NORTH KOREA’S HUMAN RIGHTS ABUSES: THE CRIMES OF A BELLIGERENT STATE

INTRODUCTIONS:
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PANEL I: NORTH KOREA TODAY: BELLIGERENCE AND HUMAN RIGHTS DENIAL

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JOANNA HOSANIAK, CITIZENS’ ALLIANCE FOR NORTH KOREAN HUMAN RIGHTS;
ROBERT KING, FORMER U.S. SPECIAL ENVOY ON NORTH KOREAN HUMAN RIGHTS;
GO MYUNG-HYUN, THE ASAN INSTITUTE FOR POLICY STUDIES;
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MODERATOR:
JUNG-HOON LEE, REPUBLIC OF KOREA AMBASSADOR FOR NORTH KOREAN HUMAN RIGHTS

LUNCHEON CONVERSATION:
NICHOLAS EBERSTADT, AEI;
MICHAEL KIRBY, FORMER CHIEF, UN COMMISSION OF INQUIRY ON HUMAN RIGHTS IN NORTH KOREA

PANEL II: TACKLING THE NORTH KOREAN CONUNDRUM

PANELISTS:
TAEHYO KIM, SUNGKYUNKWAN UNIVERSITY;
SUNG-HAN KIM, FORMER REPUBLIC OF KOREA VICE MINISTER OF FOREIGN AFFAIRS;
DAVID MAXWELL, GEORGETOWN UNIVERSITY AND COMMITTEE FOR HUMAN RIGHTS IN NORTH KOREA;
WILLIAM NEWCOMB, 38 NORTH;
JOSHUA STANTON, ONE FREE KOREA

MODERATOR:
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CLOSING REMARKS:
H. E. AHN HO-YOUNG, REPUBLIC OF KOREA AMBASSADOR TO THE UNITED STATES

CLOSING STATEMENTS:
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ARThUR BROOKS: Good morning, ladies and gentlemen. Please have a seat, and we’ll begin our program.

Good morning and welcome to the American Enterprise Institute. I’m Arthur Brooks, president of AEI. I’m delighted to welcome you to this morning’s program: North Korea’s Human Rights Abuses.

Most of you are familiar with the work of AEI. Probably most of you have been here many times. And if you have, you know that in all of our work AEI is focused on really just two core values: We defend human dignity, and we work on the expansion of human potential. No policy area is more important than those two core moral principles. There’s nowhere in the world today where those two pillars are denied more consistently and more systematically by an oppressive, tyrannical government than that of North Korea.

The Kim family regime maintains, as we all know, one of the most notorious gulag systems in the world today, with multiple secret police. North Korea’s population is marked for life by a political classification system that’s arbitrary and brutally discriminatory. And the consequences of this tyranny stretch across all parts of North Korean society today. My colleague, Nick Eberstadt, an expert in this, tells me that in North Korea we’ve seen the only famine ever to occur in an urban, literate society during peacetime in all of human history. That’s quite a distinction for the North Korean regime.

We need to continue work exposing this. We need to do research on the solutions. We need to advocate for the end to this problem. This is a problem for the entire world. We’re honored today to host experts and champions of justice who will be bearing witness to the crimes of the captive North Korean people, the North Koreans themselves who cannot report these crimes, and we will be listening carefully to your suggestions on how we can relieve North Korea’s great afflictions.

For the formal introduction to our incredibly distinguished panel, I want to turn it over now to AEI’s great warrior in the cause of justice here in the United States and around the world for the expansion of human dignity and human potential, Nick Eberstadt. (Applause.)

NICK EBERSTADT: Arthur, thank you very much for that wonderful introduction. Ladies and gentlemen, and our internet audience, our audience overseas, thank you very much for joining us for this important conference.

The crimes of the North Korean regime are perhaps more familiar to us as they have affected the international community. We read about assassinations with nerve agents in civilian airports in Malaysia; we hear about threats to turn major foreign capitals in seas of fire; we see lovely North Korean government videos depicting the incineration of cities in the United States. And we’re very aware of the brutal threats that the North Korean regime poses to us.

What we don’t always appreciate is that the Janus face of the North Korean regime is the oppression that it rains upon the North Korean people. Most of the things which the
North Korean government poses towards us today are just threats. Actually, every day in North Korea for the victims of the regime is another nightmare. We are honored today to be able to partner with a number of experts on North Korean human rights and on the North Korean international situation.

We are honored to have with us Justice Michael Kirby, who took signal action in leading the commission of inquiry for the UN Human Rights Commission on Human Rights in the DPRK, which is surely a watershed in the international community’s understanding of these crimes. It’s now no longer impossible to turn one’s back and say, “We didn’t know.” It’s been three years since that commission of inquiry. We’ll be taking measure today of where we were, where we are, and where we need to go.

Before we do that, I’d like to invite two other partners up to welcome you. First, Greg Scarlatoiu from HRNK, the US Commission for Human Rights in North Korea, and then Ambassador Jung-Hoon Lee, the ambassador of human rights from South Korea for North Korea.

Greg, thank you very much. (Applause.)

GREG SCARLATOIU: Nick, thank you very much. I would like to begin by thanking Dr. Brooks, Dr. Eberstadt, and AEI for hosting this extraordinarily important event. Our organization, the Committee for Human Rights in North Korea, HRNK, is fortunate to be cohosting the third anniversary of the report of the UN Commission of Inquiry. This is an organization established 16 years ago by a group of most distinguished scholars, former government officials, private-sector representatives. Dr. Eberstadt and Professor Maxwell, who will be on the panels later today, are board members at HRNK, and we’re very fortunate that they’re with us today.

We are also delighted to know that Justice Michael Kirby has once again been able to join us in Washington, DC. The UN Commission of Inquiry marked a crucial moment in the history of the North Korean human rights movement. Prior to the UNCOI report, the world thought of North Korea as perhaps a bizarre remnant of the Cold War. After the UNCOI report, the world sees North Korea for what it is — a regime that is committing crimes against humanity, against its own citizens, pursuant to policies established at the highest level of the state.

Together with those who have worked so tirelessly for North Korean human rights over the past few years, including, of course, the former special envoy for North Korean Human Rights, Ambassador Robert King, who’s here today, we know that compared to a few year ago, we have taken higher ground. And I will dare speak on behalf of North Korean human rights scholars, activists, and scholar-activists, and say that we intend to hold that high ground and continue to make progress regardless of future circumstances. Thank you very much. (Applause.)

JUNG-HOON LEE: Good morning, everyone, distinguished guests, members of the academia, think tanks, civic organizations, government, and media. It’s a delightful
pleasure to be here at the AEI to do this conference. And I just want to say that it’s a particular pleasure working with the AEI and also the HRNK in putting this together to address the continuing problem of human rights violation in North Korea. I would like to particularly say thanks to Nick and also President Arthur Brooks of the AEI and also, of course, the HRNK’s GregScarlatoui, and all the staff members of the two organizations — and also staff members of my organization, the Yonsei Center for Human Liberty, but they could not come.

I think an appreciation is also due to those who came from very far, particularly Michael Kirby, who’s — we were in Geneva a short while ago, and he’s a very, very busy man, and it’s a great pleasure that he’s found the time to be here with us. And also my friends from Korea, who’ve come a long way to join in this conference.

This conference is in commemoration of the third anniversary of the commission inquiry report, which concluded that totalitarian state’s systematic and widespread cruelty against its own people was tantamount to crimes against humanity. That was a watershed event and a sea change that brought about a totally different perception of and policy towards the international community dealing with the North Korean human rights issues.

The first two commemorative events were held here also in Washington, DC, and, again, I think it’s great that we were able to do this at AEI this year. That we’re doing this is very timely for three reasons. One, that three years has passed, and we’re into our fourth year. And, of course, you know that the COI report came about in February, but we’re doing it on the 27th of March. It is an important date because it is when the resolution at the Human Rights Council was passed. So we do try to, you know, put some symbolism into the date that we choose in holding this conference.

So it’s very important that we try to reevaluate what it’s meant and what has progressed or what needs to be done, as Nick earlier pointed out, as we move forward in addressing this issue. It is also timely because so much is happening all over the world. There’s so much happening within North Korea, not only in the human rights front but with all the provocations with the ballistic missiles and the nuclear — possibly yet another nuclear test, the assassination of Kim Jong-nam, Kim Jong Un’s half-brother. There are significant developments, political developments in my country, in South Korea, that keeps things very fluid, if you will, particularly in terms of what its implications might be on our human rights policy. And then there are just very big tectonic changes that’s taking place in the United States, relations with China, Russia.

So overall international relations of East Asia is changing. So I think we have to put things into perspective, the North Korean human rights — it’s easy to lose track of this issue, and I think it’s very important to refocus on this issue in spite of all these things going on on the peninsula and on the regional context as a whole.

And it’s also timely because we’re just coming off of the 34th UN Human Rights Council resolution, and it was particularly interesting this year because not only did the report come from the new special rapporteur, Tomas Ojea Quintana, but the report also
included the panel of experts’ findings, which put heavy emphasis on the accountability. So as we move forward, how are we going to implement some of the accountability measures that were included in the panel of experts’ report, which was, of course, recorded by Tomas Quintana?

So against this background, let me just — I would like to just make, or share with you, five key observations which we ought to consider as we get into our discussions throughout this conference with regards to the North Korean situation.

The first observation is that when the COI report came out three years ago, it did surprise a lot of people because for the experts, of course, we know about the human atrocities in North Korea, but the general audience, nonexperts, really had no idea what is going on in this country. It was a revelation when it comes to North Korean human rights abuses. Not too many people knew about it — the general audience I’m talking about.

The reason for that, of course, is because North Korea remains one of the most, if not the most, closed-off society in the world. There are no photos; there are no documentaries about the political prison camps or what’s happening in that country. We have these visual illustrations in other human atrocities, whether it’s in Africa or the Middle East. With North Korea, no. It’s just testimonies by the refugees and defectors. That has a tendency to kind of blank out what’s going on in that country. And in that sense, the COI report was such an important revelation.

And I say that because to address one very, very important development recently, which of course is the assassination of Kim Jong-nam in Kuala Lumpur, Malaysia, was a landmark event I think because it really unveiled North Korea for what it really is. This is what North Korea does. For us, experts on North Korea, this is not all that surprising. But when you consider the fact that, you know, this sort of provocations and atrocities is something that North Korea has been doing for decades.

If you recall from 1968, North Korea actually sent a commando raid to assassinate President Park Chung-hee at the time. The mission was aborted, but it was actually a Rambo-like attempt at our own president’s life. In the same year, USS Pueblo, an intelligence ship, was captured by North Korea and the 80, 90 crewmembers were held hostage for nearly a year. And then, in 1976, North Korean soldiers in the joint militarized area, in DMZ, actually killed two US officers with axes. We called that the axe murder incident. And then, of course, more recently, in 2010, the South Korean corvette, Cheonan, was sank, killing 46 South Korea sailors, Navy officers, and also North Korea bombed Yeonpyeong Island. So that’s the more recent provocations.

So the assassination of Kim Jong-nam in a way sort of falls in line with these sort of historical series of provocations that North Korea has committed. But for general audience who don’t know about this, this was a very important sort of wake-up call to them of what North Korea really is — that this is who we’re dealing with. This is a very important observation that alerts us not to have any fantasies with this country, some sort of a constructive
engagement, some money here and there could somehow alter this regime to improve its behavior. It’s just not going to happen.

The second observation has to do with China — another sort of fantasy, shall we say, just as with North Korea. And this is being revealed through the controversy surrounding THAAD deployment in South Korea. And I’m not here to discuss the technicalities of THAAD, but I just want to focus on the Chinese response to the THAAD deployment in terms of its retaliation against Korea and Koreans. In particular Lotte, which is one of the big conglomerates in Korea who do big businesses in China. They have marts, a number of marts. And nearly like 70 percent of those Lotte marts have been ordered to shut down, costing over $10 million to the Lotte group.

That’s not all. China is shutting down on the Korea wave in terms of the concerts being canceled, dramas being canceled, all the tours are being canceled to Korea. Koreans are afraid to go out because they’re afraid of being possibly lynched. So this THAAD issue and the Chinese response to this is allowing us to see China for what it really is, just as in the case of North Korea. It is certainly not becoming — well becoming of a country that wants to be a global leader. So we have to deal with this kind of China. It’s sort of a wake-up call. Let’s not have a fantasy to think that somehow we can gain Chinese cooperation to rein in on North Korean situation.

The third observation has to do with the domestic political uncertainty in South Korea. There are concerns of possible return to the Sunshine Policy area and what the implications might be for the human rights situation or our human rights policy towards North Korea. And I will just say that, yeah, this is a distinct possibility, and that is why it is very, very important for the international community to take an institutional approach in dealing with North Korean human rights issue.

I’m talking about sanctions. If there are significant and irreversible sanctions mechanisms in place by the United Nations, by the United States, by EU, irrespective of what government comes into South Korea, it will not be easy to reverse those sanctions measures because doing so will be a violation of UN rules or EU rules or our allies’ rules. So this is a very, very important observation that I would like to also make.

Fourthly, there are many sanctions measures by the Security Council, by the US government and also the US Capitol Hill. I think it’s very important to point out that North Korean human rights is now at a point where you cannot just separate it out and deal with it in an isolated context. We have to treat the North Korean human rights issue in the same context with the North Korean ballistic missiles and nuclear threats, North Korea’s international, transnational crimes, North Korea’s terrorism. So it has to be treated in a comprehensive, package-deal type of an approach is necessary.

And finally, my final observation is that time is running out. Time is running out in the sense that North Korea is very, very close, if not already there, to becoming a bona fide nuclear state, meaning having deployable nuclear weapons. North Korea’s hard to deal with whilst it’s developing its nuclear weapons. Can you imagine what North Korea will be like
if it had deployable nuclear weapons with Kim Jong Un with his finger of the button of nuclear weapons? It will be impossible to deal with.

No matter what we discuss at UN or in these type of conferences discussing about human rights, North Korean human rights, North Korea will not budge. So I really think that the timeline, the window that we’re dealing with is just this year and hopefully next year. We’re really talking about less than two years. If anything is supposed to be done, this is the timeline that we’re dealing with.

There is a very, very serious sense of urgency. And I hope that in this conference, this sense of urgency, that we don’t have time, is something that we take into consideration as we talk about what’s happened and how we move forward. Thank you. (Applause.)

MR. EBERSTADT: Ambassador Lee, thank you for those penetrating and important remarks. I think we can now move to the first panel, which you will be moderating.

AMB. LEE: I’ll change my hat to be moderating this distinguished panel. We will be basically — what I’d like to address in this first panel is to reminisce on the COI report, just going back to talk about what it’s meant for North Korean human rights, what’s been done in the past three years, where do we stand today, and we talk about a lot about accountability and moving forward. So what specific road map, if you will, blueprint — how do we go about implementing the specifics of accountability?

And then I will probably ask some specific, deal with some specifics like, for example, with Bob, the US recent developments in terms of the sanctions measures both at the administrative and the congressional level. Dr. Go is an expert on the overseas workers, North Korean overseas workers, so it will be very interesting to see what’s been happening in that front, particularly in Europe, and how that might play into the international strategy in dealing with the North Korean issue. Greg, of course, is jack-of-all-trades when it comes to North Korean human rights so he’ll be dealing with the broader perspectives on this issue. And Joanna, of course, has been very keen on the women and children’s issue. And also I would like to hear some on the recent development in Geneva.

So let me first give a very brief — I mean, you know the panelists I’m sure quite well — very brief introduction. Bob King, of course, longtime serving US special envoy for North Korean human rights situation until the change of government. And he’s been an iconic figure on North Korean human rights. He’s done so much, and it’s really been a pleasure working with him while he was serving as the US ambassador. And, of course, he continues to work on this issue. He was also with us as a member of the Sages Group in Geneva. So we have Bob.

Dr. Go Myung-Hyun is with the Asan Institute for Policy. And his specialization is on North Korean human rights, and he’s been very, very active. Asan is one of the most active international think tanks in Korea. So we’d like to hear more on this particular issue.
Greg, of course, one of the co-organizers of this event and a warrior when it comes to North Korea and human rights and the — amongst the civic citizens. And Joanna Hosaniak, who is with the Citizens Alliance for North Korean Human Rights, which is probably the most well-established NGO organization in Korea and very, very active in the global context. And I’m very happy that she was able to find the time to join us despite her very busy schedule, including teaching as well.

