

COMMEMORATIVE SPEECH
at the
CONSTITUTIONAL MEMORIAL HALL
Tokyo, May 9, 2017

‘What is finally to be done with North Korea?’

by: Marzuki Darusman

Ladies and Gentlemen,

May I begin with expressing my respects to His Majesty the Emperor of Japan for the honor of receiving me at the Conferment Ceremony held at the Imperial Palace on the occasion of the investiture of high honor to me. I refer to the award conferred on me, the Order of Rising Sun Gold and Silver Star.

I take this moment to also extend my appreciation to the Government of Japan for the decision for such high honor to be bestowed on me. While humbled by the immense regard of the award, I remain, in shared sentiments with my esteemed colleague Justice Michael Kirby who has been likewise bestowed with the similar high honor, in doubt as to my worthiness in meriting this conferment.

In accepting, I was prompted by the realization that this award is no less a solemn recognition of the suffering and pain of all Japanese nationals and others and their families who have been victims of acts of abductions committed by members of the state apparatus of the Democratic People’s Republic of Korea (DPRK) – an almost half a century past long-standing matter of great urgency that remains unresolved to this day.

The conferment would also be an acknowledgement of respect to my country and to the United Nations for the invaluable role it plays in promoting and protecting human rights and peace in the world.

Excellencies,

Ladies and Gentlemen,

I should like to state my gratitude to Minister Kato for according me the privilege of delivering a Commemorative Speech at the Constitution Memorial Hall.

In line with the context in which this speech is presented, I shall maintain a focus on the background – far from celebratory – that has brought us to assemble in this hall today. The matter at hand, which continues to pose a challenge of a kind that requires us to constantly reinforce our resolve to see that challenge through, is to determine what is finally to be done with a problem that is encapsulated as ‘North Korea’?

Let us quickly go over the ground again. As we do that, we will touch on the personal affiliations many of us here and elsewhere, throughout all these years, have attached to this matter. We will be aware too that such a reviewing holds special meaning for the families of those abducted who are here with us today, in the hope that they will be reunited with their kin or, at the very least, that we will all finally know of their fate. Only they alone will know, however, how deep this will reach into their anguished grief.

I would start by saying that, unless justified, it can be somewhat awkward – overlaid with a slight sense of unease – to recount one’s own story, as it would perhaps be for all of us who are here in this grand hall this evening and not in any desolate and forsaken place in a faraway northern region.

In a way, however, that is what is being laid out here: a story of coming to terms emotively – but never to be accepted – with the most heartbreaking testimonies of human cruelty, and of a desperate search for deeper understanding, whilst being aware of the hundreds of thousands of men, women and children languishing in the grim institutions of incarceration, and the millions of individual human beings who continue to endure the most severe hardships in coping with the harsh daily life in a totalitarian state that is ‘without parallel in the contemporary world’ as described by the UN Commission of Inquiry (CoI) on the DPRK.

What follows are threads of scattered thoughts – jottings really - knotted jointly to make them more resilient, lest they break on their own - drawn out from the inner recesses of memory while serving as the second UN Special Rapporteur on the DPRK - fleeting recollections, flashes of reflections and personal renderings all rolled into one. It is perhaps quite rightly said that the logic of history is not one of discovery but of construction.

I should also say therefore that this writing goes out from a particular view that the case of Japanese abductees, steadfastly and sustainably constructed by the Government of Japan - prepared for an eventual legal representation - may hold the key to finally crack the facade of feigned innocence that the DPRK has shielded itself with for so long against charges of evident impunity from the international community.

Such writing would presumably be justified too if it can be perceived to serve a wider purpose of bringing to light a larger context : the plight of a whole people chained in bondage under the yoke of an unforgiving regime bent on constantly banishing its own people to the margins, which is momentarily the tragic fate of the people of the DPRK. I say momentarily as the deliverance of subjugated peoples is not, never will nor has been ever a lost cause in history.

Excellencies,

Ladies and Gentlemen,

In the search for alternative political resources, I have had to take recourse to gain understanding of near similar situations of conflicts in other parts of the world. This presentation is therefore interspersed with theoretical crutches here and there, explicitly acknowledged or otherwise, needed for the moment, until these shoots of thoughts are able to take root and carry themselves.

