable to the standards of the United Nations. It will all be prepared and it will be ready.

In the Second World War, there was some evidence toward the end of the war that the conduct of Nazi officials and others was moderated by the fear of accountability at the end of the war. So what we have to hope for is that the actions of placing this matter on the agenda of the Security Council and all the decisions of the UN organs will render those in North Korea who have responsibility for the prevention of crimes against humanity and for securing accountability for crimes against humanity to take into account the possibility that at some future time this might be a matter that will be called to account.

That was the reason why I, on behalf of the commission of inquiry, wrote to Kim Jong-un, and that we sent him a draft when we completed our report. We asked for his comments and drew to this attention that in international law those who have the responsibility for crimes of this kind, or who having the power to prevent them fail to do so, are responsible for those crimes and will be held to account.

I was told at the time that that was something the United Nations had never previously done, but that didn't deter me or the commission of inquiry at all, because it was simple due process to give people, whom you are providing with evidence that might one time have to be dealt with, notice that that is the position, that if they have the power and they hold back from taking steps that should be taken, then one day they may be accountable.

• (1335)

It's in the furtherance of that day that the work of the commission of inquiry was in part devoted.

**The Chair:** Thank you.

Colleagues, I'm going to have to reduce the length of time for the questions and interventions to five minutes due to the fact that the first two rounds went longer than expected. That's not a criticism of how they went. It's merely a reflection of the schedule.

Ms. Bateman, please.

**Ms. Joyce Bateman (Winnipeg South Centre, CPC):** Thank you very much, Mr. Chair.

Thank you very much, Mr. Michael D. Kirby. Your dad would be very pleased.

**Hon. Michael Kirby:** My father would be pleased.

**Ms. Joyce Bateman:** He would be.

Thank you for the work you've done.

Towards the end of your comments, sir, you were talking about action and the referral of matters related to North Korea to the International Criminal Court. Could you outline what would be a best-case scenario outcome at this juncture?

**Hon. Michael Kirby:** The best-case scenario for securing accountability would be for the case of North Korea to be referred by the Security Council of the United Nations, with it exceptionally exercising jurisdiction under the Rome statute, which sets up the International Criminal Court, to refer the file of North Korea to a prosecutor of the International Criminal Court.

The commission of inquiry was not a prosecutor. It was not a tribunal. It was not a judge. It was a fact-finder. We found matters on the basis of a reasonable reason to believe the truth of what we had heard on specified matters that should be considered by a prosecutor.

Then the prosecutor would make a prosecutorial discretion as to whether it should be referred on to a tribunal, and the most available, cheapest, already established, and independent such tribunal is the International Criminal Court. That would be, in the opinion of the commission of inquiry, the most speedy and effective way that the matter should progress, and that is why we made that recommendation.

But because North Korea is not a party to the Rome statute, it requires the exceptional decision of the Security Council to refer the case of North Korea to the prosecutor of the International Criminal Court. That has been done twice before, once in the case of Darfur, and secondly in the case of Gaddafi and Libya. Of course, Colonel Gaddafi was later killed in the course of the military operations, but the Security Council, during that very turbulent time, agreed, with the five permanent members either abstaining or voting for referral of Libya to the International Criminal Court.

There are those two precedents where the P5 did not stand in the way of the referral of the case to the International Criminal Court. That is what I hope will ultimately be done. We shouldn't be too pessimistic about the Security Council. People say to me that there's no way that China and the Russian Federation will take that course, but if you remember, in the case of the downing of the MH17 plane, that was a matter that was very close to the geopolitical concerns and interests of the Russian Federation.

But there's something about propinquity. When people are in a room and with the great responsibilities of the Security Council, often geopolitics will trump human rights, but sometimes, just being present with a world problem—and an undoubted world problem, which is portrayed in the report of the commission of inquiry—some solution will be made in some circumstances to refer the matter to the International Criminal Court. That has happened twice before, and I am still hopeful that it will be done in the case of North Korea.

