

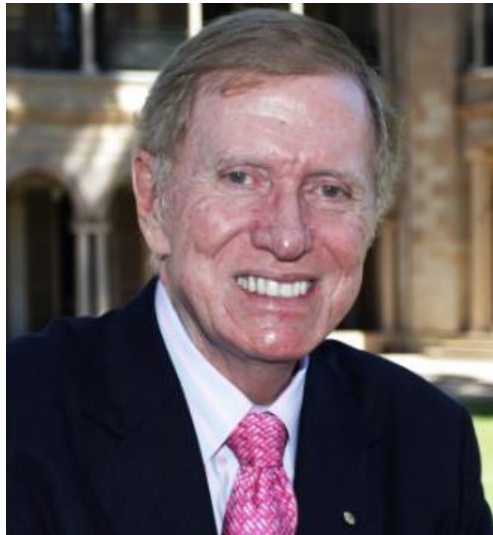


SALZBURG GLOBAL SEMINAR

Session 535

Symposium on Holocaust Education and Genocide Prevention: Sharing Experience Across Borders 21 June – 26, 2014

**Letter to the participants of Session 535 from
The Hon Michael Kirby AC, CMG**



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COMMISSION OF INQUIRY ON HUMAN RIGHTS
IN THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

31 May 2014

**SALZBURG GLOBAL SEMINAR: HOLOCAUST AND
GENOCIDE EDUCATION SYMPOSIUM
21 – 26 JUNE 2014
GENOCIDE BEYOND EUROPE**

I applaud the program at which the marvellous Salzburg Global Seminar will address issues presented by holocaust and genocide education.

I have just concluded my duties as chair of the United Nations Human Rights Council's Commission of Inquiry on human rights violations by the Democratic People's Republic of Korea (DPRK) (North Korea). The report of the Commission of Inquiry is available online:

<http://www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/Documents.aspx>

It was presented to the HRC on 17 March 2014, and to the members of the Security Council of the United Nations on 17 April 2014.

The mandate of the COI required it to report on human rights violations by the DPRK, including where any such violations rose to the level of 'crimes against humanity'. In the course of its investigation, the COI addressed the issue of whether 'genocide' had been shown to have occurred in the DPRK. In the end, relying on the definition of 'genocide' in the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, the COI did not conclude that there were reasonable grounds for finding that genocide had occurred – even though there was plenty of evidence that conduct by the government and agencies and officers of the DPRK had targeted particular segments of the population. Normally they had done so on the basis of their political opinions, where these were considered hostile to the government.

The current definition of 'genocide' in the Convention is confined to the targetting of populations, or parts of populations, on the basis of their ethnicity, nationality, race or religion. A question now arises as to whether this unduly constricts the categories of 'genocide' as recognised by the international community since the Convention was debated and adopted in 1948. The debate and drafting at that time were greatly influenced by the circumstances and features of the Holocaust, in particular as it targeted the Jewish populations of Europe on the basis of their ethnicity, nationality, race and religion. The cases of Cambodia and DPRK (and doubtless others) appear to indicate that a further category founded on political opinion could be justified. In fact, in the opinion of the Commissioners of the COI on DPRK, such an additional category would be analogous to the category of religious belief, since both are features of humanity not inherited at birth but derived subsequently and based on moral, philosophical and spiritual values and beliefs.

The foregoing issues are discussed and explained in the COI report. In the end, the COI had plenty of evidence of 'crimes against humanity'. It rejected the notion that 'genocide' was a 'gold standard' international criminal offence. Crimes against humanity are extremely grave international crimes and no hierarchy could be adopted suggesting that they somehow belong at a lower level of seriousness.

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Nonetheless, this issue deserves closer attention in any educational program addressed to the current features of 'genocide' in our world, and the features of that international crime that are likely to reoccur in the future. I invite attention to the paragraphs of the COI report in which the commissioners expressed and explained their conclusions, but also indicated that the matter deserved further attention from the international community.

The lesson of history is that such further attention often begins in relatively humble ways. It begins in the minds of civil society organisations and human rights activists. It is continued in scholarly institutions, universities and international law institutes. It is ultimately debated among national governments and finally brought to consideration and determination in the forums of the United Nations itself.