The sole aim of a critical – and therefore of necessity humanitarian - narrative on the DPRK can only be to bring to surface the excruciating torment of a suppressed people of a country terrorized into submission. Practically, it is to draw out a people forcibly silenced into abject docility by the unabated suppression of a state that purports to bear the banner of democracy – otherwise known as a system of government by, from and for the people – in its official self-appellation. It is to start yet another journey towards doing the only thing that one can do : to simply tell the truth and to keep on coming back to tell the truth, again and again and again.

The truth here then begins with the unyielding insistence of the international community to secure the complete and unrestricted visibility of the people of the DPRK.

As we enter further into the 21st Century, the ‘sui generis’ case, as depicted by Viti Muntharborn, of the DPRK remains the grotesque picture of the utter depth of regression that humankind is capable of and of the dismal state of universal human rights today.

The DPRK constitutes the black hole – where light is absorbed into complete darkness – of this region, a strange part of the cosmos of the present unstable world inter-state power structure.

Excellencies,

Ladies and Gentlemen,

The 20th Century has now receded into the background. Formerly closed societies and states have opened up – in some cases gradually - including large states that are manifesting the stresses and strains of a loosening up socio-political dynamic.

While revolution against domination might be said to have been the main historic experience at the beginning of the past century, following from the mid-century on, it was the promotion and protection of human rights and democracy that defined the period, both processes which are now continuing apace into the next new century.

Against that backdrop, it would seem as if for the DPRK the past has gone on much longer than its temporal period, encasing it within a time warp from which it seems unable to escape. Would this fundamental arrested condition of the state, eventually leading it to risking being left behind the times of the new century, be the source of its final ruin?

This rhetorical question should not be taken as a dismissal of the state, though it could be a probable outcome of the prevailing internal processes of the DPRK. The ‘known knowns’ regarding the current economic weaknesses of the country is quite massive. It would seem unbelievable that the inner contradictions within the DPRK – a case of an ‘Upper Volta with rockets’ as was the description of the USSR of times past – could continue to hold out indefinitely.

The question of the viability of the DPRK is a starting point in devising a much needed reframing of the North Korean problematic. This is based on the perceived lack of traction - bordering on ineffectiveness - of relentlessly applying would-be solutions of the past to address contemporary spill-over problems of the DPRK in the international sphere.

Excellencies,

Ladies and Gentlemen,

The international community would readily recognize the oppressed people of the DPRK as a potential political factor. But this is not necessarily sensed so specifically as a people oppressed in the real meaning of that oppression. It is because whole-sale suppression has made the people non-existent as a people in accordance with the definition of the state in international legal practice. That is, a state being a political entity having a territory, a government and a people, not just a population, which is an entirely different notion altogether.

The people rendered invisible due to being suppressed means that they are still there but – apart from a very tiny privileged minority – they are there only as exploited and marginalized human beings with few – if any – basic rights, even then all state-dispensed.

Within a specific format of a final solution, the people are not there anymore, though they were at one time at the very beginning. One could say, the people of the DPRK have been ‘spirited’ away – abducted, as it were – into the state and its ideology.

If nothing stands in the way for the DPRK government to enforce disappearance of its own people, why would we even wonder that they would

have less qualms in abducting other nationals, Japanese or otherwise, for expedient reasons of state?

If a people can be made to become 'unnoticed', this is in most cases only possible through a fusion of extreme statism and nationalism that produces the elimination of the people – and part of its population – not only in a vision of the future but in actual policies of political cleansing on the ground. Hence, the disgraceful political prison camps dispersed throughout the country.

In fact, the creation of those notorious camps of forced enclosure of a specific category of people accused of political crimes against the state, solely defined by the state, together with all their families considered to be implicated by association, manifests clear features of an apartheid policy. Such enclosures amount to arbitrary incarcerations, and, in terms of segregational intent, could be defined as forming an internal colony within the DPRK.

The method of causing near total disappearance of the people, thus denying its existence, is further perfected through two politico-administrative techniques of denial and double speak as state policy.

The way it works is to deny categorically any allegation of any possible wrong doing by the regime and preventing access for credible verification; and whatever cannot be held down by denial is then faced down with double speak: by professing one thing and then acting in a completely reverse way, in absolute contrariness to what was stated before.

Thus, for the DPRK it would seem to be normal state practice to deny without the slightest misgiving that there are any human rights problems in the DPRK, while at the same time committing to accept Universal Periodic Review (UPR) recommendations for the betterment of their human rights conditions at one instance, and to have that formal commitment wholly revoked at the very next available instance.