So that’s our panelists. And for the next hour or so, I’d like to do the discussions. And I will open up for some Q&A for like 20, 30 minutes towards the end before we break for the luncheon event.

So I will just throw out for you guys to reminisce on the COI report, the three years, and where we stand in — you know, where do we move on from here. And just in the order as we’re sitting.

So, Bob.

ROBERT KING: I’m not sure that now is a good time to spend a lot of time reminiscing. My impression is that we’ve gone through a period of time when, against a lot of odds, we were successful in being able to name the Commission of Inquiry. Through a remarkable stroke of genius, we ended up with Michael Kirby as chairman. And within the period of one year, made a major change in terms of the focus, the attention, and the effort that went into North Korean human rights was able to significantly increase.

What I think the real issue that we’re looking at right now is not looking back and congratulating ourselves, but looking forward and saying, “How do we continue this effort? How do we keep moving on this process?” And I think it’s a particularly difficult time because we’re going through some difficulties here in the United States with a new administration. We’ve had a little over two months of a new administration. There have already been some ups and down. There are questions about how North Korea human rights is going to play in the policy of this new administration.

In South Korea, at the same time, we’re going through a unique situation there in terms of a president having been impeached, a new election about to take place. The politics of that election look like there’s going to be some uncertainty and questions in terms of how the issue of human rights is handled in North Korea as well. So it seems to me that our thinking needs to be focused on the future and that we can save our congratulations for later.

There are a couple of things that strike me as being things we need to think about as we try to move the agenda on human rights forward. Number one, the North Koreans continue to test nuclear weapons and missiles. They continue to be very aggressive in terms of pressing their efforts in that regard. And the real question that we need to look at is: How does human rights play in an era when the nuclear issue is going to be more significant, more dangerous, more problematic, and what does human rights mean? Is this a time when
we back off on human rights in order to make progress on the nuclear issue, or is this a
time when we press forward on human rights?

The one difficulty with human rights, and this is I think going to be increasingly in
the fore — is human rights simply a tactical tool that we use to put pressure on North Korea
for human rights reasons, or is human rights an issue that in and of itself deserves our
attention and our focus and our efforts? And even keeping human rights as a focus of our
attention, how does it relate to what we try to do in the nuclear era, and how does that play
out?

And this is not an issue that’s an easy one to deal with. I get people who tell me
frequently that we made great progress on human rights largely because we haven’t been
able to do anything in terms of dealing with the nuclear issue for the last several years. I
think we need to keep that in mind as an issue that we’ve got to come to grips with and
figure out how in this era when human rights has made great progress up to this point. Do
we keep moving forward on human rights at the same time we deal with the increasingly
problematic issue of North Korea’s nuclear weapons?

A second concern that I see coming out of some of the noises that have come out
not from South Korea about the United States is where are we going with regard to the UN
Human Rights Council. There have been some comments made by some American leaders
that we need to rethink whether we want to be a member of the Human Rights Council. We
went through that era when the Human Rights Council was created 12 years ago, and the
United States did not become a member of the Human Rights Council.

When there was a change in administrations, we did join the Human Rights Council,
became an active and an involved member of the Human Rights Council, and I think it’s
important that as the United States makes decisions and looks toward what our policy is
going to be on human rights, on the United Nations, and so forth, that we not throw the baby
out with the bath — that we look at the opportunities and possibilities of working within
the Human Rights Council, rather than saying, “Because there are areas that we disagree
with, we’re going to pick up our marbles and go home.”

I think one of the reasons we’ve been able to make the progress that we’ve made
in the last few years is because there has been an active, engaged, involved participation
by the United States in the Human Rights Council. And I think it’s extremely important
that we continue that effort, that the United States continue to play a leading role in the
Human Rights Council, we continue to use the Human Rights Council as an instrument
for putting pressure on North Korea. We may disagree with some of the things the Human
Rights Council does. I find it difficult to believe that we don’t. And I’m sure other countries
have problems with some of the things that come out of the Human Rights Council.

But overall, looking specifically at North Korea and the North Korean human rights
issue, it was the fact that a major international body together with large majorities condemned
North Korea for its human rights record, appointed the Commission of Inquiry, and legitimatized
the Commission of Inquiry with a number of people who were in support of the creation of
that Commission of Inquiry. So I think this is one thing that we need to look very carefully at and one thing that we’ve got to focus on as we think about the future.

The other issue that we need to think about in terms of the human rights situation — again, it’s related to the nuclear issue — and that is the question of sanctions on North Korea. Do we have enough sanctions? How do human rights play into that issue? Thus far, the United States is the only country that has imposed sanctions on North Korea for human rights reasons. All of the sanctions on North Korea with the exception of some specific sanctions that we imposed eight months ago were imposed for nuclear testing, missile testing reasons. We need to continue to press North Korea with sanctions on human rights grounds. We need to seek to expand those to include other countries as well.

But the one thing that we need to remember, and speaking here as an American and speaking of the American government, we need to keep in mind that sanctions work when they are broad-based and they include other countries, particularly with North Korea, where our economic relationships with North Korea are so extremely limited, sanctions against North Korea will not work unless they’re cooperative sanctions, cooperative in particular with China. And this means we have a relationship to work on in terms of continuing what we’ve been trying to do with sanctions and involvement with China.

I’ve said probably more than I needed to say. I think these are things that we need to be thinking about as we look at where we’ve come from and making sure that we continue to make progress along those same lines. Thanks.

AMB. LEE: Okay. I think that’s a great opening remarks.

Dr. Go?

MYUNG-HYUN GO: Thank you. It’s an honor to be here, standing on this podium along with the real experts and giants in the North Korean human rights issue. I was introduced as an expert on North Korean human rights, but in truth, the real experts are here. And I do work on other issues regarding North Korea, such as the economy, demography, public health. But then, personally speaking, human rights has been one of the most rewarding research areas for me.

After I contributed to a report on North Korean overseas workers in 2014, I had the chance to attend the international conference in Europe at this group lunch with the foreign minister from a country from the Middle East, whose name I am not going to mention here, and I had a chance to bring this issue up to him personally. And, of course, the foreign minister said that he wasn’t aware of the issues of North Korean workers in his country, but later on, after we finished up the lunch, one of his aides came to me in the elevator and told me that the foreign minister told her to look at this issue of — (inaudible). So that was one of my career highlights when it comes to working on North Korean issues. And when it comes to the other areas in North Korea such as economy, security, I don’t get that kind of satisfaction at all. So this is an area that’s very rewarding.
So I’ve been interested in the North Korean overseas workers for a while, especially because — I mean, my research effort has been galvanized by the work of the COI DPRK, you know, headed by the Honorable Judge Kirby here present. And we wanted to expand on this work. We wanted to come out with some convergence of human rights and actual policy tools that we can use to apply pressure on North Korea and effectuate change in North Korea.

And actually it’s very tough. As you know, North Korea is a very isolated country. It’s very difficult to influence what’s going on inside the country. But North Korean overseas workers represent this bubble, so to speak, a little piece of North Korea that lies outside of North Korea. And it would be our reach of the North Korean regime and we do it in our own domain, so to speak, something that we can influence. And that’s the reason why we focus on the North Korean overseas workers issue.

And it’s been pretty successful, in my view, ever since the COI report came out. And, for example, last year, in the general assembly, 2016, issued a general resolution calling attention to the human rights situation of the North Korean workers overseas. And also, another interesting action was carried out by the United Nations Security Council when they issued sanctions against North Korea for its fifth nuclear test, which for the first time it’s included a paragraph calling attention to the plight of the North Korean overseas workers. And that’s actually important because even though at Resolution 2321, it only makes mention of the North Korean overseas workers, it means that, eventually, if North Korea keeps provoking, keeps carrying out provocations with nuclear tests and missile tests, the United Nations, the international community are going to do something about the income that the North Korean overseas workers generate for the regime. So this is just a hint though of what’s going to come in the near future.

And also, in other areas, other countries have been more involved in paying attention to this issue. A case in point is actually Germany. The German Parliament has issued a resolution calling attention to the presence of North Korean overseas workers in Europe. It shouldn’t be a surprise, but there are two EU member countries to have employed North Korean worker. I’m — (inaudible) — so one is Poland, and the other one is Malta. Malta, to its credit, has expelled its North Korean workers. Poland is in the process of doing something about it. And also the European Union as a regional body has been very responsive to the issue of North Korean overseas workers and has called it — I mean, put focus on this issue as well.

But there are many other countries that still employ North Korean workers. The case in point is China. China has been employing more North Korean workers after the issue of this UN DPRK report, which contradicts their narrative of being a responsible global power.

Another country that employs more workers is Russia. Russia is being one of the first countries in employing North Korean workers, starting in the 1960s by inviting North Korean workers to work in Siberia, in the logging fields there. But there’s been a press report last year, where it said that the foreign minister or labor minister, one of the ministers in the Russian government said that they wanted to hire more North Korean workers, which
goes against the spirit of the sanctions, and it condones what North Korea is doing in terms of nuclear development.

So those are some of the things that have been taking place since the issue of UN DPRK report. And I will say that this is a major challenge for North Korean issues because, in a way, the North Korean workers overseas are earning income for the regime, which is used for the nuclear and missile development in North Korea. There are different estimates about how much money the North Korean workers generate for the regime. In my report, I made a mistake. I said like the North Korean workers are making between $1 to $2 billion a year. That was a typo. Sorry about that. But then, it looks like those North Korean overseas workers are generating at least, at a minimum figure, at least $100 to $200 million a year for the regime. And this is actually a huge sum of money in North Korea. North Korea is a very small economy. Its total trade is about $7 billion a year; $6 billion of that takes place with China. And North Korea has been recording a trade deficit ever since it was established.

And, actually, there’s a very good report about that by Nick Eberstadt here. It was published by our institute, which shows that North Korea has always been dependent on some sort of capital inflow from the outside in order to finance its economy. And $100, $200 million a year for North Korea, it’s a lot of money. For example, as a point of comparison, when North Korea was at the height of proliferating weapon exports to other countries in the ’90s, the total amount of this illicit trade for North Korean regime was about $100 to $200 million as well. So now, right now, North Korea, it’s only this money without too much pressure from the international community. That’s something that we can target in order to somehow put pressure on North Korea to curtail its illegal activities.

So going forward, I would say that we can take this issue to the ILO, for example. We know that North Korean overseas workers, it’s a form of forced labor. There’s no standardized contract that the North Korean workers sign before they leave the country. And, for example, when they leave the country, the only details of their work they hear before leaving is that there’s basically the country of destination, what kind of work they’ll be performing. For example, there’s no information about how many hours they’ll be working.

Oftentimes, they work 12 to 16 hours, which is true. For example, in Siberia, they work even longer hours because there’s a sudden workload that they have to meet, and oftentimes they don’t have enough time to meet that quota so they have to — their sleep is deprived because they have to make up for the missing quota — they have to sleep less. And the wage — there’s also wage confiscation. There’s a standardized wage rate that Pyongyang puts on its North Korean overseas workers. That rate hasn’t changed since the ’90s, which ranges between $120 to $150. So what the North Korean regime does is they contract out these workers to local employers in the host countries, and they get paid in the local rates.

For example, in the Middle East, in the construction area, the rate is around $1,000 a month, but then the North Korean workers, they only get paid $120 so the rest is pocketed by the regime. So you can do like a back of the napkin kind of calculation and see how much money the North Korean regimes makes through these contracts. So there’s wage confiscation.
Also, when these workers, once they arrive in the host countries, their passports are confiscated so they are — their freedom of movement is restricted and also they are — (inaudible) — these countries along with the security agents from the regime. So there’s no chance for them to, for example, find other jobs or like move to another job site or even move to another country because they’re under constant surveillance. And they work in these kinds of conditions, like working 12 to 16 hours a day, their wage being confiscated with restricted freedom of movement for three years straight. And during that period of time, they don’t have any chance to go back to their country and be with their families.

So for these reasons, the North Korean overseas workers export schemes constitutes an example of forced labor. And I think there’s ample ground for international bodies such as ICC, the International (Framework Accord ?), also the ILO to intervene in this case and ameliorate the situation for North Korean workers. So I’ll stop here.

AMB. LEE: Perhaps we can come back to this ICC issue in the later discussion.

Greg, some general take.

MR. SCARLATTOIU: Thank you, Ambassador Lee. As all distinguished speakers pointed out this morning, one of the great challenges for the human rights community has been that we have often been outcompeted by North Korea’s nukes and missiles, in particular prior to the completion and submission of the UN COI report.

One point that I would like to make this morning is that human rights is not a nuisance and should not be regarded as such. This is not an obstacle. The very reason why the Kim regime acts the way it acts is the very nature of the Kim regime. And North Korea’s abysmal human rights violations and crimes against humanity are a manifestation of that very essence of the Kim regime. This is a regime that has managed to outlive its peers in the former Eastern European communist world by 28 years now.

Moreover, it has managed to accomplish two hereditary transmissions of power through diplomatic deception, through developing nuclear weapons and ballistic missiles at the expense of the welfare of its citizens, and through a deliberate policy of human rights denial executed pursuant to policies established at the highest level of the state, and of course, through diplomatic deception, that unfortunately we’ve become so familiar with for the past few decades.

What we have found out is that this regime truly cares about two issues. One is its pocketbook. We can look at the Banco Delta Asia precedent, and this will be discussed in great detail in our afternoon panel. The other one is its legitimacy. This political arrangement in North Korea is not a cartel. This is not a criminal power-sharing arrangement. This is one regime that holds absolute monopoly over political power, which it holds through the relentless indoctrination of its citizens, through the relentless isolation of its citizens, and through the relentless oppression and repression of its citizens. Remember, this is the only country on the face of the earth that is holding 120,000 men, women, and children, young
and old, at four or perhaps even five political prison camps, the only country on the face of the planet that’s classifying its own citizens into three social classes, depending on the perceived degree of loyalty to the regime and the perceived degree of loyalty to the regime of their parents and grandparents.

There is only one political competitor for this regime, and that is the free, prosperous, democratic Republic of Korea, South Korea. So this regime does care about its legitimacy. Every time human rights is brought up at the General Assembly of the Human Rights Council, every time human rights is brought up by international NGOs, this — in addition to addressing an extraordinarily important legal, political, moral, ethical issue — this also undermines the legitimacy of the Kim regime as a political entity. These efforts are extraordinarily important. These efforts must continue. We have seen this regime reacting after the UN COI.

Yes, it is denial, but nevertheless they organize so-called human rights briefings. Their foreign minister was dispatched to the General Assembly twice, the first time after 15 years not having spoken before the General Assembly, and a growing cottage industry in North Korea is producing videos threatening witnesses, courageous defectors who testified before Michael Kirby and the UN COI, or the US Congress or other entities. They round up family members, and they produce threatening videos telling them, “We know where your family members are: Be careful.” Of course, the assassination of Kim Jong-nam was mentioned earlier. That goes along the same lines. If the leader’s own half brother could be touched and executed, believe us, nobody is safe.

So a point that I would like to make about the North Korean human rights situation is that just as North Korea, the North Korean regime, is terrible, as it continues to be — has been somehow changing, undergoing a transformation, not for the better, the human rights situation has also shifted. And our organization, the Committee for Human Rights in North Korea, has continued to monitor the North Korean human rights situation through satellite imagery analysis, through witness testimony, through expert opinion and expert testimony.

We have identified several trends: for example, the relocation of political prison camps away from the border with China, simply for the reason that this was bad PR for the North Koreans, plus the last thing they want is yet another political prisoner escaping across the border to tell his or her story. Facilities inland have been expanded twofold in the case of Camp 25 in Chongjin. Camp 14, we looked at it, Amnesty International looked at it. Again, it expanded into the adjacent village. In the process of relocating prisoners from Camp 22 in the border areas with China, for example, thousands disappeared, and we fear the worst based on interviews with those who were on the ground at the time.

Another development we have confirmed at the camps, based on what we heard from defectors previously and on satellite imagery, is that we now see additional watchtowers, machine gun nests installed along possible escape routes. We don’t always see overlapping fields of sight or of fire, but seems to tragically confirm statements by former prisoners and guards that the regime is preparing to eliminate witnesses if faced with a contingency — a certain types of circumstances that might actually result in the demise of the regime. We
must keep those prisoners in mind. They’re extraordinarily vulnerable. Civil society doesn’t always have the power to do anything about it, but civil society surely has the power to increase awareness, to make everyone aware of their plight and the danger they face.