In the present age, and particularly in the world of human rights, we are not captives of the past. Boundaries of international and universal human rights continue to be expanded in order to meet the grave wrongdoing committed by some human beings against others.

Few international institutions have had more influence over the years than the Salzburg Global Seminar. In the past, I have had the privilege of attending the seminar on a couple of occasions. Now there are new issues deserving its attention. These include: the global approach to narcotic drug control; human rights issues presented by HIV; the issues of animal rights, protection and welfare; the international issues of LGBTIQ rights and the resistance to respect for them on the grounds of supposed religious and cultural values; the issue of intellectual property and pharmaceuticals as it impinges on the right of access to essential healthcare necessary for human life; and issues raised by climate change. One further issue can be added, in the light of the above discussion and the work of the COI on DPRK, namely the modern definition of 'genocide': whether the current definition in the Genocide Convention is too narrow, and whether it should be expanded to include the destruction of a population, or part of a population, on the grounds of the political opinion that its members hold or are believed to hold.

In the hope that this may attract the future attention of the Salzburg Global Seminar I send greetings to the participants in the Holocaust and Genocide Education Symposium in June 2014.



Michael Kirby
Chair, of the UN Commission of Inquiry
on Human Rights in North Korea (2013-14)

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**Statement by Mr Michael Kirby Chair of the Commission of Inquiry on
Human Rights in the Democratic People's Republic of Korea to the 25th
session of the Human Rights Council, Geneva, 17 March 2014**

President,
High Commissioner,
Distinguished members of the Human Rights Council,
Excellencies,
Ladies and gentlemen,

Last century, the world was faced with the Nazi ideology that sought to relegate people to the condition of lesser beings. It used terror, discrimination and extermination in concentration camps to achieve its ends. It deployed totalitarian control to silence its critics.

The world said 'never again'. It proclaimed the Charter of the United Nations. It declared universal human rights as our shared destiny.

Thereafter for almost 50 years, another terrible scourge of humanity reigned in South Africa: apartheid, the system of racial segregation under which the rights of the majority were curtailed and those of the minority maintained. When it fell, the world said never again.

In the 20th century, the conscience of the world was shocked again by the cruelty of the Khmer Rouge. They arbitrarily executed and tortured those perceived as subversive elements. They starved their population in the name of self-sufficiency. Virtually no-one was untouched. When the killing fields were discovered, the world said never again.

Here we are in the 21st century. And yet we are faced with a remaining and shameful scourge that afflicts the world today. We can no longer afford to remain oblivious to it, nor impotent to act against it.

The Commission of Inquiry has found systematic, widespread and grave human rights violations occurring in the Democratic People's Republic of Korea. It has also found a disturbing array of crimes against humanity. These crimes are committed against inmates of political and other prison camps; against starving populations; against religious believers; against persons who try to flee the country - including those forcibly repatriated by China.

These crimes arise from policies established at the highest level of the State. They have been committed, and continue to take place in the Democratic People's Republic of Korea, because the policies, institutions and patterns of impunity that lie at their heart remain in place.

The gravity, scale, duration and nature of the unspeakable atrocities committed in the country reveal a totalitarian State that does not have any parallel in the contemporary world.

These are the ongoing crimes against humanity happening in the Democratic People's Republic of Korea, which our generation must tackle urgently and collectively. The rest of the world has ignored the evidence

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for too long. Now there is no excuse, because now we know. In today's world, billions of people have direct access to the horrifying evidence.

Last month - when the report was made available online - it received broad media coverage. But the findings of the Commission were not available to the people in the Democratic People's Republic of Korea.

What is important is how the international community now acts on the report. What is most important is immediate action to improve the lives, and fulfil the human rights, of the ordinary citizens of the DPRK. A compelling report and wide media coverage are good. But they are woefully insufficient.

Satellite images show the Democratic People's Republic of Korea, at night, immersed in darkness in stark contrast to the blazing lights of its neighbours. This visual impression epitomises the accounts conveyed to the Commission by the brave witnesses who came before it. Their country is a dark abyss where the human rights, the dignity and the humanity of the people are controlled, denied and ultimately annihilated.