• (1340)

**Ms. Joyce Bateman:** Do I still have one minute?

**The Chair:** One minute.

**Ms. Joyce Bateman:** Briefly, I'm very heartened to hear of your testimony to my colleague Mr. Marston that for Mr. Shin, even with his recantation, there was still significant corroboration with the other witnesses that you heard. Did that affect in any way the overall credibility of the commission?

**Hon. Michael Kirby:** Not at all. In fact, we made statements so that it didn't affect it.

Mr. Shin, in the manner of the North American media, was created a kind of poster boy and sort of celebrity. This tends to happen in

some parts of the world, but so far as the commission of inquiry was concerned, he was just another witness.

North Korea has constantly rejected the suggestion that there are detention camps, but we had objective evidence. We had satellite images, some of them provided to us through defence satellites, but most of them just through Google Earth. You can google the coordinates of where the prison camps are said to be and all of the paraphernalia and the descriptions that are given by the witnesses are borne out by just going down with very high accuracy to the places where the prison camps are.

There is objective testimony of the existence of prison camps. There is some evidence of relocation of people, and perhaps the closure of some prison camps, but we are not convinced. The commission of inquiry was not convinced that was a result of a policy of scaling down the prison camps but rather the redistribution of people within the prison camps that already exist.

But let there be no doubt that there are detention prison camps outside the ordinary justice system of North Korea where very large numbers of people and their families are kept because of their political views and where many are starved to death in conditions of barbarity.

• (1345)

**The Chair:** Thank you.

Professor Cotler, please.

**Hon. Irwin Cotler (Mount Royal, Lib.):** I'd like to begin, Justice Kirby, if I may, not only by commending you for your testimony today and your comprehensive report, but really also for a lifetime of commitment to human rights and the rule of law.

In your commission's final report, in which you document the wide array of crimes against humanity, you conclude by saying that the gravity, scale, and nature of these violations reveal a state that does not have any parallel in the contemporary world.

Now this is, as you pointed out clearly, an R2P situation, but if it is an R2P situation, the question arises how can the international community now on the 10th anniversary of R2P best give expression to this imperative in the case of North Korea.

Of course, a reference by the UN Security Council to the ICC would be the best example, and it's always possible this may happen, but I'm not unmindful of the fact that with regard to Syria we were prevented from invoking the R2P there because China and Russia again and again exercised their veto.

My question is what can the international community do either to persuade China and Russia, or if that does not work, other initiatives that we might take, and in particular how may Canadian parliamentarians assist in this regard?

**Hon. Michael Kirby:** First of all, Professor Cotler, I pay my respects to you. In our respective earlier lives, you as an academic and me as a practising judge, we met on a number of occasions and I'm most respectful of your question.



I think the answer I would give is the answer I gave when I was asked a very similar question in the General Assembly: what can we do? The answer I gave at the time was that whenever you meet the representatives of DPRK in the corridors, you should tell them that this is not acceptable. Whenever you meet the representatives of China and the Russian Federation, you should give them the same message.

We are, after all, this month and next month celebrating the enormous sacrifices of the Red Army and the Russian people in bringing an end to the Second World War, in which they were close allies of Canada, Australia, the United Kingdom, and the other P5 countries. They have an interest in securing peace and stability.

There will not be peace and stability on the Korean peninsula so long as there is a disrespect of fundamental human rights. This is a reality that I think needs to be brought home to them.

In the meantime, there's work to be done. Next month a field office will be established to continue to collect the testimony, and the greatest peril, as far as the follow-up of the report of the commission of inquiry goes, is that, because of other pressing international concerns, it will go off the agenda.

That is why I'm so grateful to this committee of the Canadian Parliament that you are signalling today that this is not off the agenda but that it is still on the agenda and it has not been repaired. I would hope that this committee will continue to operate and continue to remind people of the work of and the report by the commission of inquiry, but we should not give up on the work that the Security Council can do if it chooses to do so.