Of course, we are all aware of the purge that’s been ongoing since early 2009. According to the Seoul-based Institute for National Security Strategy, at least 340 senior officials have been purged or executed. Remember, it’s not only one individual. It’s the entire support structure that’s taken out from underneath, together with family members, colleagues, pursuant to a system of guilt by association — (Korean phrase) — a system of feudal extraction, up to three generations of the same family are punished. Of course, as we all know by now, and our organization was able to acquire the satellite image to confirm it, the ZPU-4 anti-aircraft machine gun system is the weapon of choice when it comes to the execution of senior officials. You’re talking about four machine gun barrels, 50-caliber, 14.5 millimeter, for those used to the metric system, automatic fire. Bodies are disintegrated, pulverized, turned into mist. That’s what happens to senior officials in North Korea, those who are purged, not even allowed to leave a body behind.

Another trend that we have uncovered and discussed in New York City last week — we were there with Suzanne Scholte of the North Korea Freedom Coalition, the board member of HRNK — disproportionate repression of women. Women are the ones who assumed primary responsibility for the survival of their families during and after the days of the great famine of the 1990s. It is primarily women who are arrested for perceived wrongdoing at the markets. It is primarily women who cross the border into China without government approval and get subsequently arrested, forcibly repatriated, and imprisoned. We have established satellite imagery baseline of quite numerous detention facilities.

In early September last year, we established a baseline for Kyo-hwa-so, reeducation camp. Mind you, this is not a political prison camp — (Korean phrase) — close to the border with China. What we learned is that out of 1,000 women prisoners, 80 percent, 800 of them are women forcibly repatriated from China. So many of them were imprisoned that a new annex, a new building was constructed, according to those who had been in the area, either former prisoners or others. We were able to confirm this via satellite imagery.

In the aftermath of Typhoon Lionrock, we snapped a few more satellite images of this facility and emphasized the flood damage of this facility, encouraging our friends and colleagues at the United Nations to apply a human rights upfront approach to their humanitarian work in North Korea. What does that mean? If you’re conducting a fact-finding mission, a post-flood, post-disaster fact-finding mission in this area, what we’re trying to tell you is that right next door, the North Korean regime is running a forced labor reeducation camp where political prisoners are held. Yes, 800 women arrested and forcibly repatriated by China in direct and flagrant violation of the 1951 refugee convention to which China is a party.

What can we do under the given circumstances, of course, the distinguished speakers on this panels are aware of these answers. From the viewpoint of the United States, we can surely continue to apply the elements of our national power. Diplomacy has always been
very important, will continue to be very important. Through the relentless efforts of
Ambassador Lee Jung-Hoon, Ambassador Robert King, and others, we have established a
coalition of the likeminded at the United Nations, comprising primarily the United States,
the European Union, the government of Japan, the government of the Republic of Korea,
and others.

This is the coalition of the willing that has pushed for the creation of the UN COI,
that has been so supportive of the three General Assembly resolutions, four Human Rights
Council resolutions, covering, addressing North Korean human rights, including crimes
against humanity and accountability. And also this is the coalition that pressed for the
inclusion of North Korean human rights in the UN Security Council agenda three times.

Information is another very important element of national power. Information
campaigns must continue. We have Radio Free Asia, Voice of America, stations based in
South Korea. We must continue to tell the people of North Korea the story of their own
human rights, which they don’t necessarily understand, a story of the corruption of their
leadership, in particular the Kim family regime, the story of the outside world, in particular
the story of South Korea, a prosperous true democracy, these days a little bit noisy, but, of
course, that’s how we like them — noisy.

Of course, military power will continue to be very important. And the US-South
Korea alliance, the US-Japan alliance, and the trilateral coordination between us and our
friends, partners, and allies will continue to be the bedrock of peace, security, prosperity,
and human rights in Northeast Asia and the Asia Pacific and beyond.

Economic power will be discussed in great detail this afternoon. Of course, the
sanctions regime will continue to be very important. The sanctions regime that has enough
time to be implemented, we should not jump to conclusions while it’s still too soon. And,
as pointed out by Ambassador King, a sanctions regime that should increasingly factor in
the very grave human rights violations and human rights concerns that we all have. Thank
you very much.

AMB. LEE: Okay. Great. Thank you.

Joanna.

JOANNA HOSANIAK: Thank you, Ambassador. Good morning, everyone. It’s
an honor to speak in front of you today. And, thank you, Ambassador, for inviting me and
also for believing in our efforts, especially on — (inaudible) — efforts. And thank you to
Greg and HRNK and also AEI for hosting this event.

I will come back to what the ambassador asked about the COI because in order to
understand how important it was for civil society, you have to understand the history. And
the COI did not come — you know, did not drop here on Earth out of, I don’t know, heaven.
It’s just a consistent effort of civil society, of certain NGOs that have been doing this kind
of advocacy.
Citizens’ Alliance was established in ’96, and it was the first NGO in South Korea, and our funders are coming from Amnesty International, the Amnesty International Chapter under military rules in South Korea. However, they had to split with the progressive side because the progressive side would never address the North Korean human rights issues. And that’s why Citizens’ Alliance was established. And, however, in our work, we use the Amnesty kind of type of work documenting and also advocacy. This is what we have used.

And since 1999, we were active at the UN. And at that time, you can understand that this — you know, now we take for granted that everyone is talking about violations and crimes against humanity in North Korea thanks to Justice Kirby and excellent panel and excellent also staff members of COI and their report. However, at that time, nobody really wanted to even meet with NGOs when we were going to Geneva. And, first efforts in 2003 and 2004 to have a resolution on North Korean human rights, the majority of states would not even meet with us. However, we were able to kind of push forward a special rapporteur. And that was a first I think watershed for the movement.

But 10 years of advocacy did nothing, did really nothing. I mean, in a way, we had this international recognition that were this — you know, the resolution was tabled every year, there were reports of the special rapporteur and secretary general later in the General Assembly. However, when we met after 10 years of doing this type of advocacy, an increasing number of states voting yes, still many states would say, well, the situation in North Korea seems to be OK, you know. As Ambassador Lee pointed out, we don’t see that there is such a dramatic event going on like in Syria, Sudan, for example. So we’ve realized that without a strong push for something much bigger, nothing will happen.

At that time, already there were NGOs that were pushing for COI, but we knew that, you know, with types of advocacy that we’ve been doing, simply speaking, you know, the resolution is not being drafted simply by countries who know, you know, what they are doing and so on. This is a push, a negotiation coming always from civil society. This language has to be negotiated. So we knew that we have to use this strategic advocacy to advance this call for COI and to actually have this commission of inquiry because the victims deserve that. The victims we felt deserve that, and that the international community has to understand how serious the situation is.

But, also, the reason why we stepped in with Human Rights Watch to kind of, you know, strategically push for this Commission of Inquiry, was the fact that we were hoping that there would be change also in South Korea. Until, you know, 2004, we were not able as a civil society group to raise certain issues and work in North Korea without being criticized of being sponsored by US and kind of military, you know, adventures that we have in mind and so on and so on.

So it was really in order to show that, you know, that there is a certain consensus, that this information does not come only from NGOs, neither from American NGOs or South Korean NGOs that are biased, as was considered, but it also would come from recognized experts from the UN. And that’s what actually happened. And although we
didn’t understand at the time that the commission would have such impact and that would have such an impact also on North Korea because, in fact, North Korea would — the North Koreans went to great lengths to stop this motion for a referral to ICC at the Human Rights Council and especially at the General Assembly. And it was unsuccessful.

But, you know, one thing that I wanted also to tell you is that even when we stepped into lobby for the Commission of Inquiry and put that into the resolution, many states opposed the Commission of Inquiry. And, for me, the personal success was when I was observing the same states that were opposing when we were negotiating the language one year before, and then one year later after Michael Kirby’s report and the resolution that was tabled and call of all EU states in Japan for referral to ICC. There was such a shift within a year among the states that, you know, would not be willing to kind of consider that. Yet we knew that, you know, for example, the call for ICC was very much symbolic for a majority of NGOs. It would keep the issue high on the agenda of international community.

However, we knew that this is a call which will not be realized in the near future due to the fact that North Korea is not a part of the Rome Statute and it would have to be referred only through the Security Council, but on Security Council unfortunately we have China and Russia and we are not pushing for any vote in the Security Council. However, we are pushing every year to have this official discussion. And that has been held since 2014.

But as Michael, Marzuki, and Sonja always said that something has to happen after. You know, it cannot stay like this. We cannot just ride on this marvelous time of the Commission of Inquiry forever because new international issues are coming to the front of the international community, so the Syrian crisis, the refugee crisis in Europe, and so on. So it’s taking over North Korean issues, especially in Geneva and in New York. And that means that NGOs cannot just, you know, settle in. There has to be constant move forward. And Marzuki made — when he was outgoing, he made this call for a panel of experts on accountability to devise the strategy on accountability for DPRK, for North Korea.

And we’ve realized, you know, in January, when I was checking whether this would be included in the resolution, it turned out that it wouldn’t be. And then, since then, we have lobbied that this panel of experts would be, you know, included in the resolution. You cannot even imagine what was the opposition. One of the diplomats told me, “Joanna, you’ve got your Commission of Inquiry, what else do you need? More resources you need. You know how expensive you are, guys. Look how successful your advocacy was. In just 10 years, in Geneva, from, you know, denial of what’s going on in North Korea, you got your Commission of Inquiry. Be happy with that and be quiet.” I will not say which country was that. You would be surprised.

But, you know, I’ve realized at that time that coalitions and international community, this is not — we should not take it for granted. The constant push, you know, and the constant trust-but-verify attitude has to be toward each and every country, especially those that are drafting the resolution. And so it was much harder to establish the panel of experts on accountability than it was to establish the Commission of Inquiry in fact.
But I will tell you why we wanted that. First of all, it is very important that we will look into practical avenues apart from call for referral to ICC of what we can do internationally and, secondly, of the role that South Korea could play in the future. If anything happens, for example, in North Korea, we have large North Korean community in South Korea, resettlers, over 30,000, many of them victims, and many of them will be calling for some form of justice. And this is something that South Korea also has to be prepared for. And we wanted that this panel would somehow address this issue.

Well, one thing that, you know, we managed to push on the panel of experts report was — we organized these meetings with the transitional justice practitioners and also international legal experts that would assess the situation. And we have UN office in Seoul that is still documenting with a view of ensuring future accountability. This is a result also of COI. But the experts came to the conclusion that there is a lot of documentation that has been done. NGOs both in South Korea, in the United States and other NGOs that have documented but also, you know, state institutions, different — in different countries also have — and especially in South Korea have amassed large documentation. And so there is enough — and, of course, COI, what the COI has done, there is enough documentation.

What is really lacking is this kind of fling between the documentation and how to use this documentation for future prosecutions. And this is a problem because the majority of the documentation by NGOs, human rights NGOs and UN office is using different methodology. It is human rights methodology. It is not a methodology that is used in international, you know, criminal investigation. And that was a call to the panel of experts to include that and to add resources that would strengthen the new UN office, but especially with the experts that — legal experts but (with ?) experts that were involved in some trials, for example, at the International Criminal Courts that would evaluate what has been gathered and would start prosecution strategy, and they would start also building cases that could be used for future prosecutions in various states.

So what we need right now, this is a kind of new stage, you know, of I think documentation and advocacy. This is what resolution has called so we will have that. But what we really need as NGOs is to kind of coordinate certain efforts with specified professionals — whether these are aerial experts or whether these are terrorist case experts or, you know, some experts that are tracking financial resources — and link it directly to the personnel and institutions that are involved in the crimes in North Korea. And this is a key because continuing documentation it will not bring us to any other point. You know, this documentation has to be used for something, and this is what we are aiming at right now.

And, secondly, I think our advocacy has to move to a certain stage that we can use — you know, there is not only a call for referral to ICC, but we can use our advocacy vis-a-vis certain states to ask them, when we have these certain cases, for example, being built, litigations, that we could use it with certain states that would be willing to prosecute individuals under the domestic jurisdiction. And this is a new stage for advocacy, I think, that we are facing. And this is possible. Many states could do that either under conventional — on torture or, you know, on the domestic laws, the tort laws here in the United States, in the UK also could be used. And I recently talked to Nepal lawyers that have been building
this kind of strategy in UK, with the UK judiciary, prosecutors, and police to bring to justice the Nepalese perpetrators in the UK. So this is doable, but this is a whole new stage in the advocacy for NGOs and also a whole new stage in a type of documentation that NGOs and UN office has to do.

AMB. LEE: Okay. Thank you, Joanna. You know, one thing great about having a very, very knowledgeable panel is that it makes the moderator’s job very simple. You throw one question, and your time’s almost up. So I’m actually going to pick up where Joanna was talking about because, really, at the crux of the issue is accountability, you know, how do we hold North Korea accountable. And, yes, you know, we have this issue about the Security Council referral to the ICC, which remains, of course, you know, the issue.

And that — you know, maybe like three, four minutes, not quite as long because we do want to spare some time for Q&A, but I’d like you to sort of pick up on the recent — Tomas Quintana’s report, which included, of course, the panel of experts report on the accountability. I mean, there are other ways to go about, some of which Joanna talks about. I mean, what about the — we keep hearing about the special tribunal or ad-hoc tribunal as originally pointed out by the COI. Why can’t the general assembly kick in this process when the Security Council is not moving on what is a grave threat to the security and peace of this particular area?

Maybe Dr. Go can elaborate a little further on the ILO role and how some of these countries where the North Korean overseas workers are in, like Poland and other countries who are members of the ICC, what they can specifically do to move the ICC or get ICC involved without having to go through the referral of the Security Council? What about the kidnapped people — abduction issue that the Japanese government of course is very, very keen on? Japanese are not the only ones abducted. There are Thai — there is a Thai abducted case. We have hundreds of women in Korea, as hundreds of abducted cases.

Is there any way that the coalition of governments that could go to the ICC with, you know, this continuing crime sort of theory on this. What about R2P? I mean, there are, it seems, tools to really push drive on the accountability issues, just that they’re not being used I don’t think. Maybe for three or four minutes you can each just be a little more specific about what could be done realistically in terms of accountability, especially with some reflections on the recent, you know, panel of experts discussions. Bob?

AMB. KING: The United States is a particularly difficult situation on this issue. We’re not a member of the ICC. It creates heartburn for us when we have to look at ICC issues. There are also issues with regard to setting up an independent panel. One of the concerns that the United States and a number of other countries have is the growing costs of UN programs. And there is pressure to keep those costs under control. My guess is that the current United States government will continue to express those problems and will make it difficult.

Part of the problem is that unless there’s a general consensus, it’s very difficult to move forward. And I don’t see that kind of consensus occurring anytime quickly. That
doesn’t mean that we shouldn’t continue to press for it. The issue of the Commission of Inquiry, the creation of the Commission of Inquiry, was not something that people said, “what a wonderful idea, let’s do it” as soon as it came up. This was something that took some time to reach the point where the consensus was there and we were able to move forward on it.

And so my sense is on the issue of accountability, particularly looking at ICC or special tribunal, is that we need to continue to talk about it. We need to continue to discuss it. Organizations like Joanna’s group and other civil society groups, these are issues that need to be part of the conversation. We need to continue to press on them.

And at the same time, we need to continue to press on our governments. And, you know, the United States should feel pressure. There is no question that the concern that was expressed by many of the NGOs in the United States about wanting to have a commission of inquiry was one of the things that ultimately led the United States to say, “Yes, we should do it.” So, yes, we need to continue to press. This isn’t something that will happen quickly and easily.

The other difficulty in terms of moving forward, particularly with some kind of a formal referral to the ICC, are the politics of the Security Council. And, yes, it can be done in the General Assembly, but you have the same kinds of problems in the General Assembly, and in some regards, you don’t have the ability of a handful of states to oppose it and stop it. But you’ve got to build consensus, and this is a longer-term process. I think we need to continue to press for it. I think we need to continue to work for it. But I think it’s got — it’s going to be something that the nongovernment organizations, the civil society groups can make progress and can press on those kind of things.

The other thing that I think we need to be careful is that we don’t see North Korea in isolation from other things that are taking place not just in North Korea, but elsewhere. What are we doing in terms of accountability for other human rights abuses elsewhere in the world? And I think to the extent that we create a culture — not just that North Korea is a problem we have to deal with, but a culture that says human rights abuses, wherever they occur, need to be dealt with in some kind of a process like this. We need to move in that direction.

And so I think we need to see this as a larger problem in many ways, and one that’s going to require continued effort on the part of all of us who are particularly concerned about North Korea, but about those who are concerned as well with the broader issues of human rights generally. Thanks.