The DPRK called the resolution this Council passed without vote to establish the Commission "a political chicanery which does not deserve even a passing note". The Commission's findings have been characterized by the DPRK as "sheer lies and fabrications deliberately cooked up". We have been accused of "politicising human rights". We are labelled as "marionettes of the string pullers". The release of the report has been described as a "politically-motivated provocation aimed to tarnish the image of the dignified DPRK and ramp up pressure on it in a bid to bring down its social system".

The Commission does not ask anyone to believe blindly what we say.

Read for yourself the words from the testimony of hundreds of witnesses who spoke to the Commission of extermination, murder, enslavement, torture, imprisonment, rape, forced abortions and other sexual violence. Their testimony is not only in the documents before you. The authentic voices of victims, families and experts who participated in the Commission's public hearings are on the Internet - the same Internet that billions on our planet now use, but access to which is denied to the ordinary people of the DPRK. Ask yourself, why this regime forbids such access? Why does it punish its citizens for watching harmless soap operas from abroad? Why does it restrict radio and television sets to government controlled stations?

Listen and watch for yourself the public hearing witnesses who spoke about the state sponsored discrimination and classification of people; persecution on political, religious, racial and gender grounds; the forcible transfer of populations; the enforced disappearance of persons; human trafficking, forced abortion and the murder of children; and the denial of food and needless death by starvation.

Make up your own mind on what could be the truth and what could be fabrication. Freedoms of thought and conscience are rights that many of us take for granted. But they are forbidden in the Democratic People's Republic of Korea.

If letting victims raise their voices is politicising human rights, how then can we help these victims?

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If the Human Rights Council is not the place to speak up about the atrocities that we have been told of, or to speak about accountability, then where is the venue? Is there any venue? Or is the world to continue to look the other way?

If the International Criminal Court is not the place where crimes against humanity are to be addressed, then where do we seek accountability for these wrongdoings?

We have been told to use dialogue, to avoid confrontation, and to employ cooperation. We have even been criticised for failing to go to the DPRK and engage with its people. All of our efforts to initiate dialogue and to offer cooperation have been spurned by the Democratic People's Republic of Korea, even up to this month when we reached out yet again to the DPRK and offered to come without preconditions and brief their Geneva Mission. Our offer to go to Pyongyang and answer questions has been ignored. All contact has been rebuffed.

The DPRK claims that the establishment of a country-based mechanism is political confrontation. Does the same argument then apply to the Human Rights Council's Universal Periodic Review, where the DPRK has not accepted a single recommendation? It has been said that country-mandated Special Procedures are a provocation. So can the same then be said of the thematic-mandated Special Procedures that have not been invited, nor permitted to visit, the country in the last 20 years? For a place where human rights are said to be perfect, this is a country that is strangely unwilling to reveal itself to others.

Members of the United Nations: the Commission of Inquiry challenges you to address, with no further delay, the suffering of millions of North Koreans. They have been in the forefront of our minds this past year. Think of them. And act.

Authorities of the Democratic People's Republic of Korea: the Commission of Inquiry challenges you to respect the human rights of your citizens.

If you claim that only through dialogue and cooperation the crimes that we have uncovered and the gross human rights violations that we have brought to light can be addressed, then start that dialogue now. Commence that cooperation immediately.

Commit yourselves to an open and honest exchange today in this forum, during this session. Dismissal of our report and of its findings by the DPRK should no longer be accepted by the Council as a sufficient response to allegations of such egregious violations and serious crimes. Now you have a comprehensive report. And, through our report, the victims of great wrongs now speak directly to this Council and to the world.

Show goodwill. Immediately release, without condition, the tens of thousands of your citizens who are convicted of offences that were political in nature. Those who did not receive a fair trial. Those who were tortured. Demonstrate cooperation by allowing independent monitors to check and verify that no one in detention is harmed or tortured, or kept incommunicado.

Abolish immediately and completely the discriminatory *Songbun* system, an apartheid of social class.