Somehow there needs to be a way for Russia and China to see, whatever their geopolitical concerns, that there are deep issues of human rights in a country that has the fifth-largest standing army in the whole world, with a population of 24 million, and which reportedly has 15 to 20 nuclear warheads and increasingly sophisticated missile-delivery systems, and which is now experimenting in submarine technology with the potential of spreading the power of the nuclear arsenal that it has.

This is an extremely serious issue for peace and security, and when you have countries with no respect for the fundamental human rights of their people, that is a very unstable situation. Therefore, it is of deep concern to Canada and people everywhere, and to the lives of people in the Korean peninsula. Accidents, mistakes, and risks are great, and we cannot simply put this into the "too hard" basket. We have to turn the intelligence and the unanimity of the human family to finding a solution to this problem.

• (1350)

**The Chair:** Unfortunately, we've passed the allotted and have to go to the next questioner.

Mr. Devolin, go ahead, please.

**Mr. Barry Devolin (Haliburton—Kawartha Lakes—Brock, CPC):** Thank you.

Thank you, Mr. Kirby, for being here today.

As someone with a long-standing interest in North Korea and these issues, I watched with great interest from a distance as you and

your commission did your work. What I think many of us found most interesting is that most of what you found was already known; there really wasn't a lot of new information. But I think it was an example of how a formal process, under the auspices of something like the United Nations, and the gathering and coherent presentation of information actually did change the conversation. The process that you and your commission of inquiry went through did make a difference and actually pushed this debate to the next level. I thank you and your colleagues for having done that.

When we talk about North Korean human rights and violations of human rights, of course, there are those who are still in North Korea. Then there are the North Koreans who have escaped overland into China, where they are still under threat, because as we all know, if they are apprehended by Chinese authorities they will be forcibly repatriated. It would seem that China is choosing not to take seriously its own obligations to not forcibly repatriate those who have reason to fear for their safety if they're sent back to their homeland. Then there is that underground railway that many of them take, which can take several years to get through China. Thailand is usually the destination of choice. And then some have resettled in South Korea and elsewhere.

But I want to talk about China for a minute, not about North Korea specifically. I question whether the international community has the ability to apply moral suasion against the DPRK to compel or persuade them to follow some of these international norms. China is difficult, but I think China provides a better opportunity for the global community to somehow persuade China not to forcibly repatriate North Koreans who have escaped. Maybe China doesn't want those people to stay in China, but I've often wondered whether the international community could come together and essentially make an offer to China, saying, "If you apprehend North Koreans, bring them to us and we will relocate them; we will deal with them from that point forward".

I'm curious about what your thoughts are on that. Would there be a way to approach China—maybe from the side, so to speak, rather than in a direct confrontation on this matter—to try to create a situation where the lives of North Koreans who have made it over the first wall into China, but not over the second wall out of China, could be improved and the possibility of their ending up somewhere safe would be improved?

**Hon. Michael Kirby:** It is true that the escape lines have been made more difficult in recent times. The usual mode of escape was across the rivers in the north of the Korean Peninsula during the winter when the rivers froze over.

But one of the duties that was assigned to Kim Jong-un by his father during his father's lifetime was to go up to the border area. Reportedly he was shocked by the porous nature of the border, which was so defensive of the escape of so many people from North Korea. Therefore, both DPRK and China have built barriers that make it much more difficult to escape in that manner.

But when they do make it across, as a continuing stream does, then they often have to seek refuge and help from faith-based organizations from South Korea, which then can put them on the escape lines, rather similar to the way Canadian, British, and other soldiers in the Second World War were shepherded through France, down to the Pyrenees, and out into freedom.

If they go to Thailand, they're reasonably safe. Thailand will not send people back to North Korea. Laos, on the other hand, sent a whole planeload of young people, after they'd gone through their escape, back to North Korea in contravention of international refugee law.