MR. GO: If I’m allowed to go further on taking the issue forth of North Korean overseas workers to the ICC, obviously I described before much of what North Korea export of labor overseas constitutes, the forced labor scheme. And that’s actually a crime against humanity specified in the statutes of the ICC. So that creates a ground to take this issue to the ICC.
But then another issue is how many victims are involved in this issue, in the forced labor, by the North Korean regime. So the number of North Korean workers who are forced to work abroad has increased in the last couple of years. According to statistics, 35,000 North Korean workers were involved in the scheme in around 2010. Right now, the number has increased to 60,000 at least. So these are the lower bound of the estimate, not upper bound, not even average.

And so this is actually a pressing issue, an urgent issue. It’s an ongoing issue. And even though, if you look at the grand picture of how many people are victims of forced labor in the world, according to ILO statistics, there are 20 million victims of forced labor. And if you compare it to the number of North Korean workers, it might seem like jumping the bucket.

But the key difference here is that unlike many of the forced labor schemes, which are private crimes, North Korea’s export of workers abroad is actually a state policy. It — (inaudible) — submission. There’s a lot of violation, human rights violations taking place in North Korea, actually — (inaudible) — that’s the key difference here compared to other grave human rights violations, and it occurs in peacetime as well. So I think that’s the reason why there’s this impetus to take the case to the ICC and putting in — I mean, focus to the international community and put the spotlight on the North Korean leadership.

So I’m going to go to the technicalities about taking the case to the ICC. Ten countries are members of the ICC, as — (inaudible) — treaty, Treaty of Rome. And there are two countries from Europe, Poland and Malta, and there are five countries from Africa — Senegal, Namibia, Uganda, and then Nigeria, and maybe I’m missing something here — and then two countries from Asia: Mongolia and Cambodia. And there also two countries from Latin America. These are much smaller number. There’s Ecuador and Peru. These are like less than 10 in each country.

So there are 10 countries who signed the Statute of Rome, and then they’re parties of the ICC, and therefore, we can — I mean, so ICC has jurisdiction over this issue. The number involved is much smaller, obviously, because a part of the workers are in China and Russia who haven’t signed the treaty. But then, even though the numbers are much smaller, we have a jurisdiction here, and also because of — (inaudible) — of the gravity of the situation, the urgency of situation, I think there’s plenty of ground for the ICC to consider this issue and eventually take — prosecute the parties responsible.

By the way, before I forgot to mention that the European Parliament also expressed concern about the use of North Korean workers in Europe and have made it very specific that the hosting countries, countries that host North Korean workers, allow the private enterprises to hire these workers are also responsible for the human rights abuses taking place in the work sites that employ North Korean workers.

AMB. LEE: Okay.

Greg?
MR. SCARLATOIU: Addressing the question about abductees that you also asked, surely, close to 80,000 South Koreans were taken by the North pursuant to an order issued by Kim Il-sung, beginning right after the surprise attack of June 25, 1950, the surprise attack launched against South Korea. Many more have been taken afterwards — fishermen, students even abducted from Europe, South Korean students. We’re well aware of Japanese abductees, teenage girls abducted on their way to badminton practice, families torn apart, nationals of other countries — Lebanon, Romania, the Netherlands.

Technically, the big issue here is if the abductees have been held after the 2002 Rome Treaty, thus does ICC jurisdiction apply? A very strong argument can be made that although we might not have evidence beyond reasonable doubt, that this practice of abductions has continued post-2002, we might be able to secure the evidence that these abductees have been held against their will post-2002. And, of course, there are suspected cases that might have happened actually post-2002. So once we produce that evidence, some of the countries whose nationals have been taken by the Kim regime will surely have personal jurisdiction over their own nationals. Countries from whose territories abductees were taken by North Korean agents will have territorial jurisdiction over this issue and, thus, standing at the ICC.

A very quick point about transitional justice. We all know that transitional justice comprises a complex, versatile tool kit. The point of transitional justice is, of course, justice, and also restoring these societies to good health. Prosecution, especially of those who have committed crimes against humanity, by international or domestic tribunals is extraordinarily important.

At the same time, we have to remember that in order to proceed with what might be the largest humanitarian operation in world history, in order to proceed with efforts as difficult as they might be to rescue prisoners from North Korea’s political prison camps, some of North Korea’s officials will have to cooperate. In order to do that, we will have to remember that this is a complex tool kit, also including perhaps truth and reconciliation commissions, also perhaps including amnesty. We will have to remember that we have learned some great lessons, for example, from the decommissioning of officers and NCOs in Eastern Europe, and the United States was very closely involved with this process. We have learned a different type of lesson through attempted reform and post-regime change in the Middle East, for example. There is a lot to learn from that. Ultimately, we have to remember that the people of North Korea also matter. And they need to be educated regarding transitional justice.

In Eastern Europe — Joanna will argue — in many instances we’re simply content to see that there are free elections and some semblance of free markets. If left in place, the kleptocracies — the corrupt kleptocracies of the type North Korea has under a totalitarian dynastic regime — they’re kept in check. But if left unchecked under different circumstances, if no — and I’m not talking necessarily about prosecution, but if no proper lustration process is implemented, they will become a cancer that will ultimately end up basically destroying not only the northern half of the Korean Peninsula, but becoming a very, very serious issue even for a unified Korean Peninsula, a unified Republic of Korea.
AMB. LEE: Joanna, did you want to pick up on the accountability — yeah.

MS. HOSANIAK: Sure. To address your question about what else we could do internationally, I would agree with what Ambassador King has said. You know, I would like to keep things simple. It’s not that easy. As senior diplomat, Ambassador King knows how difficult it is to work with various states. And when it was so difficult to, for example, convene some commission of inquiry, just a few states that are normally, you know, very supportive of our work, Europeans states and Japan and US, how difficult it would be to, you know, lobby one — over 100 states to convince them to — you know, of General Assembly to convince them to, for example, establish the ad-hoc tribunal or something else.

We would have to have an army of NGOs, and we don’t have that. We are just a few of us that continue to do this advocacy work. And we want to — you know, not to simply disperse our efforts to too many things. Just keep things simple and very targeted. And I think we are on a right direction, especially with these added resources and what we can do with the UN office in the near future, how we can establish this linkage evidence — with the institutions, what we can do between NGOs, with the excellent work that Greg is doing, for example, on mapping the institutions of power. Some NGOs that are mapping graves, for example, with this kind of, you know, documentation that is existing on perpetrators.

And, you know, it’s not easy to say, you know, of course, because of the chain of command, the top leadership is responsible. You have to prove how this linkage is working. And this is what the UN office is struggling with and many NGOs are struggling with — to prove this linkage. And this was the case — and Greg will know that very well as well — in our Central Europe, where, you know, secret police and secret police in North Korea is the one that is in majority responsible for the majority of the crimes that are happening.

But that secret police was established in order to be the military arm of each party in each communist country. However, this kind of linkage between the party — and the orders were always going from the party to the secret police, not vice versa. This was kind of the subservient role of the secret police to the party in each country. However, you know, this kind of linkage was in majority proven only when the archives were open. And this is very difficult right now to kind of prove this linkage.

So I think we have to first focus on that and combine our efforts in order to prove to international community how deeply these several institutions and the top leadership is involved in these crimes in order to kind of strengthen our advocacy, our international advocacy. Then maybe something will happen.

You know, I’m not saying no. For example, there’s a surprising turn of event was with Syria at the General Assembly vote recently, with the special prosecutor. So many things could happen, but I don’t think we are ready with the international community to just say, yes, you know, out of the blue, there will be something very big, ad hoc tribunal or something else because the Security Council is inactive. It doesn’t work this way. And
it requires a lot of targeted advocacy vis-a-vis every possible state. And this is something that we cannot waste our resources on right now.

However, I think that there were many other issues that were not addressed that we could, you know, kind of go deeper into. One of the issues that the Commission of Inquiry could not find enough evidence was persons with disabilities. Children with disabilities is an issue that is very dear to my heart. And I would love to kind of see, you know, more action being taken on that. Simply speaking that, you know, since the ’90s, we had a lot of disturbing testimonies of what’s going on with the children and persons with disabilities, including testimonies of testing chemical and biological weapons. And this also was confirmed when we did our recent report on women in 2013. These testimonies again appeared from the top officials that we interviewed and from local police officers. And I think this is an area that hasn’t been further investigated. We are not saying that this is really happening. There needs to be investigation, but this is something that the international community especially can do. This is direct linkage also to the Security Council if it happens.

Let’s say, for example, you know — for example, North Korean and Syrian activities have been ongoing since the ’90s, and near the city of Aleppo, there were, you know, various reports of testing chemical weapons there and some North Koreans that died and Syrian personnel that died, allegedly during some of the testing. Aleppo continues to be a site of chemical usage of weapons against its population, so I think we have to — with what happened with Kim Jong-nam, for example, we have to look at that linkage.

We know from history that chemical and biological weapons were unfortunately developed because of the testing on unwilling human subjects. And this is a kind of area that we would have to investigate further because we are talking about the state that is not using not only probably these weapons against its own population, but selling it, and those weapons may be used against populations of other countries. I think there is really a lot of work that has to be done to kind of, you know, prove that North Korea — how North Korean different institutions of power are operating.

AMB. LEE: Okay. All right. Thank you, Joanna. We have about 15 minutes so I’m going to open up to the floor. Please identify yourself and make your question specific and short. No statements please. I’m going to give prerogative to the organizer. Nick. And then we’ll go in that order.

MR. EBERSTADT: Thank you, Mr. Ambassador. Nick Eberstadt from the American Enterprise Institute. I want to salute you all for a really valuable, informative update and assessment on where we are. And I want to offer a question to any of you who would care to deal with it about one of the major headaches today I think for all of us concerning advancement of human rights in DPRK, and this is the People’s Republic of China. In Victor Cha’s apt phrase, China has taken on the role of defense lawyer for North Korea in international fora and the UN and elsewhere, in effect. You two ambassadors, Ambassador King and Ambassador Lee, have had the pleasure of working up close and personal with the Chinese regime in some of these fora. The rest of you are in varying degrees involved with the problems that China has caused. Are there creative ways that we can increase the
cost for the Chinese government of serving as the financier and defender of the world’s largest outdoor prison?

AMB. LEE: What I’ll do is because of the time limit, let me take a few more questions and then come back to the panel. So the two gentlemen. I’ll let you answer that, Bob.

Q: Peter Priam (ph), an intel analyst and a former diplomat. I think it may be possible to (conflagrate ?) both the nuclear and human rights issues because if you look at Victor Cha’s estimate of the death toll, a million people at the hands of the Kim regime, you count the death toll of a nuclear weapon, 200, 250,000 people, you have actually five nuclear weapons worth of people dead at the hands of the Kim regime. And if the regime lasts for another 10 years, you can add yet another nuclear weapon worth of people. Add to this the fact that these prisoners are mining uranium. So there need not be a wall between the nuclear and human rights issues.

Ambassador King, is it possible, would you be willing to, is there any possibility of pursuing secondary sanctions?

AMB. LEE: Okay. The gentleman in the back. Yeah.

Q: Thank you very much. Conrad (ph). I work for the Embassy of Poland here. And Poland was mentioned several times because of the overseas workers. Just to put it into perspective, at recent count — it’s probably a question to Dr. Go — we have something like 200 North Korean workers in Poland. And, you know, we stopped issuing visas for them, we are sending all kinds of inspections, and I’m sure the conditions in Poland for them are much better than in Siberia, for instance. So they are not getting this $100, $200 million of US dollars from Europe by that case.

And this is the question part. What would you see to an argument that the kind of exposure like that, workers exposure, official exposure to other countries could become handy and beneficial in the future if something changes in North Korea? Because we start all the discussions that it’s an isolated country but now their preferred policy choice seems to be more isolation, including diplomatic isolation. Thank you.

AMB. LEE: Okay. Is there any other questions from this side? Yes. Maybe the last question, and then we’ll come back to the panel.

Q: Thank you. My name is Lee Yang (ph). I just wonder if you can give some kind of statistic about what kind of crime you’re talking about and whether you can compare among some other countries with the United States. It would be very helpful.

MR. SCARLATOIU: On which issue?

MR. GO: Which issue?
Q: What kind of abuses, whether there’s murder or there’s genocide or whether there is deprivation of their human rights or their protection of their housing or their food or medicine, something like that. And if you could compare with some major countries who has abuses or compared with the United States. And maybe in terms of the media or propaganda, it would be very useful. So there would be no misleading.

AMB. LEE: Okay. I’ll come back to the panel. I think a couple of them were addressed to you, Bob.

AMB. KING: I’ll make a couple of comments.

AMB. LEE: Okay.

AMB. KING: A couple of things, first of all with Nick’s question on China. China really is the problem in terms of North Korea, but it’s also a problem in terms of how we deal with China. And the relationship with North Korea is not the only issue we have to deal with China on. So the whole issue is an extremely complicated one and involves a lot of different facets.

One of the issues, for example, is the question of North Korean refugees who are — the only way out is through China. Some of those refugees actually are able to leave China. The Chinese allow them to go. Some of them they don’t. A lot of that depends on what the relationship is between China and South Korea. And, right now, I suspect it’s — and I haven’t seen the latest numbers — I suspect it’s much more difficult for refugees trying to get out through China. They’re returned, as it was earlier. There was a period of time when the Chinese were happy to do it.

The Chinese are concerned about North Korea, and there’s no question that North Korean nuclear weapons do represent a threat to China. There are stories that have appeared in The Washington Post talking about how unhappy the Chinese were about the execution of Kim Jong Un’s brother. So it’s a very complicated kind of thing.

And part of the difficulty is how do you deal with a country when you’ve got so many issues to deal with and so many buttons to push that lead us in different directions? It’s a challenge for the new administration that’s coming in. It’s a particularly difficult time because the State Department, as far as I understand, has only one official that has been confirmed by the Senate for the new administration. So, I mean, there’s a lack of leadership at the top. There are concerns about people who can make decisions with authority. And the relationship with the White House in terms of how you make those decisions and how you deal with a complex, nuanced relationship and try to impose some consistency and some direction on it. It’s not easy.

On the other hand, I think the Chinese are as concerned about North Korea as we are concerned. And I think it’s a challenge for us to try to come up with ways to deal with the Chinese. It is not an easy issue. There’s not a simple answer. And this is going to be something that we’re going to deal with. An interesting article in the Post a day or so ago
about how the comments that were made by the new secretary of state with regard to North Korea are remarkably like the kind of policy prescriptions and statements that were made by the previous administration.

The difficulty with North Korea is that we’re dealing with a lot of problems and a lot of complications and a lot of difficult issues. And for better or for worse, most foreign policy decisions are dictated by the conditions that are out there, and we’ve got to work with them. We’ve got to come up with the best solutions. It takes really bright people, and there are really bright people. And I’m hoping that we’ll get into a situation where we can look at some of these kinds of issues and be able to focus with this on the Chinese.

The China relationship is one of the most complicated, most important, and most vital for the United States to come up with good solutions on. And we need people who are going to be able to do that.

A couple of quick comments on secondary sanctions. Yeah, I think secondary sanctions, which would particularly bite Chinese firms, are something that we ought to be doing. And I think that China’s a big country, lots of people, lots of economic activity going on. Some of it the government knows about, some of it it doesn’t. And I think to the extent that we can identify some of the problem players with regard to North Korea, we ought to identify who they are and Chinese entities ought to be sanctioned and we ought to figure out ways of going after them. So, yeah, we need creativity. And I think that would be something that would be helpful.

MR. GO: Yeah. So I’ll quickly address the issue of China’s involvement in the North Korean human rights abuses and address the issue of, you know, how — I mean, how like there could be some possible upside to employing North Korean workers for their own benefit. And that’s a very good, important question.

So I’ll address the Chinese issue first. I — (inaudible) — secondary sanctions issue. The bulk of North Korean workers are in two countries right now, working in two countries. One is Russia; the other is China. We know — we estimate a number of North Korean workers in China will be around 20,000 to 30,000. Many of these workers don’t work in the service sector, also in construction, but there’s also a significant number who work in manufacturing work sites in China. And many of the products that are made in these factories where North Korean workers are employed exported to around the world as made-in-China products. So here is one case where can find out which companies in China are employing North Korean worker under false labor conditions.