A similar charade of denial and double speak relates to the difficult agreement reached between former Prime Minister Junichiro Koizumi and North Korean Supreme Leader Mr Kim Jong-il in 2002 regarding the return of Japanese abductees, following the latter's startling official admission that the DPRK had in fact abducted Japanese nationals for various state reasons. While a partial return of the abductees later took place, commitment on the part of the DPRK to conduct further investigations into other cases of Japanese abductees were not fulfilled, nor have they been until now. An insight to be drawn from this episode, is that security and human rights are instrumentally rather than just causally linked. This is the moment that perhaps could be seen as the early beginnings of the long political process that would eventually bring the human rights case of the DPRK to the UN Security Council where it is today.

Analyzing the evolution of state practice of the DPRK, it becomes apparent that how the state is perceived – and even conceived – is crucial in deciding the strategy to be adopted to face and face down the regime.

Excellencies,

Ladies and Gentlemen,

What then is the nature of the DPRK? Renowned Korea historian Bruce Cumings describes the DPRK as a 'garrison state'. This might be akin perhaps to a 'military state' which is a temporary form. To expand this definition, and to get closer to an approximation to the reality of the DPRK, is a formulation by the critical historian Ilan Pappé, when referring to a certain state located somewhere in the Middle East as an 'army with a state'. Going out from this the DPRK is in truth an 'army with a state'. This concept which could be compressed into the idea of an 'army-state' seems adequately able to explain the installation of the whole 'military first' policy that has been put in place by the regime. Differentiated from a 'military state', an 'army state', as is a 'nation-state' for example, is a generic form that is relatively permanent.

The 'military first' policy is clearly a concrete reflection of the militarization of the whole society and the state's involvement in the lucrative contraband international arms trade. The militarization of the DPRK society inevitably includes the militarization of its educational system whereby the people are taught to perceive reality in permanent conflictual terms, both within the state itself and in the relations of the DPRK with the world.

The nuclearization of the 'army-state' today, constitutionally sanctioned, is a culmination of that policy. This has been undertaken through a dogged but consistent process to pursue an armaments build-up objective. In the main, this is a product of the ideology of the state and has been made possible by the ideological mindset created by it.

It is this frame of mind that is extremely restrictive that creates the faulty statist rationale for marginalizing human rights in any policy decision. This is where the basic relationship between hostile security-risk-generating acts – now nuclear-driven - and the abeyance of human rights by the DPRK fully lies. The security-human rights nexus is thus firmly established.

Excellencies,

Ladies and Gentlemen,

The point of belaboring on this is to establish the nature of the DPRK in order to determine the correct approach in devising a new strategy to resolve the North Korean problematic. If it is accepted that 'an army with a state' formula is wholly descriptive of the DPRK, then the obvious politico-military strategy to adopt would be to undertake to 'disarm' that entity.

This would be a visible departure from the set approach of the dual track mode of pressure and engagement currently preferred by the international community. A dual track approach on a problematic country would be effective

only to the extent that that country is keen on being recognized as a civilized and respected member of the international community. I must confess to having forcefully advocated this mode, as SR and thereafter, to nullify the previous counterproductive approach of completely isolating the DPRK. Isolation has often been proven to lead to greater internal conformity, thus further facilitating tighter political control of the people by the regime.

In that sense, the DPRK have all along not showed itself to be overly interested in being part of the international community. In fact, sealing off itself actively from the outside world can easily be seen as a primary feature of its state behavior. It is therefore clear that pressure and engagement would have to be complemented with a more robust and targeted strategy aimed at disarming the DPRK in terms not only of its military hardware as such, which would be unfeasible at this stage, but of its ideological supports.

Simply put, to paraphrase Pappé : disarming the DPRK is presented here as an ideological disarming. To sum up, what may be needed now is to conduct a thorough evaluation of the dual track mode of pressure (which is in reality escalation of isolation of the DPRK) and engagement (which has been reduced to the mechanics of disbursing humanitarian aid). This should start with acknowledging that there was never any conceptual linkage between the two vectors of pressure and engagement, much less a method to gauge effectiveness of their implementation in the field.