I thank you for thinking outside the square. I think this is exactly what we should all be doing, because if you keep hitting your head on the P5, and the veto, and action in the Security Council, you may simply do damage to yourself and not much good for the Korean people.

One of the points that has been made to me in recent days is that countries like Australia, Canada, and the United States could possibly do some good for people who have gone through this tremendous ordeal to escape and who for one reason or another do not have refuge in another country for asylum. There are such people and I think it's fair to say that the figures show that Canada, which has a famous story of receiving and protecting refugees, the United States likewise, and Australia to some extent too have not been generous in the way they have welcomed North Korean refugees. The United States I think has only taken something like 130—a very small number.

South Korea, of course, has a right of citizenship. If you arrive, if you can get there, you have a right to be a citizen. For various reasons some people don't want to go there or can't go there and therefore seek refuge elsewhere.

That is something that this committee might care to consider, along the lines that you have suggested. I think that's a good idea. We should be motivated by respect for the people.

I've come here from Salzburg, where we had a global seminar. In the course of the seminar one of the speakers, exceptionally, put on the screen photographs taken by her during her time in North Korea. Some of the photographs were of Pyongyang, which show a surprisingly modern looking city, though very empty streets. But other photographs showed young children from North Korea dressed in very cheap-looking Chinese, but warm, wind cheaters and garments against the terrible cold of the Korean winter. As one looked at them and at the school children shown in the photographs, staring straight at you, as a western person looking at these people who are victims, you realized you cannot hate the people of North Korea. You certainly cannot hate the children and the youth of North Korea. They are themselves victims of very great wrongs.

• (1355)

It's important that we never lose sight of the people who are behind the geopolitical and human rights issues in the great chambers of the United Nations and even in this Parliament. People out there in Korea don't know we are meeting today and don't know we are talking about them. But it is a sign of the world we live in that we have sufficient love of people in a faraway country with terrible

weapons at their disposal who are still human beings and who deserve and would expect if they knew that the United Nations, the world, Canada, Australia, and other countries would do what they could to alleviate the suffering.

**The Chair:** Thank you.

We have one questioner left. Just before we go to him I want to be clear and mention that this comes out of discussions I've had with Mr. Devolin. My understanding is that there is a special and unique problem with regard to people who have left North Korea. In theory they can go to South Korea, but in practice South Korea is a destination they may wish to avoid for the safety of their families and themselves. Are you able to comment on that?

• (1400)

**Hon. Michael Kirby:** I can't comment in any way disrespectfully of the Republic of Korea, or South Korea. South Korea has absorbed 27,000 to 28,000 refugees. It gives them a passport. They are entitled to citizenship under the constitution of the Republic of Korea, because South Korea asserts that it is the legitimate government of the Korean peninsula.

But it is true that a proportion, not a big proportion I think, feel alienated from some aspects of life in South Korea. Normally North Korean citizens are significantly shorter than their confreres in South Korea. They therefore tend to stand out and getting through that process of vetting and getting into a job, getting opportunities, is not easy in South Korea. Some would wish to and could make a useful contribution to countries like Canada, Australia, the United States, but we take very few because we say they can go to South Korea. But what must not happen is *refoulement*, the sending back of people to North Korea, because even if they left North Korea as economic migrants seeking a better life, if they are sent back they are very severely punished, some reportedly even with execution. Therefore it is a very serious thing to send them back and it should not happen.

**The Chair:** Thank you.

[Translation]

Mr. Morin, you can ask one last question.

**Mr. Marc-André Morin (Laurentides—Labelle, NDP):** Thank you, Mr. Chair.

Thank you for joining us, Mr. Kirby.

I don't know whether you have a lot of information on the situation in North Korea, on what is happening inside the country. I believe that repression always contains an economic aspect. For instance, it is easy to see that in the example of the Holocaust, when Germany's entire economy was tied in with the concentration camp activities. Moreover, the mass murder of millions of Jews in Europe was a source of revenue and funded their own repression.