And there’s a reason why China employers prefer North Korean workers over their own workers. It’s not because their wages are practically lower than the Chinese peers. It’s because the turnover rate for North Korean workers is zero. For three years, they don’t go anywhere. So that’s why they’re much more preferred than the Chinese counterparts. So that’s one area that we can target and then the secondary boycott issue — boycott method.
Another issue about the North Korean workers, how they’re exposed to the outside world, whether that could have some kind of net positive effect in North Korea when they go back to the country. And I commend actually my colleague, Polish colleague, for asking that question because it’s a very important question.

Also, Poland is a little bit of an unintended victim, so to speak, of, you know, the matter of North Korean overseas workers because what I’ve heard is that the working conditions in Poland compared to other countries are much better in many ways. Even the number is much smaller there. And then Poland is doing a great job addressing this issue, reducing the number of workers working in the country and all that. But I think the net number of North Korean workers in Poland will be zero pretty soon. So that’s actually a positive development from my perspective.

So addressing the issue whether there will be any positive effect from those workers, North Korean workers overseas when they go back to their country, first of all, I think it will be very little first because the working conditions of these workers when they are abroad is very harsh. They are under constant surveillance, and their interaction with the local population is highly curtailed, highly prohibited. So even if they wanted to gain some sort of — like a knowledge or experience with the local population, that experience is limited by the fact that they’re in a very controlled environment. And that’s one.

The other one is that even if they have a positive exposure to the outside world when they’re working abroad, when they go back, they have a very high chance of getting approached or getting sent to the political prison camps. I’ve discussed this with high-level defectors in North Korea. Through interviews what was revealed was that if you’ve been sent abroad to study or to work, your chance of getting put eventually in the North Korean society is much higher than — in your similar education or work experience than never been abroad. So the regime knows that those people who were abroad bring back risk to the regime. So in a way there’s high risk of like — you know, for the North Korean workers when they go back to their country will be eventually — not prosecuted, but sent to the political prison camps where the conditions are very — (inaudible).

So I think — yeah. So you have to really think about these issues — (inaudible).

AMB. LEE: Okay. We’re running out of time so maybe very quick takes by Greg and Joanna.

MR. SCARLATOIU: Absolutely. The question about the comparison. The history of democracy in South Korea is very recent, and yet even during the darkest days of the Park Geun-Hye administration, South Korea had an opposition party. South Korea was not running political prison camps. Yes, there were some extrajudicial killings, perhaps enforced disappearances, but nothing, absolutely nothing on a scale comparable to the overwhelming abuses happening in North Korea today. Again, 120,000 men, women, and children, three generations of the same family subjected to induced malnutrition, torture, secret executions, public executions, forced labor.
None of us are perfect, and those of us in the democratic, free world acknowledge our issues and address our issues. We’re aware that here in the United States there is a high number of people in incarceration. Surely the number of political prisoners in the United States is zero. We’re not running political prison camps out of Leesburg, Virginia, or Winchester, Virginia.

And what is perceived as normal behavior in the free world is criminalized in North Korea. An American tourist accidentally leaving behind a religious book, a Bible that landed him into a sea of trouble. An American young man who was unwise enough to pull what would amount elsewhere to a college prank and perhaps a slap on the wrist was given many, many years or hard labor in a North Korean prison camp for that reason.

A very quick point about China if I may.

AMB. LEE: Sure.

MR. SCARLATOIU: Great points that Dr. Go Myung-Hyun has made. We have documented the use of forced labor in North Korea’s export industries, for example. We all remember the letter that Michael Kirby and the other two commissioners addressed to the permanent representative of the People’s Republic of China in Geneva, a letter warning that by engaging in the forcible repatriation of North Korean refugees, Chinese officials may be aiding and abetting a regime that’s committing crimes against humanity.

Now, us, in the human rights community, NGOs, we can lament and complain about the lack of resources and the difficulty of our mission, and that is true. That said, the Citizens’ Alliance, the Asan Institute or the Human Rights in North Korea are not large-scale, worldwide grassroots human rights organizations. Our colleagues at such organizations have been wonderful. We have been part of the same team. They’ve made great progress. We have seen worldwide campaigns run by such large-scale, grassroots organizations addressing a lot of very good issues. We haven’t yet seen a worldwide grassroots advocacy campaign addressing this particular issue, North Korean human rights. Once we see that, perhaps that will be a game change involving and affecting China’s position as well.

AMB. LEE: Joanna, any final words?

MS. HOSANIAK: Just to be quick, I think the best way to understand what’s going on in North Korea is simply to get back to the roots and read the report of the Commission of Inquiry. And if not the whole report, which is very big, the shortened version, just 30 pages. You have everything there: violations of the right to food, freedom of movement, freedom of expression, religion, political prisoners, what have you. And the fact that what the commission said that these violations amount to crimes against humanity that do not have any parallel in the modern world. I think this is a key statement from the Commission of Inquiry. It says everything about North Korea.

And in terms of China, just shortly, what Dr. Eberstadt mentioned, I think we also have to look at the issues that China is really contributing to — that these crimes are
continuing by the fact that they are sending North Korean refugees back to North Korea when they are exposed to severe punishment after their repatriation. And the punishments are increasing in North Korea. So, you know, our international campaign on the one hand in the past was leading to the decrease of punishment.

For example, in 2004, after the appointment of special rapporteur and so on, we had certain testimonies that, for example, in detention centers there were less beatings. Some women testified that some of the people even said that they had to sign that their human rights were not violated upon release. But with Kim Jong Un taking over power, the persecutions are increasing. And that means that, you know, less people will make it through when they are deported back to North Korea. And we have to look at China’s role at that.

It’s quite confusing what China is doing. You know, with — for example, the recent announcement of — with coal, for example, and cutting down on flight routes with North Korea and so on, at the same time, for example, our NGO, who helps North Korean refugees in China as well, has been very harshly affected by the discussion of the THAAD deployment. And there is, unfortunately, a huge crackdown right now on those that are helping refugees in China. So we have to, you know, look at this kind of double standard that China is using.

AMB. LEE: Thank you, Joanna. I will conclude this morning session by pointing out that I remain very skeptical in the hope that somehow North Korea can be convinced to reverse its current policies on human rights and the weapons of mass destruction. South Korea’s had 10 years of engagement policy where, during the 10-year period, we’ve had as much as $10 billion flowing into North Korea. And yet, you will recall that the first nuclear test North Korea conducted was in that 10-year period. So I think Nick is spot on to suggest that really the focus ought to be on China rather than somehow trying to convince North Korea.

Now, things look, you know, pessimistic with China, but one optimism might be that currently as things stand, China is under this sort of like Cold War mentality where it’s battling with the United States in this hegemony over the Asia-Pacific region and that somehow North Korea plays a role in China’s favor. But China does want to play a global leadership role, and North Korea is pulling down its ankle in its desire to become that global leader. And I might also add that communism in China is — when you look at the long history of China, it’s really more an aberration than a norm for that country. China traditionally has always been very mercantilist and pragmatic in a sense.

So, hopefully, somehow, we can convince China that there’s more to gain by not becoming the defense lawyer that it has become — that it has more to lose by continuing that role than by stopping that role that China has so much to gain in terms of not only the denuclearization of the Korean Peninsula but in terms of really initiating the second stage of economic development, particularly in the three provinces of Northeast China. So I think that’s where really the convincing of China ought to be placed on in terms of the economic benefits and the economic losses of continuing this current practice.
So on that note, please join me in giving a warm applause to this excellent panelist discussion. (Applause.)

MR. EBERSTADT: Ladies and gentlemen, lunch is waiting outside. We will reconvene at 12:45 p.m. for a conversation with Justice Kirby. And please join me once again in thanking our panelists for an absolutely superb presentation. (Applause.)

(Break.)

MR. EBERSTADT: Ladies and gentlemen, can I ask you to take your seats? Because we’re going to begin our next session, which I think is going to be a highlight of the conference. We have the honor of being able to welcome Justice Michael Kirby to our AEI headquarters. And I am charged with what I think will inevitably be an inadequate introduction to this man, who is a hero of the international North Korea human rights movement.

By procedures of Australian justice, my understanding is that a justice to the Australian High Court is obliged to retire at age 70. And if Justice Kirby had concluded his career at age 70, he would have had an illustrious and eminent CV. He was, I believe, the youngest appointed person in the justice system in Australia’s history. He was known as the great dissenter in Australia’s high court, which he served on for many years. Somewhere in between there, he found time to be the chancellor of a highly respected university. And along the way he acquired more degrees, honorary and other, than a lot of thermometers have.

But I think the reason that we all know him is what happened in what we might say is your second career, maybe the most membrane and arguably important part of your career, which was in leading the COI. Those of us who look at North Korea and human rights can really see, I think, the history as being divided into the pre-COI period and the post-COI period. And we have Justice Kirby I think in very large measure to thank for that.

I have a lot of questions that I’d like to ask him. I imagine that you all might have a few questions you’d like to ask him as well. We have the opportunity of having a conversation with Justice Kirby. Before any of that, though, I’d like to give Justice Kirby an opportunity to offer any reflections he might care to share to begin with on the origins of the COI, where we’ve come in the last three years since the COI, and where we need to go. So welcome to AEI, sir.

THE HON. MICHAEL KIRBY: Thank you very much. I want to begin this conversation with a few words of praise of Dr. Eberstadt because I’ve read a very important essay that he wrote, which is not about North Korea but which everybody who wants to understand where we are in Western societies today needs to read. It’s called “Our Miserable 21st Century.” And it’s about the fall since the global financial crisis in employment for undereducated male employees. And it’s true of Australia, and it’s true of the United States of America, and it gives a very brilliant analysis. And so I was really looking forward to our conversation today. And you’ve thrown me a bit by getting back
into speech mode because I was thinking he was going to ask very searching questions. I’d better be on my toes.

But thank you very much for having me here. Thanks to AEI. I’ve gone to virtually all the think tanks along this road now. And it’s a very impressive collection of institutions, and Washington is lucky to have it. The world is lucky to have these very clever people working on very difficult problems, of which one of the most difficult is North Korea.

The Commission of Inquiry, as we’ve heard, grew out of actions of civil society and of the frustration of the international community that there were lots of reports about North Korea, but nobody really quite knew what was happening. And then the catalyst was the action of one who became my colleague, Marzuki Darusman, the former Indonesian prosecutor general and attorney general, who became a member of the COI by the resolution of the Human Rights Council. And he suggested in one of his reports as special rapporteur that they should set up a COI.

And so the proposal was included in a resolution. And then a very unusual thing happened: It went to the Human Rights Council. And the president at the time, the ambassador for Poland, called it on, and there was no call for a vote. And three times he paused and banged his gavel, but no one called for a vote. And that is a very significant thing because to set up a COI is a very political sort of action, and it nonetheless went through without any opposition at all. And I think that was a mark of the fact that the international community of all differences of opinion had come to the view that something had to be done, and there had to be a thorough investigation.

Then a second unusual thing happened. The usual way the United Nations conducts inquiries is in the tradition of the Napoleon civil law tradition. It’s basically done in private. It’s very efficient, but it lacks publicity. It lacks transparency. And I put it to my colleagues when we first met in July 2013 that the antidote to the secrecy of North Korea would be that we would do everything we did in the Anglo-American tradition, upfront, publicly, sitting in public so that as we did our judgments, we could ourselves be judged. And that had the advantage of bringing forward 80 witnesses who could tell their stories.

It’s true, as was said in the panel earlier today, that we don’t have the graphic photographs of horrible conditions in detention camps or in the refugee detention in China when people are brought back in desperate conditions into DPRK. We don’t have any of that graphic, photographic detail, but we have certainly got a lot of very powerful statements by a lot of witnesses.

And the report is written — this is the report. The report is written in the manner of the Anglo-American tradition. Every second page has got a quotation from the witnesses because they can say things much more briefly and much more powerfully and convincingly than somebody who’s simply regurgitating and then telling it in the third person. And so that is why this is a very readable report. A lot of UN reports are not criticizing anybody, but they’re written in the passive voice and everything is very indirect. This is direct, upfront,
and it allows the people who have suffered greatly the dignity of speaking directly to the leadership of the United Nations and to the nations of the world.

What is surprising is that this report has not been properly published. It should have been picked up by a commercial publisher or, it was suggested to me this morning, a university publisher. I don’t believe so long as there wasn’t any interference with the text there would be any problem from the UN so far as copyright as concerned, but ideally, this should be out and about. Otherwise, as we said in our report, the danger is that the world will turn to something else. It’s always, as Joanna said, something happening. And it’s easy to neglect North Korea because it’s a faraway country, as you put it, of which we know little and we should know more. And there’s a great deal in this report. And, unfortunately, there’s no evidence that things have improved, and in many ways, as Ambassador Lee said this morning, what happened recently to Kim Jong-nam wasn’t surprising to me. This was simply a continuation of the type of activity that has sadly become all too common over the past 70 years.

And so I might have been the great dissenter on the high court of Australia. I had some very conservative colleagues. But I was not the great dissenter in this report. This report was unanimous. It was brought in on time and within budget. It was all written in a space of effectively six months, and it was produced, and it’s really in Geneva they say this is the gold standard of UN COIs. And that issue of methodology is something we shouldn’t underestimate because we need the UN to work well, effectively, and I think was a good illustration of the way to do things.

Now, what is the good news, and what is the bad news? Now, the good news is the UN fundamentally did everything we wanted it to do that it could do, save for the veto. It gave us a brilliant secretary. I was glad Joanna referred to that this morning. They worked in the Palais Wilson, and they worked very effectively. They worked very hard. I read every word of their drafts and changed a lot — a lot, so it is written in a natural English speaker’s language. And they did a very, very good job. And my colleagues were wonderful. We got on well together. That doesn’t always happen in multi-member bodies.

But we then — they didn’t like the fact that we wanted to have public hearings because that was very unusual in the UN. They said, “We won’t be able to control it; there will be security problems.” So we said, “Don’t worry about it. We’ll take the risks. We want to do this this way.” They also didn’t want me to write to Kim Jong Un because they said, “We’ve never done that before — never done that.” And I said, “Due process requires if he’s not here and we’re going to be critical of him, we have to give him the draft so that he can pick it up and tell us of any mistakes or anything that’s unfair.” He didn’t, but we gave him that chance.

They didn’t like the letter we sent to the Chinese ambassador. But we said, “That’s due process.” Interestingly, the Russian ambassador, a wise old guy in Geneva, said, “Look, we understand completely what is going on in North Korea. We’ve been there. We’ve done that. We’ve seen all this. And this is like a time capsule. That’s what you’ve got to understand,
this is a time capsule. But the time capsule is going on a bit long and the time is up for it to be opened up, and still it hasn’t been.”

He also gave us some good advice. If they do things that are good, praise them. And they did do some. It was a very short list. They did sign the disabilities convention. And there is evidence that what had been the case before that Pyongyang you never saw a person who limped or who was in a wheelchair, no one. In the perfect city, everybody had to be perfect. But they signed it. They haven’t yet ratified it I don’t think. And therefore it’s, again, an imperfect delivery.

But the Russian ambassador was right, and we did what we could. They were actually quite courteous, the Russians. There’s a procedure called the Arria procedure, which is a procedure named after an ambassador from Latin America that if you have a matter you want to get before the Security Council, you can have a meeting not in the chamber — the beautiful chamber of the Security Council in New York but in another room in the UN secretary building, and give a briefing to any member of the Security Council or any member of the General Assembly that wants to turn up. It’s a sort of giving them an interest in the issue.

So we offered to do an Arria briefing. And the Russians asked to see us. And they said, “We’ve come to explain that we will not be at the Arria briefing, but this is no discourtesy to the COI. This is because our instructions are that we do not approve of country-specific COIs, but we do want to emphasize that we have no disrespect for the COI.” The Chinese simply didn’t turn up, didn’t say anything, and they were completely missing in action when we had the meeting — the Arria meeting. And then the Arria meeting went on to the meeting in the Security Council.

At every stage, in the Human Rights Council, in the General Assembly, and in the Security Council, we had very big votes. They were very big votes, by the standards of the Human Rights Council, extremely big votes. I think there were only six dissenters against the recommendations in the report of the COI when it was tabled. But those who did disagree with it took that line that I’ve mentioned, the Russian — where we’re not saying we’ve got any criticisms of the reasoning and so on. We just don’t approve of country-specific mandates. My answer to that always has been, well, we didn’t ask to be appointed. We’ve been appointed. And once you’ve got it, it’s a little bit formalistic to say you’re not going to have any regard to it once you’ve got the evidence and the information. But anyway, that was where it stood.