Excellencies,

Ladies and Gentlemen,

A single matter that would have merited much greater looking into during my mandate, and perhaps also during the limited work period of the CoI, is the ideological dimensions of North Korea. It might take us too far afield to go into these matters at this point. To be brief, an ideology based on

the idea of total self-reliance, as is the case of the DPRK, is an anachronism in the global world of today. To analyze such an ideology may not be productive.

What is more interesting is how a specific ideology expresses itself in the political and power formation that forms the basis of ordering of a state and society. Rather than its internal doctrinal content, what is important is the articulation of its ideological reasoning, and whether it underpins or overrides the state's national interest. For the DPRK, its external aggressive posture would seem to point to the latter, ideology trumping national interest. Ideological disarming, on the other hand, is aimed to achieve the former, that is to subsume ideology under national interest, allowing for more 'normal' inter-state relations.

How then is a political infrastructure built to conduct a process of ideological disarming? In other words, how does one move from 'tough talk' to 'tough dialogue'? It is by initially agreeing on a new set of vectors other than the previous set of pressure and engagement, as these have been less effective than expected in the past. This matrix of vectors would include distinguishing between political systems and the people as such, being alert to how reality can be easily distorted, recognizing that information is easily manipulated, acknowledging that publication of views may become instruments of indoctrination, and being aware that governments will misrepresent and demonize what and whom they wish.

In the final instance, there will be a real need to transform present inter-state relations into international legal relationships. These relationships would be founded on a set of normative concepts that can be readily observed, consisting of 'a moral purpose of the state, an organizing principle of sovereignty and a systemic norm of procedural justice' (Christian Reus-Smit, 1999). This is the normative context in which the unfinished matter of accountability of abducted Japanese nationals by the DPRK needs to be justly settled.

The just resolution of the international question of the abductions of Japanese nationals by the DPRK is rightly placed on its own path, aside from the overall accountability track regarding alleged gross transgressions of crimes against humanity committed by that state as laid out in the CoI Report.

The case of Japanese nationals abductees meets the elementary legal conditions, based on the existence of preliminary factual proofs of acts of crime committed by the DPRK, to hold a hearing. Facts as evidentiary material is available concretely, firstly, in the figure of 17 identifiable Japanese citizens abducted by the DPRK with established tempus and locus delicti (and facts on an additional figure of 883 persons whose abduction by North Korea cannot be ruled out); secondly, in the admission of wrongdoing by Mr Kim Jong-il at the First Japan-North Korea Summit Meeting in September 17, 2002 in Pyongyang of actual abductions carried out by the DPRK; thirdly, in the actual return of 5 persons of the 17 confirmed abductees in October 15, 2004; and, fourthly, in the recorded discussions of all relevant bilateral talks held between Japan and the DPRK and other fora, both prior and subsequent to the establishment of the preliminary proof, corroborating evidence of culpability of the DPRK of abduction of those identified Japanese nationals.

Furthermore, the nature of abduction as a continuous crime in international law allows for sustained evidence gathering and investigations for all individual cases unconstrained by statutory limitations. Endorsement of the United Nations and wide international support for the pursuit of settlement of the case help to facilitate assessment and determination of the correct strategy and forum for adjudication. Finally, firm domestic support through, among others, the Association of the Families of Victims Kidnapped by North Korea and the Japanese people in general provide political legitimacy were the process to become, for any legitimate reason, prolonged.

At this juncture, the abduction of Japanese nationals would seem to be the most substantive case that could spearhead a justified international legal

prosecutorial action against the DPRK, both on a stand alone basis as well as part of wider international accountability measures. Meantime, the UN Human Rights Council (HRC) in its March 2017 session have adopted the UN Special Rapporteur's 'Group of Experts' practicable accountability recommendations. At no time has there been more ideal conditions than now, enabling the international community to move forward with vigor to pursue the perpetrators of all the long unaccounted for gross wrongdoings in the DPRK. There will be counter actions to rollback, to be sure, but the point has always been – and will be for the near future – to gain further foothold every time for the next and the next and the next again forward action to be made until, at the end, we get there.

Excellencies,

Ladies and Gentlemen,

Allow me now in closing to acknowledge the invaluable support given to me in the discharge of my UN mandatory responsibilities, and to express sincere appreciation for H.E.Ambassador Otabe and H.E. Ambassador Okada, who both served concurrently in Geneva with the greatest distinction during a crucial period in our journey towards bringing out to the world the real truth on the DPRK. In a different time and a different place, I would do it again.

Thank you.