According to what I have heard, in North Korea, there is a new privileged class of North Koreans who work in factories on the border that are often controlled by large international companies. The people who work there have absolutely amazing lifestyles compared to ordinary North Koreans who are starving. The source of the regime's collapse is probably the creation of a privileged class of North Koreans who are exploiting their peers. In addition, the funding mostly comes from factories operated by South Korean or Chinese companies.

What are your thoughts on that?

[English]

**Hon. Michael Kirby:** It's true that the economy in North Korea has, to some extent, been stimulated by areas that are often on the border, especially the border with China, which allow joint projects. *The Economist* magazine last week reported that the economy of North Korea grew by 7% last year. Whether or not that's true, it certainly has improved. But whether that gets into the pockets of all the people of North Korea is the point of your question.

The North Korean regime has a so-called *songbun* system, which divides people up in a kind of caste system. Actually there are 55 subcategories, but essentially there are three categories. There is the core class, who are the friends of the regime. There is the wavering class. And there is the hostile class. These are old-fashioned communist-type words. Most people are not in the core class. Most of the core class live in Pyongyang.

It is in the interests of all people in North Korea for the economy to improve. With improvement of the economy there will be a trickle-down effect to all people.

One of the most interesting people I met last week in Seoul is a young man who, outside of North Korea and Korea, has established a business through which he is engaging with some of the escapees. The point he made was that when they get the smell of the capitalist system, they are full of energy, ambition, and a desire to do as well as their cousins do in the south.

South Korea is an extremely successful economy. If the North Koreans can get some of the same attitude and success, their economic position will improve. But sharing it around is going to be very difficult.

● (1405)

[Translation]

**Mr. Marc-André Morin:** A question came to me while you were talking.

If we see that there are indeed sources that supply the regime with capital, shouldn't we take some measures—for example, when we sign agreements with countries—to ensure that Canada is not doing business with companies that use slavery, in one way or another?

Shouldn't we impose penalties against companies or countries that take advantage of people working in slave labour conditions? Could that not be a way to deal with it?

[English]

**Hon. Michael Kirby:** This would take me into areas in which I am not an expert, but I think it's a legitimate question. It's a little bit analogous to the issue of trafficking and those who take advantage of the escapees. It's also analogous to the quite significant and increasing numbers of North Korean workers who go into neighbouring countries to work—and sometimes distant countries, like Gulf countries, to do particular jobs—and get only a small fraction of the money that is paid to the Government of North Korea for the work they perform.

I think you'd have to balance, on the one hand, the desirability of promoting economic improvement in North Korea and, on the other hand, the misuse of those zones of joint activity. That would require quite a lot of consideration before you could begin sanctioning economic development.

On the whole, economic development, as we've found in other countries, such as Cambodia, is often going to be a key to improving the life of ordinary people. To the extent that we can do that, we can save people from starving.

Never forget that in the 1990s, of a population of 24 million, according to our estimates, a million North Koreans starved to death. At the same time, North Korea was expending huge resources, which could have been devoted to their starving population, on nuclear armaments, on a huge army, and on missile-delivery systems.

It's a matter of trying to get them interested in economics rather than armaments. That is the integrated nature of human rights and also of peace and security.

● (1410)

[Translation]

**The Chair:** Thank you, Mr. Morin.

[English]

Mr. Kirby, thank you for taking the time to come here to provide us with your testimony. It has been very enlightening indeed, and we are grateful to you.

**Hon. Michael Kirby:** Thank you very much, Mr. Chairman.

I pay my respects again to the Parliament and to the people of Canada for the support that Canada gave to the work of the commission of inquiry.

**The Chair:** Thank you.

Colleagues, we will be meeting in camera on Thursday. I look forward to seeing you then.

The meeting is adjourned.





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