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Prioritize the fight against hunger and malnutrition with all available resources over propaganda and personal glorification. Wind back the gross overspending on the fourth largest army on the planet in favour of food for the people. Allow humanitarian assistance in accordance with humanitarian and human rights principles.

Engage in dialogue by disclosing the whereabouts of those who have been forcibly abducted from Japan, the Republic of Korea and other countries.

Allow separated families to communicate with each other through mail and telephone and to permanently reunite. Everyday. Any hour. Not just a very few in a year, for just a few hours, won by lottery ballot amongst tearful Koreans grateful for such crumbs. These are human beings – many of them in their twilight years. They are not political pawns to be used for bargaining and negotiation.

The findings of the Commission are hard to hear, but truthful.

Our conclusions are heavy, but inevitable.

The recommendations are challenging, but unavoidable.

These are the only recommendations that we could possibly arrive at following the horrendous but credible accounts that we have heard these past months. They are the recommendations that our conscience requires us to put forth to you, to address the kind of atrocities that we have encountered through the evidence of those who have suffered. Plain speaking of their suffering requires me to say that it has been caused, in part, by the indifference of the international community.

We have not made these recommendations lightly, fully aware of the weight of our words, and the gravity of our assessments. Nothing in our past lives could have prepared us for what we heard. Our duty is to report to the world the evidence we found. If this report does not give rise to action, it is difficult to imagine what will.

The Commission urges the Democratic People's Republic of Korea to immediately and unconditionally accept and implement all of the recommendations contained in this report.

The Commission urges all countries, including China, to respect the principle of non-*refoulement*, and, accordingly, to abstain from forcibly repatriating any persons to the Democratic People's Republic of Korea, given the fearful evidence that we have heard and recorded. There should be no forced return to DPRK by any State unless the treatment in DPRK, as verified by international human rights monitors, markedly improves. Asylum and other means of durable protection should be extended to persons fleeing the Democratic People's Republic of Korea who need international protection. The victims of trafficking should be given appropriate remedy.

The Commission urges the members of the United Nations and the international community, to accept their responsibility to protect and to implement all the recommendations contained in our report addressed to them: especially those related to accountability, including the referral of the situation of the Democratic People's Republic of Korea to the International Criminal Court.

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The recommendations of the Commission were formulated to be addressed immediately, in the medium and in the long term. Even those recommendations that require more time to be implemented demand attention and action to start now, immediately.

The Commission has completed its work within time and faithfully. We have discharged the mandate given to us by this Council. We have done so with integrity, impartiality and professionalism. You asked us to identify any human rights abuses and crimes against humanity. We have answered those questions with evidence. You asked us how those responsible might be rendered accountable. We have answered that question with the available options. And with long and short term actions to rebuild person-to-person contacts in Korea. We have fulfilled our function. It is now up to the Member States of the United Nations to fulfil theirs. The world is now better informed about Korea. It is watching. It will judge us by our response. This Commission's recommendations should not sit on the shelf. Contending with the scourges of Nazism, apartheid, the Khmer Rouge and other affronts required courage by great nations and ordinary human beings alike. It is now your duty to address the scourge of human rights violations and crimes against humanity in the Democratic People's Republic of Korea.

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Short Biography of the Hon Michael Kirby

When he retired from the judicial service on 2nd of February 2009, Michael Kirby was Australia's most distinguished and longest serving judge. After starting his legal career as a solicitor and barrister, he was first appointed as a Deputy President of the Australian Conciliation and Arbitration Commission – youngest person ever to hold federal judicial office in Australia. In February 1996 he was appointed as one of the seven Justices of the High Court of Australia, Australia's federal Supreme Court, a position he held until his retirement. In addition to his judicial service, Michael Kirby worked extensively with universities. He served as Chancellor of Macquarie University in Sydney (1984 – 1993) and currently holds Honorary Visiting Professorship at twelve universities worldwide. Upon his retirement, he became more actively involved in international institutions, including his most recent service as the head of the Commission of Inquiry on Alleged Human Rights Violations in the Democratic People's Republic of Korea (2013-14) which produced groundbreaking *Report of the commission of inquiry on Human Rights in the Democratic People's Republic of Korea (2014)*.