There’s a curious provision in the charter which was borrowed from the league, which says that on a procedural motion, all that is required is the vote of 10 member states to support a procedural resolution. That was something that was borrowed from the League of Nations. And that’s why we got it onto the agenda of the Security Council. China and the Russian Federation opposed, but it came up there.

So at every stage, the UN was pushing it as far as it could. They then pushed the proposal, which we had put for a field office in South Korea, which was a tricky thing
from the point of view of the Republic of Korea, but the Republic of Korea agreed and
the United Nations advocated it and it was established. So that is a good thing.

We also picked up a suggestion of Prince Zeid, who had been the Jordanian
ambassador in the Security Council when Jordan was a nonpermanent member, who said,
when you are preparing witness statements, prepare them please in the manner that you
would prepare them for a brief for a prosecutor so that if you don’t have a court yet, one
day you might have a court and you should have everything ready so that it can be put into
the court. Of course, that can’t be perfect because until you know the court, you don’t know
what their jurisdiction is, what their procedures will be, and so on. But most of them are
pretty standard, and therefore, you can prepare your statements. And that is what we did,
and that is what is now being done by the field office. So in that sense, they’re continuing
what we did.

We had a great deal of help from civil society and from the Republic of Korea’s
ambassador for human rights, Ambassador Lee, who is here, and they established the Sages
Group afterwards to keep a bit of carrying up of the issue and keeping it before the eye. We
had the committee of experts. That was set up and that reported. And there was a very
powerful resolution of the Human Rights Council just last week, which, again, without a
vote. That’s a very unusual thing in the Human Rights Council. Without a vote, they
continued the mandate of the special rapporteur for another year. They continued the
mandate of the field office for two years, and they noted and supported the report of the
committee of experts.

So, so far, so good. Now, what’s the disappointment? The disappointment is China.
We called on the Chinese mission in Geneva. We were hopeful that China, because of its
own natural concerns about the security, immigration, and other risks of its neighbor, would
help us to some extent. We asked to be allowed to go to Beijing to talk to officials and to
the academies. No. That could not be done. We asked to go to the border area to see refugees
in place. No, that could not be done.

And then when we heard of the memorandum between China and the DPRK to
repatriate DPRK citizens just by an administrative procedure. We warned them about a
special branch of the law of refugees because China is a party to the Refugees Convention
protocol. And that states that even if a person has left their country of nationality, but then,
whilst out of their country, they form a well-founded fear of persecution if they are sent
back, they are then designated a refugee plus in the place. And that gives them the protection
that they would have had if they’d left their country of nationality to escape persecution.
They become refugees, and they are entitled to the protection. We pointed all of this out for
the Chinese ambassador, but he said these are just economic immigrants trying to improve
their lives and so we just had to beg to differ. But we drew their obligations to their notice,
which I don’t think they liked. They then insisted that we attend the correspondence to our
report, which we did. We were happy to do that because the report and the correspondence
doesn’t throw a good light on China.
However, we’ve got to acknowledge a very important thing. If we find difficult the conduct of China in the Human Rights Council, then the solution to that is not to enlarge the power of China in the Human Rights Council or in the United Nations. It would be, with respect — as we say in the law when we’ve got to say something really nasty — it would be shooting yourself in the foot. If the United States of America was so to diminish its beneficial and liberationist role in human rights to stand away from that and effectively hand the leadership of the United Nations in terms of power, influence, and ideas over to countries that are not friendly to those ideas.

When I was aged six, the schoolchildren in my little kindergarten in Australia were lined up to sit on the Concord Road as Mrs. Roosevelt went past. That great lady, she was going up to the Concorde Repatriation Hospital in Sidney, a hospital built with US money for the US veterans to open the hospital. And I still remember, I swear she looked at me as she went past. But this was the post-world settlement. This was led by the United States. This was the great gift.

And as Prince Zeid pointed out a week ago when he gave a speech at the opening of the Human Rights Council, it was not accidental. It was deliberate that in the preamble to the charter, before peace and security, before economic equity, human rights was placed first in the preambular statements. And it’s, therefore, absolutely core. It’s one of the three pillars of the United Nations. And it will be a tremendous tragedy to the world, to people who love and respect America and know of its contribution to human rights, if the United States steps back.

So whilst we focus on China, we’ve got to focus on the United States, China, and other great powers in the United Nations. And myself, I don’t really complain too much about the veto. We would not have had the United Nations without the veto. I’m sorry but this is a bit realpolitik, and this was what was decided at Breton Woods — at Dumbarton Oaks, and this is — that was the price of getting the United Nations. And that’s just something we’ve all got to live with.

But we don’t have to live with a nuclear armed power. And what is really disappointing is nothing on the ground has really improved in DPRK. A lot on the ground has really gotten worse in DPRK by the human rights-threatening steps of developing missile system, developing probably an arsenal of 20 nuclear weapons, getting the weapons to a position where they can be militarized to be put on these missiles and being a great danger to themselves, to their own people, and to the region around.

So we hope that we would at least get engagement. Our report mentions many suggestions of engagement. It’s seeking why can’t the dentists of North Korea meet the dentists of South Korea? Why can’t the professions, the sporting teams, sister city links — but we made no progress on that.

The only time progress was made — and there have been articles written about this with starry-eyed views that this was a wonderful thing — was when DPRK agreed to take part in the Universal Periodic Review in the United Nations General Assembly. But if it’s
analyzed in terms of the timelines, the only time they did that was when a resolution was pending to refer the matter to the ICC and to the Security Council. Then we got the so-called charm offensive, and it was during the charm offensive that they sought to support a motion by Cuba that the action on the referral should be delayed whilst they saw whether North Korea could improve its human rights situation by dialogue. Well, that didn’t fool the international community. They defeated the Cuba resolution, and the charm offensive stopped dead halt. So I’m afraid when people say, “oh, look, they are now engaging, they are now involved,” I think that was simply a ploy.

I went to a meeting of the National Assembly about a month ago, the 2nd of March. And it was held in the legislature buildings in Seoul. It wasn’t actually a meeting of the assembly, but it was open to members of the assembly. There were a lot of members of the assembly there, and there were two people there from the opposition. So it was a significant thing that they had — it was to celebrate the first anniversary of the human rights in North Korea statute. That had taken 13 years to get through the legislative process, but it was one year since it got through.

And one of the people who wasn’t a member of the assembly but was an adviser said, “What you must understand is that our role in respect of North Korea is to do what they would want, do what will be good for them respecting their right and obligation to make their own decisions on human rights.” I pointed out, and it is a fact, that they don’t have a society in North Korea where they know about human rights, where they talk about them, where they have a civil society that links to the internet or any other course, so that it’s really not a very realistic approach.

So the bottom line is we haven’t improved a single thing in terms of the conditions in North Korea, but we certainly have informed the world about those conditions. And that is the stimulus to a rational planet and to the safety of the planet because as Nick was pointing out at the beginning of today, the two are interconnected. And you can’t have a safe North Korea if you don’t have a North Korea that respects the fundamental human rights of its people, including to liberty, to freedom and to food, and to dream as a human being ought to.

So that’s a quick résumé of the good news and the bad news. And I’m sorry to end on a rather grim note, but that’s the truth of the matter.

MR. EBERSTADT: Mr. Justice, let’s continue on that grim note for a moment. Let’s talk about crime and punishment. Your COI I think documents in a searing manner, an unforgettable manner, the crimes — the human rights abuses and crimes that have been committed. Some of us have blessedly little encounter with the law, and I think maybe either others in our audience here and around the country, internationally, who are likewise not so informed about legal procedures.

What is the actual mechanism for bringing — for holding people in the DPRK leadership accountable for their crimes at the ICC? What sort of mechanism would that be like? What would it look like as it unfolded? What would be the consequences if such a procedure went forward?
THE HON. MICHAEL KIRBY: Keep in mind that we were not a prosecutor. We were not a tribunal to decide guilt. We were a commission to inquire and to report. And the way it’s written, again, in the Anglo-American way, the facts are set out and then there is we find, and the findings are said clearly, and that is then a foundation. As has been pointed out, North Korea is not itself a party to the Rome Statute, which establishes the International Criminal Court, therefore, the only way that court could get jurisdiction under the Rome Statute is the exceptional clause that provides that if where a party is not a member of the statute, the Security Council decides, then the Security Council can refer the matter to the ICC.

That has happened three times and with the concurrence of the United States of America, which is not itself a party to the Rome Statute, but is a permanent member of the Security Council, so its vote on such a matter being a substantive matter is essential to the validity of the resolution. The three times were the situation in Darfur, the situation in Libya, and I think there was one other case. But certainly those two.

The situation in Libya seems to have died away because of the subsequent events of the change of regime in Libya. But I think the Darfur one is still under investigation.

What happens if there is such a referral is that the file is then taken up by the prosecutor of the International Criminal Court. And that person, who’s charged with exercising the prosecutor’s discretion, which is at the gateway of the commencement of criminal proceedings would get all the statements, take more statements of their own, and then decide whether to file an indictment. And that indictment would set out the crimes that were charged, and that would then go to the judges of the ICC for determination. And they would have to determine the matter on the basis of the criminal onus approved. That means beyond reasonable doubt.

And so the steps are reasonably straightforward. It is important not to make the mistake that we’ve been a prosecutor and we prosecuted and exercised the prosecutorial discretion. We were very clear. We were simply making the preliminary findings. And then it’s up to a prosecutor, but we’ve got to get them before a court. And if the ICC doesn’t work, that’s what the group of experts have been looking at, is there some other procedure, one we went through, the alternative procedures in our report, one of which was to set up a special tribunal like the Yugoslavia tribunal or the Rwanda tribunal or to set up some sort of joint international and national tribunal, but North Korea isn’t really a recipient of the jurisdiction because it’s resisting and, in any case, it couldn’t be a guaranteed independent court.

Another would be to have a truth-and-reconciliation type process. The problem with that is that tends only to work if you’ve got a post-regime situation where, essentially, there is an acknowledgment that things have gone wrong and opening up and an honest account of wrongdoing, which then can be accepted in the big picture of the settlement between those who have been victims and who have done great crimes.
But the one thing you can’t do since the Nuremberg tribunal is just ignore crimes against humanity. These are not just human rights violations. In the language of the Nuremberg decision, these are crimes that shock the conscience of human beings. And they are large crimes of much violence, including homicide, that shock the conscience of humanity. And that is what on a number of cases we found is the case with North Korea. And that simply cannot be ignored.

The nation-states in the General Assembly in 2005 agreed unanimously that in the event that the country of nationality does not resolve to act upon such crimes, it is then the responsibility of the entire international community to do so. This is the so-called responsibility to protect, RtoP. So this is a responsibility of the international community. And I’m not sure of how it’s going to end up and what’s going to happen. But it cannot simply be shelved. That is simply not acceptable with the step that the world took at Nuremberg, led I should say by the United States of America.

MR. EBERSTADT: I have a lot of other questions I’d like to ask, but I just — I think I’ll limit myself to one or two before we open up for more general conversation. Justice Kirby, under existing international legal standards, would there exist at this moment ways that North Korean leaders outside of their country could be brought to justice for possible crimes that they and their regime have committed? I’m thinking of someone traveling outside of the borders of DPRK. I mean, I realize that’s a very diffuse question but not addressed —

THE HON. MICHAEL KIRBY: I understand. Don’t be too embarrassed about not being a jurist. I’ll forgive you. You’re an economist and a brilliant one.

MR. EBERSTADT: A recovering economist.

THE HON. MICHAEL KIRBY: And everyone should read “Our Miserable 21st Century” just to cheer them up. (Laughter.) But the situation with a person outside North Korea who is arrested is that if their crime has occurred after 2002, then there would be a way by which they can be brought before a special tribunal, if one were created by the United Nations, or there is a so-called principle of universal jurisdiction.

It’s a bit — it grew out of the way the international law dealt with piracy and slavery. Both of these were acts which a growing revulsion formulated about them and they were such that if you got a pirate or a slave before a court in a country that did not condone their piracy or accept slavery, then the courts of that country had jurisdiction. And the view would be taken that in the case of crimes against humanity, there would be jurisdiction in countries if they were brought before their courts to deal with them.

Now, there’s a problem with that because most judges love jurisdiction, and they generally get their jurisdiction either because the country in which they’re sitting is the country where the crime occurred or because the person is a national of theirs. There’s got to generally be a strong link. And the somewhat more nebulous notion of universal jurisdiction accepted for slavery and accepted for piracy is harder to sell to courts.
When General Pinochet was in London, he was brought before the English courts on the basis that — he was there I think on a visit to get medical treatment. And the English courts were willing to uphold the universal jurisdiction, but to hold that it didn’t apply to him in those circumstances. And he was then sent back to Chile.

So it’s something judges, especially common law judges, tend to be very — a bit suspicious of. So I wouldn’t put too much money on that particular item in the chess game. I think what we have to do is either secure action in the International Criminal Court or get another institution established by United Nations resolution through the General Assembly.

Now, so far as action by the United Nations in respect of somebody who’s out of North Korea, there is a principle called Principle of Command, and that principle is the one I referred to in my letter to Kim Jong Un, the one that the UN official didn’t much like, which said that I drew his attention to the fact that under international law, if a person having the power to stop crimes against humanity fails to exercise that power, then they may themselves be personally liable for the offenses that then occur because they could have stopped them. And that is the command principle. And that has been drawn specifically to their attention.

And it was when that was pending in the United Nations that North Korea suddenly became very charming because it is true, and they are very defensive and I would say reverential towards their supreme leader and the family. And that being the case, they began to get alarmed that that just might be ordered. As it happened, it hasn’t yet gone to a vote in the Security Council, but something has to happen. It is simply not acceptable once you’ve got the findings that are in this report to do nothing.

Some people say having that is an obstacle to an overall settlement. And I understand that argument, but my job as a commission of inquiry was to find the facts, and that’s what we’ve done. The job of diplomats may be to do — cut some sort of deal, but I can’t support that because crimes against humanity have to be followed up, and that’s what the COI has recommended.

MR. EBERSTADT: A question leading directly from your comments just now, and this is a completely hypothetical question that does not deal directly with the COI. In our morning session, Joanna and Greg both touched upon the question of transitional justice in the former communist states of Europe and the former Soviet Union. And, of course, we know that there is very little in the way — there was some, but there was very little in the way of lustration, and some say far too little in the way of lustration.

In a transitional justice situation in a post-DPRK Korean Peninsula, there would be the question of what sorts of approaches would be the appropriate approaches. There’s also a sort of a tactical or strategic question as well. It could be that Western societies and open societies would want to encourage today defection from the DPRK in terms of relatively high-standing leadership in the process of reducing the cohesion of the leadership, the effectiveness of the leadership. And then there’s the question of what should be done with regard to amnesty, immunity, or other sorts of benefits for people who left, so to speak, early.
I’m sure you’ve thought about this. I realize it’s not part of the COI, but can you share any reflections that you might have with us on those sorts of issues?

THE HON. MICHAEL KIRBY: Well, the state of international law appears to be that you cannot have immunity for crimes against humanity. I repeat, these are not just ordinary human rights crimes of which there are many in every country. In my own country, the United States, ROK, everywhere there are human rights violations which are done by officials. But these are crimes of a very high order. I never thought I, an Australian judge, would sit in a tribunal where effectively I was hearing vivid testimony that reminded me of nothing so much as those very vivid black-and-white films of General Eisenhower and General Montgomery going into the concentration camps after the Second World War. And this is what was told to us, and I have every reason to believe, no reason to disbelieve, the truth of it.

But the principle is you can’t have immunity against things of that order. Otherwise, it would be the affront that the person like Himmler would be able to walk around free because some sort of deal has been struck. Interestingly, in most of the cases where there has been an attempt to settle a very serious conflict — the FARC in Colombia or the situation in South Sudan — the attempt has been made to strike a deal on a basis of immunity. And if the UN was ever involved in it, that has been excluded. And that at least is my understanding of where the situation stands now. So I wouldn’t think there would be much chance of a deal being struck that gives immunity for crimes against humanity.

Other crimes, yes. And we should remember that in Germany, after Nuremberg, there were German trials of lots of lesser — and they didn’t get very big sentences for what were terrible, terrible crimes, and many were not ultimately prosecuted. And in the end, it was cut off because the Berlin Blockade occurred, and there were other urgent problems. But immunity is not easily given and should never be given for crimes against humanity.

Where that leaves the final settlement, I’m not sure. There is, of course, a very high-level official. He was the second head of mission of the Embassy of the Democratic People’s Republic to the Court of St. James, and he escaped. And he had his children, unusual in the United Kingdom, being educated. It would be a very good thing, I think, if Ambassador Lee could, with his permission, organize this. If I could have an interview which would be available for conferences like this, that spoke to him about — not about his own case, but about the situation revealed in this report. And we could get an insight from within the citadel of what the arrangements are and what the general arrangements of control are, and any criticisms or comments or acknowledgements that he has of the things that are in the COI report because I think that he’s apparently a very intelligent man and he is — apparently, he speaks perfect English. He makes notes for himself, so we were told by Lord Alton, in English, and therefore, we ought to be thinking of how we can get into an understanding of the people inside the citadel because it is at least possible that that is the way things may ultimately change, by understanding what is going on there. Speaking amongst ourselves has its limits.
MR. EBERSTADT: I think I have a way of getting your suggestion to Ambassador Lee.

THE HON. MICHAEL KIRBY: Do it subtly.

MR. EBERSTADT: I’ll do it very subtly. That’s my forte, Mr. Justice. (Laughter.) So we have a little bit less than 10 minutes left. And I’d like to see if there are any questions or comments from the audience. I’d like to collect maybe a couple of questions together. Our routine, as I think you know, is we like to ask you to identify yourselves and please to make your questions quick. Any questions or comments from the — I see one here. Are there any other questions or comments? Yeah. You’ve already asked a question, ma’am. You’ll ask one, but let me — this gentleman. Wait for the microphone please.

Q: Really short question. Has the COI full report been translated into Korean? And how widely has it been disseminated in South Korea?

MR. EBERSTADT: Thank you. And we have — ma’am, you have a question too I know.

Q: Thank you very much. I just want to go to from the basic. If you see abuse, you want to report it, is it to the UN, then how do you process? Do you need an NGO to collect all the genocide before you say you can take a look at these individual cases? What I mean individual report the abuse to the commission or to rapporteur? How do you process through in order to be a case —

MR. EBERSTADT: Ma’am, do you mean witnesses? Do you mean witness testimony?

Q: Individuals who witnessed or been witnesses, then should be a case of the abuse really a crime, and it should be processed by the UN, if not by the US? So how do you really process through to see this is really recognized as abuse and then deal with it?

MR. EBERSTADT: Thank you. Any other — yeah. We had one more question over here. Why don’t we gather those, and after that, give Justice Kirby an opportunity to offer his answers and final reflections. Yes, ma’am.

Q: Hi. Yes. As a matter of international law —

MR. EBERSTADT: Can you identify yourself?

Q: My name is Grace Kang, and I’m with NK in USA. And as a matter of international law, would it be a viable approach to have states question the legitimacy of the DPRK, especially given the fact that the UN General Assembly was given the Korea question following the defeat of Japan and that the answer was supposed to be a united, independent, democratic one Korea. And given the evolution of international law, it seems that the DPRK regime is not meeting its responsibilities as a legitimate government, and therefore, by delegitimizing it and having each member state of the General Assembly withdraw recognition from the DPRK as a state and to instead go back to the original Korea question and say that
there needs to be a united Korea under a legitimate governance. Technically, you know, Kim Jong Un could try to drastically reform and meet current international legal standards for legitimacy.

MR. EBERSTADT: Thank you. I think I got it.

Q: Okay.

THE HON. MICHAEL KIRBY: On those three questions, number one, has report been translated, yes, it’s been translated into a number of languages. I have been told that the translation into Korean is a very formal and not very readable translation. I don’t have Korean, and therefore, I don’t really know. But if that is so, it ought to be retranslated in the same accessible style as the report. We took a lot of pains — online, you can still see all of our public hearings. And there are transcripts as well as the online oral statements which transcribed into English, and that’s available as well. We engaged with international media. We took a lot of pains about communication.

But, you know, there probably should be comic form reports. We’ve got to make this accessible to the younger generation. And there ought to be a lot of attention to ways of communicating. There’s an awful lot of money in South Korea that ought to be available. If they love their fellow Korean nationals, you know, there ought to be the money to do this thing properly. You’re never going to have another chance like this. It’s three years, but, you know, and soon it will be six years and then it will be 10 years. And it’s really important this should be available. So I think if there are people in the audience who can think about how we can do that, lots of photos of the commission at work and so on, I think that would be good. But there are translations.

Number two, how do you make complaints of abuses? Well, there is now this field office in Seoul. And the field office receives complains. There are more than 30,000 former citizens of DPRK who have been admitted into South Korean society as refugees, or they sometimes don’t want to make complaints. But if they do make complaints, there is now the facility of the field office, and people can get in touch and make their complaints. And I think that should be encouraged.

I formerly had a mandate in Cambodia. And a very important element of the work in Cambodia was collecting the stories. This is part of Korean history. Please remember: The Korean people did not decide to divide themselves. This was imposed upon by a decision made by the allies as the Second War was finishing and effectively by the Soviet Union and the United States. The Soviet Union, if you read the material, was surprised that the United States wanted to do this because the United States was well in advance of the Russian involvement in the war, but that was done. And the actual line was decided a middle-ranking officer in the State Department, Dean Rusk, later the secretary of state to President Truman.

So we can’t blame the Korean people. They’ve never had the right to self-determination, but you can make complaints through the field office. And they are now — they are not resourced to make a lot of — to work, to collect lots of complaints, but it’s very important.
They should be well resourced. They’ve just got the resolution from the Human Rights Council to extend them for two years.

Now, finally, about the seat of DPRK in the United Nations — the problem is that if they are to be expelled from the United Nations, you’d first have to do that because, at the moment, they are a member of the United Nations and their credentials are accepted. If they were to be expelled by the United Nations, that would require a vote in the Security Council, and that would be vetoed by China and the Russian Federation. So that would not work.

The Council on Foreign Relations has issued a report recently in which it urged that consideration be given to what happened in South Africa. Faced with that situation and the possibility that the United States or the United Kingdom would veto the expulsion of South Africa under apartheid from the United Nations, steps were taken in the General Assembly. And in the General Assembly, South Africa was suspended from membership of the General Assembly. The power to do that exists under the charter.

So one suggestion has been that given the egregious situation revealed about DPRK and given the fact that DPRK has joined the United Nations and signed many international human rights treaties and simply isn’t living up to its own obligations under the charter and under those treaties that it should be suspended from the — what happened when that happened in the case of South Africa was the old South Africa flag continued to fly outside the United Nations in New York. But they could not take their seat in the General Assembly. If they had ever been voted onto the Security Council, they could have taken the seat there, but they were never voted on. That was very unlikely that they would be.

So there would be a real question. Is that in the interest of the world to close off an avenue of daily encounter? And also there’s the people of North Korea, who have a right to have some form of representation and as well as that they have to answer. It’s a very powerful thing to be in that chamber, and they’re there, and you — they say something, and you can answer fearlessly, boldly, honestly. That’s something they don’t have at home, but it’s something which whilst they are a member of the United Nations, that can be done by the international community. And, on balance, I think it’s better to have them in the institution, held to account — constantly held to account. You can see on YouTube an encounter between myself and the ambassador for DPRK, where he started to criticize the report, and I said, “Well, you let us in. If you prove a single one of our statements is incorrect, we will withdraw it and correct it and apologize. Let us in to have a look. Let the world in. Let the media in.” And, of course, there was not answer to that. (Laughter.)

But, anyway, let us think about how we can get this properly published because time passes and the world’s attention moves to other things. And you’ll never get within the next 10, 15, 20 years — hopefully, this will be — this nightmare will be solved by then, but it really ought to be available to citizens everywhere to read, to think, and to be mobilized into action.
MR. EBERSTADT: Ladies and gentlemen, join me in thanking and also in saluting Justice Kirby. (Applause.)

Our next panel will begin in two or three minutes after we reconfigure the stage. Stay tuned.

(Break.)

MR. EBERSTADT: So, ladies and gents, we’re going to move on to our next panel now. Can we stop with the chat and make with the nice? We’d like to get our next panel started, so if you all will please join, we can start to address the vexatious question of what is to be done.

We I think had an extremely illuminating and maybe slightly daunting exposition this morning of the state of the landscape. And now we have five expert practitioners who I think will help us think through some of the problems that we face and maybe some of the approaches to making bigger problems into smaller problems.

There is a more copious and full introduction of each of our panelists in your conference material. Let me just run down the row here briefly.

At your far left, my far right, you can choose whichever you want, is Professor David Maxwell, associate director of the Security Studies Program at Georgetown. In an earlier life, Professor Maxwell was one of the authors of the O Plans for the Korean Peninsula, including the question of dealing with a collapse in DPRK, in North Korea.

Next we have Professor Sung-han Kim, the Korea University, eminent academic background, also eminent diplomatic career, a deputy foreign minister of the ROK, and a long-standing friend of the US-ROK alliance.

Professor Taehyo Kim of SSK University in Seoul has not only an eminent academic pedigree, but has served in the ROK’s National Security Council. He’s had the pleasure of dealing firsthand with his North Korean counterparts on at least one occasion, maybe on more than one occasion.

And William Newcomb. I think I’m correct in saying that Bill Newcomb is maybe the longest-standing student of the North Korean economy of any American in government or out. I certainly know that Bill started tutoring me in North Korean economic affairs back in the late 1970s. In government, he was in the intelligence community, in the State Department, in the Treasury. He was part of an extraordinary effort that ended or culminated in the Banco Delta Asia affair, in tracing North Korean international finances a little bit more than a decade ago. And served on the Panel of Experts for the UN in assessing North Korea’s international financial flows and attempts to break or violate sanctions.

And certainly not least is a friend and colleague, Josh Stanton, who is a lawyer by training. He runs an absolutely indispensable blog, One Free Korea, freekorea.us. If you
don’t read it yet, start now. It will make you smarter about all this stuff almost immediately. Josh is also the author of I think what’s become a canonical volume, “Arsenal of Terror,” which documents the North Korean state’s complicity as a state sponsor of terror — a beautiful document prepared for the US Committee of Human Rights in North Korea.

So, gents, I would like to ask you each to take no more than five to seven minutes, and this is going to be kind of a fielder’s choice, address one aspect of the international North Korean human rights international security problem that you see as especially pressing, and what we need to do to prepare for it, or maybe even preferably to make it a little bit smaller.

Dave, I’d like to start with you and just work this way.

DAVID MAXWELL: Thank you, Nick. And it’s great to be here on this obviously very important topic. But I’m going to start out, Nick, and violate your guidance because I’m going to talk about making a small problem bigger. As we all know, the new administration is apparently in the process of reviewing the strategy for North Korea. And we all know, you know, what was euphemistically called strategic patience from the last administration, although that wasn’t the official term, but that’s certainly been the popular term.

But we don’t know what is going to come out of the new administration, although we’ve heard a lot of things that are interesting, to say the least. And I can talk a lot about collapse, preemptive strike. But I just want to make the problem bigger. I think we’ve been myopically focused on the nuclear problem, as comments already from this morning. But what I would like to see is the development of a holistic strategy for Korea in Northeast Asia, really, you know, my naive sense here as part of an overall grand strategy, but I think that’s probably a bridge too far.

I don’t think that we can have policy and strategy focused on a single North Korean threat, but instead we’ve got to have the policy and strategy really to focus on what — and Greg’s already mentioned the Korea question this morning, which, in paragraph 60 of the armistice of 1953 recognized that the only solution to the Korea question was unification.

What I like to think about is what I call the big five on the Korean Peninsula, and this is why I make the problem bigger than smaller, because I don’t think we can just look at the nuclear problem. So the big five, as I determine it, number one is war. Obviously, we must deter war, but if attacked, we have to defend, fight, and win. So that’s number one, and that’s got to be the foundation of our strategy.

Regime collapse is something that we must prepare for. You know, we made the false assumption in the 1990s that we could live with the Agreed Framework because the regime would eventually collapse. We planned for it, but we really haven’t prepared for it. But regime collapse is most dangerous because it could lead to the decision by Kim Jong Un to go to war. So regime collapse and war are interrelated.

Third are human rights and crimes against humanity. We know the whole litany from gulags, external forced labor, public executions. You know, we must focus on this,
you know, not only because it’s a moral imperative and it’s the right thing to do but we’ve also heard of the practical reasons for doing this. It undercuts the legitimacy of the regime, and I think it gives hope to the Korean people living in the North who are suffering. They use those words deliberately, the Korean people living in the North. I try now not to use North Koreans because those 30,000 refugees or defectors in South Korea are Korean citizens. And I think in terms of unification, we must think in terms of the constitution and a unified Korea. So the Korean people living in the North are the ones that are suffering under the regime.

Fourth, I would lump the asymmetric threats together, and this includes provocations, the nuclear program, the missile program, the cyber capabilities, their special operations forces, and their global illicit activities. You know, we talk about sanctions that are — you know, we need more sanctions, secondary sanctions. One of the things we really need to focus on are the illicit activities being conducted around the world by Bureau 39 and the General Reconnaissance Bureau. This is the hard currency that’s going to the regime to fund their missile and nuclear programs and keep the regime afloat. So if we — new sanctions may not be necessary if we get countries around the world to enforce their local laws and international law, because they have diplomats that are clearly violating international law using their diplomatic status to traffic in drugs, to counterfeit, and to bring hard currency back to the regime.

And then, of course, the last is unification. And this is the biggest challenge, but, as I said, it’s really the solution, the way out of the problem. Because the bottom line for me is that the only way we’re going to see an end to the nuclear program and the threats and the crimes against humanity being committed against the Korean people living in the North by the mafia-like crime family cult known as the Kim family regime is through achievement of unification and the establishment of what the Center for New American Studies called a couple of years ago a United Republic of Korea, or UROK, that is secure and stable, nonnuclear, economically vibrant, and unified under a liberal constitutional form of government determined by the Korean people. And Justice Kirby mentioned self-determination. And I think this is the ultimate form of democracy, when the Korean people decide what they’re going to be.

So let me close with these thoughts. When a nation’s diplomats openly engage in the drug trade; when a nation engages in the counterfeiting of other nation’s money, to include the US $100 bill; when a nation engages in bank robbery against another state, physically or by cyber or any banks, for that matter, as well as kidnapping, assassination; when a nation threatens the very existence of another nation through conventional and nuclear war; and lastly, when it commits horrific crimes against humanity, against its own people, is there nothing that can be done about that state? I’ll close with that.

MR. EBERSTADT: Thank you, David.

Sung-han, the floor is yours.
SUNG-HAN KIM: Thank you. First of all, I’d like to thank AEI and Yonsei Human Rights Liberty Center and the Committee on Human Rights in North Korea for giving me this wonderful opportunity to speak to the great audience.

First of all, I’d like to say — I think we had a very excellent session in the morning about North Korean human rights situation and how to address it. By the way, as David Maxwell pointed out, the question arises whether we need to link North Korean human rights problem to North Korean nuclear problem, in other words, whether we need to continue or put pressure on North Korea, on human rights as a way of resolving the North Korean nuclear problem or we need to delink it from the North Korean nuclear problem so that we can continue this kind of pressure on North Korea for the sake of improving the North Korean human rights problem.

I think, you know, there will be ups and downs in dealing with the North Korean nuclear problem. If there’s a kind of a downside, then we have to lower the emphasis on North Korean human rights, I think that is not going to be a good kind of a strategy. I think we had better delink these two issues so that we can maintain a certain kind of a consistent way and amount of energy and commitment with respect to North Korean human rights problems separately from the North Korean nuclear problem.

I’m sort of a hard security person so I just add some of my points, in addition to what David Maxwell pointed. As you see, North Korea is pursuing so-called Byungjin policy, pursuing North Korean kind of a nuclear development program and economic development in a simultaneous way. By the way, I think North Korean strategy is based upon kind of a very shrewd kind of a game plan which consists of several stages, the first of which is to accelerate miniaturization of nuclear warheads and improving ICBM capability that can hit the mainland of the United States.

Secondly, by the way, North Korea could come to the negotiating table for tactical purposes when our pressure is getting to the extent that North Korea is quite suffering. Then North Korea may resume its nuclear development when our pressure has rather eased. Unfortunately, North Korea may continue its nuclear development towards the final destination of realizing ICBM capability as well as other kind of systems that can threaten the US, as well as, you know, US allies. And, finally, North Korea may try to pretend to negotiate over denuclearization while at the same time, you know, trying to maintain the stability of the regime.

As you know, if you look at other normal countries, their national security is usually located higher than regime security. But in the case of North Korea, I think regime security is located higher than national security, which gives us a very important insight. In other words, if we do not threaten North Korea’s regime security, we are not going to induce or press North Korea to come to the negotiating table. That’s why we have been talking about meaningful sanctions, meaningful pressure so that North Korea may come to the negotiating table just because their regime security is seriously threatened. That’s why we are talking about secondary sanctions or secondary boycott because there are so many loopholes in the process of imposing UN Security Council resolutions.
North Korean state-run companies go into China to hire Chinese brokers or they create pseudo-Chinese companies to deviate the UN sanctions. That means — so we are not going to impose a real pressure or suffering against the North Korean regime unless we can crack them down and unless we can fill the loopholes of our sanctions. So that’s why UN Security Council resolutions alone are not going to be enough. We need to impose really orchestrated secondary sanctions to stop those pseudo-Chinese companies so that North Korean authorities may not rely on those entities.

Against this backdrop, I think our goal needs to go beyond the so-called strategic patience. We need to look toward so-called regime transformation, if not regime change. That means choking the North Korean regime security so that North Korean regime may be threatened, otherwise they are not going to come to the negotiating table.

Now, the Trump administration is reaching the final stage of policy review. I expect to be completed to go beyond the strategic patience, which means we need to do some more than just waiting until North Korea changes its behavior. So we have some options. Dialogue without any conditions — I think it is unfeasible. The second option is military strike or preventive strike or preemptive strike without any exhaustion of diplomatic kind of means is also dangerous. So we need to consult with each other, particularly ROK, Japan, and the United States, we need to consult with each other about how to induce North Korea to come to meaningful dialogue by imposing really meaningful and orchestrated systematic sanctions.

The objective of those sanctions is not to topple down the North Korean regime but to induce North Korea to come to the negotiating table for denuclearization. Let me stop there. Thank you.

MR. EBERSTADT: Taehyo, take it away.

TAEHYO KIM: Thank you very much, Nick and Ambassador Lee Jung-Hoon for allowing me to be part of his important event. I’d like to connect the human rights connotation to the North Korean policy options. And, first of all, I think it is about human rights violation for South Korean people before North Korean people because under the divided situation, South Korean people is suffering from not only the nuclear threat, but also terrorism and numerous provocations and infiltrations. And this North Korean factor is the fundamental source of South Korea ideological, economic, and political division in South Korean society.

In that sense, I think at least minimum sense of military deterrence mechanism should be maintained between US and Korea. So PAC-3 system against short-ranged threat and THAAD system against mid-range and long-range threat and all these, a missile defense system should be connected with a good surveillance and intelligence reconnaissance system capability between the US and Korea.

Preemptive strike, I think this is still premature because as we witnessed during the Cheonan and Yeonpyeong incident in 2010, it is not only China but also US who is concerned about possible spillover effect in the Korean Peninsula. So we will see after the Trump
administration finalizes their specific approach to Pyongyang, and also we will see after
the Korean presidential election on May 9.

Second, of course, this is about the human rights violation in North Korea. North
Korean elite group is afraid of their physical and mental well-being under the Kim Jong
Un dictatorship. And also, as many people mentioned in the morning session, North Korean
diplomats and laborers are exploited to send money and resources to help the Kim Jong Un
regime to maintain and strengthen their nuclear capability.

And Mr. Tao-ho (ph), former deputy chief of mission to London, told me once that
he took part in some communist party central committee meeting hosted by Kim Jong Un,
and there were dozens of people sitting front center stage. These people looked different.
They constantly moved. They couldn’t just stand still, scratching their necks and faces.
Definitely those were nuclear scientists. So nobody was stopping them from doing these
things. This means that they have been exposed to nuclear material, and they are not that
— (inaudible). But still, they are respected because of their military first policy. This is
also a human rights violation.

So what I try to emphasize is that unification policy itself is a complete and
fundamental approach to solve the nuclear problem and also resolve the human rights
dilemma both in South and North Korea. I may be more pessimistic than Professor Kim
Sung-han in the sense that I don’t believe any kind of future, another peaceful negotiation
will give us a breakthrough to solve the nuclear problem. So the reason why we push China
is to minimize the inflow of nuclear resources, why we try to maintain the UN resolution
and US-Korea economic sanctioning mechanism is to minimize another input to nuclear
capabilities, which means we really believe in a possible — another Six-Party Talk mechanism.

Finally, I’d like to mention diplomatic approaches and our challenges concerning
US-Japan, Russia, and China factors. So far, I think the Trump administration has been a
little behind about value issues. Presidential inauguration address, the president did not
mention at all about fee democracy or human rights or even free trade issues. That means
that the US administration might not be that active as the Obama administration in inducing
a Korea-US partnership to emphasize on North Korea policy in terms of spreading democracy
or human rights issues. Rather, it has been approached in terms of a practicality, national
interest, or problem-solving approaching.

In that sense, I think the Japan-Korea relationship is under real difficulty. And it
has been also a democratic alliance to hand together to face against North Korean human
rights violation. So it is important for the Japanese people not to look at Korea that so
nationalistic. And it’s important for Korean society not to approach Japan as a militaristic
self-defense forces. It’s important for the leadership to include Japan as a part of a scenario
to prepare for any contingency scenarios against North Korean possible collapse.

We should talk to China, but it is not for entirely changing Chinese attitude toward
peace treaty or North Korean nuclear problem. But it is for China to get invited, to get
involved with our initiating a unification process. If something happens, we should ready,
and we should ready to take initiatives in advancing our issues to eradicate the WMD program, to handle refugee issues, and to make a new order in North Korean territories.

Finally, I don’t expect that the China-Russian tie will be weakened or loosened facing the Trump administration. Still, China will be supporting Russian position in Syria and the Middle East, and I think still Russia will be supporting Chinese position on the Korean Peninsula. But at the same time, we know that Russian government has higher hope for possible Korean unification simply because of their necessity to open up and develop Siberian and Northeast Asian economic region. In that sense, I think US and Korea will be much more active to initiate the strategic (pause ?), possibly a closed discussion with Russian leaders about the future of the Korean Peninsula.

WILLIAM NEWCOMB: Thank you. I too want to thank AEI and HRNK for the opportunity to be here today and especially for this morning because that was certainly an enlightening session this morning. I truly enjoyed it.

What I want to do discuss sort of handpicked aspects of UN sanctions and how they apply or don’t apply to human rights in North Korean. Now, this is the third anniversary of the COI. December was the 50th anniversary of the United Nations sanctions. So they’ve been around for a long time, but they haven’t been static. They’ve changed quite a bit from when they were first applied.

There was a lot of criticism about sanctions when they were applied in the case of Iraq and oil-for-food and so forth and the abuses. And those resulted in a number of international conferences to look at the design application and consequences of sanctions. And so sanctions themselves changed. They changed from being comprehensive in nature to being targeted in nature. And targeted sanctions are the kinds of sanctions that began to be applied to the DPRK beginning in 2006 after the first nuclear test.

Now, in 2009, the Security Council established a panel of experts, which I had the privilege of serving on for three years. The panel of experts was given the mission of helping to advise the Security Council on the application of sanctions, trying to help countries implement sanctions correctly, and investigating alleged incidents of sanctions-busting.

Now, the panel was held pretty much strictly to its mandate. So when Dave Maxwell talks about North Korea’s illicit activities, which I had earlier experience looking into, counterfeit currency, narcotrafficking, counterfeiting cigarettes, which was a huge money earner for them and so forth, those were forbidden inquiries during my time on the panel. They were forbidden because illicit activities were not part of the mandate. The mandate was restricted to looking at nuclear, other WMD and ballistic missile developments, and efforts, of course, to develop those programs.

The only way I could have looked at counterfeit currency, for example, was if I could find evidence that the proceeds of counterfeiting currency, which was led by Office 39, were used to support prohibited programs. But given the difficulty of going in and developing evidence like that, we in effect had to not follow up on those kinds of topics. So over time
what we have seen is a trajectory of sanctions measures that have tried to put greater pressure on North Korea’s earnings and its transportability and so forth.

So how does this relate to human rights? There’s one point of — pardon the mathematics — near tangency. And that is in overseas labor. And it’s just now coming to a point where possibly something can be done with it. Now, let’s take a look at the latest panel of experts report. And if you haven’t read it, do so. It’s available on the UN website. It’s very long, but it’s quite readable, and it’s evidence based, so it’s not a bunch of conjecture and so forth. You can find the facts, and don’t skip the appendixes because that’s where all the good stuff always ends up.

So what do we have in there? Well, as mentioned by Dr. Go this morning, we have one line on overseas workers where the Security Council is endorsing the panel calling — I should rephrase that. Back in 2321, we had the Security Council putting in one line on overseas workers. In the panel’s report, what we had is an exploration of the sale of SCUD missile parts to Egypt. Now, how Washington ever let Egypt get back in the missile business with North Korea is beyond me because the State Department should have squelched that in the very beginning with any hint of it. But it happened, right?

Who was involved? The seller was a DPRK company called Rungrado. Now, the shippers and some of the intermediaries involved, by the way, the DPRK companies that were making this happen, they operated out of China out of the DPRK Embassy in Beijing, which is where the DPRK often operates, you know, out of embassies. It establishes companies; it has officers, in effect violating the Vienna Conventions in doing so, but countries let them get away with it.

So what’s the nature of Rungrado? Well, Rungrado has appeared before. Rungrado is the contractual partner of the overseas workers that are now in Poland. So now we have a hook where the panel of experts could go in and look at the proceeds of these kinds of activities that are now serving in violation of the sanctions. It’s now peeking under the tent of the mandate. So this, in effect, is very important.

And let me just — I don’t have the time to connect all the dots, but let me just move on forward with the overseas workers, which were discussed pretty thoroughly this morning. Former Special Rapporteur Darusman gave a report to the UN back in 2015, and he identified overseas workers as forced labor. Now, some people call them slave labor. Sometimes that gets to be a very debated term. At a minimum, I believe, they certainly qualify as trafficked individuals. I think they fit all the criteria of someone being trafficked. And, in effect, the 2016 State Department report on trafficking identified North Korea, including these overseas laborers, as a tier-three violator, which is the worst case that they identified.

So where does then that lead? Well, let me jump to the future. We have the possibility of a radical change in policy in the Republic of Korea. There are discussions underway about restarting the Kaesong industrial complex. Every year of its existence before it got closed, or I think every year, Human Rights Watch identified the labor practices at Kaesong as violating international labor standards. And the ROK, at the time, chose not to do anything
about it. Closing Kaesong, in my view, was the appropriate thing to do. Closing Kaesong is consistent with depriving the North Koreans of the funding of their various kinds of programs. Restarting Kaesong, given the complexity and coverage and scope of the UN sanctions, in my view, would be a violation of existing sanctions.

So how do you get around that? Well, you get around it by trying to cut a deal. You might get around it by instead of paying them in US dollars, which I never understood in the first place, you pay them in South Korean Won or some other one. Or you work an exemption because the 1718 Committee is in power to provide certain kinds of exemptions. To get an exemption, you have to have consensus. The 1718 Committee operates on a no-objection procedure. So if any one of the 15 members objects to this kind of an exemption, it cannot happen. And I would urge all 15 members to object to this kind of exemption because having workers overseas is no different than having them employed in an exclusion zone in North Korea itself. And I probably took up all my time. Thank you.

JOSHUA STANTON: All right. Usual disclaimer: I’m speaking only for myself. I would like to maybe raise the mood just a moment from the sour note, the depressing note on which Justice — I’m not blaming you. I was actually going to attribute that to Justice Kirby. And to say that because of the report that you published, we have probably more consensus, here in this town and perhaps internationally, than I have ever observed on the North Korea issue.

What we saw when Congress acted one year ago and passed the North Korea Sanctions and Policy Enhancement Act was one of the most overwhelming votes I’ve ever seen happen on an issue that used to be polarizing and controversial. We had 418-2 in the House and 96-0 in the Senate voting in favor of what was effectively a tough-love policy. And that’s boiling 50 pages of banking law and human rights law down to two words, tough love essentially meaning that we were being tough on the government of North Korea and that we were really moving toward immediate accountability, but trying to do so in a way that was compassionate for the people of North Korea.

The premise of tough love was that if you say that accountability is a Sunday issue, you’re really saying what people were saying to Martin Luther King when he sat in the Birmingham jail and he wrote that wait almost always means never. And to the people of North Korea, to say wait is not a reasonable request.

And, furthermore, to say that accountability consists only of words is not enough. I think words are very important, and I’m going to return to that. But whereas some of us were a bit critical of the last administration for getting the words right but not hitting accountability hard enough, I fear that I see the Trump administration potentially going too far in the opposite direction and much, of course, is still unknown about what the policy review will be. We’re seeing a lot of signals that the Trump administration will push for tougher sanctions. I’m not seeing any indications of what its position will be on human rights. You can’t have tough love without both of those things.
And it’s essential to make the policy work, and it’s essential because the issues are inextricable, and let me tell you why. Number one, it is the right thing to do. Okay. So perhaps the people in this White House don’t follow the Kantian imperative. Let’s go on — I knew you would get that. Let’s go on to the utilitarian reasons then.

It’s important to our allies in building a global coalition. Human rights is an area where Japan and the European Union have led and where countries as far away as Botswana have found that issue to be powerful and persuasive. It is an important part of building a global coalition to enforce sanctions, particularly in countries where governments are ultimately accountable to the people.

It is important for keeping a domestic coalition. I will tell you that I keep a very close eye on the mood on Congress. And you will not unite the Congress around a policy that consists solely of sanctions and that focuses exclusively on the security issue. If you want to keep the mainstream together on this issue, you must have both tough and love.

It is important for South Korea. Look, we may be facing a very disturbing change in South Korean policy. The case that we have yet to make is that the South Korean people are going to be answerable to their own history for the way they have treated their brothers and sisters in the north for all these years. You know, I have heard Moon Jae-in, the candidate who was leading in the polls now, described as liberal. To me, I see liberalism as meaning compassion for the underdog and for the weak and for the victims of injustice. Well, let me tell you a little bit about my insight into the position of Mr. Moon.

Mr. Moon is an alumnus of a group called Minbyun, Lawyers for Human Rights. So was former President Roh Moo-hyun. Recently, 12 North Korea waitresses defected in the city of Ningbo, China. Those women escaped successfully to South Korea, where in accordance with their rights by international law they had an asylum hearing. The North Korean regime made a spurious accusation saying that the South Korean government had abducted these women, an allegation that no one but Minbyun took seriously. And Minbyun went into a South Korean court and petitioned to force these women, contrary to international law, which guarantees them confidentiality to state on the record whether they had defected of their own free will or had been abducted. Either way, they would either be signing their own death sentence or that of their families. This was a horrible abuse of the women’s human rights and of the legal process. And indeed, it would have been against the law in the United States, and I would have felt obligated to report similar conduct to the state bar of any attorney making such an unethical argument.

This conduct is not liberal. This is extreme. And the United States has to use its moral imperative to press against issues like that, against abuses like that, and to help ensure that South Korea adheres to the United Nations Security Council resolutions, which are, as Mr. Newcomb points out, increasingly — but have long had some overlap into human rights. There is in fact a provision in UN Security Council Resolution 1718, which is now 11 years old, that forbid the export of luxury goods to North Korea.
If you want to talk about the one human rights violation that probably hurts and affects more North Koreans than any other, it is the gross misappropriation of North Korea’s national resources resulting in severe malnutrition for somewhere between 70 and 80 percent of the North Korean people. This is obscene. And it is in fact a horrible crime, and it is well documented in the Commission of Inquiry’s report, and that too has helped to build us an international consensus. And there is a legal tool that we can use against this.

The reports of the panel of experts continue to support what we have long known — that North Korea continues to use our banking system to violate our laws, to proliferate, and to abuse the rights of its own people. As that money enters correspondent banks in the United States, we have the legal power to block that money and to the extent it’s involved in illicit activity to forfeit that money.

There is in fact an executive order that we have already used against Rungrado, the company that Mr. Newcomb brought up, for its involved in proliferation. It could just as well have been for violations of the human rights of the forced laborers in Poland. And I hope that this aspect of the North Korean regime’s vulnerability will be exploited, just as its surprising vulnerability to our criticism will be exploited.

I was very surprised when North Korea’s minister for state security was relieved from his position in part for, quote, “human rights violations.” When I first saw that report, I thought, well, maybe that’s another one of those unsourced reports from the National Intelligence Service or some unknown person, but then we started to see corroboration coming from inside North Korea that (MSS ?) cadres were being lectured about don’t do these following human rights violations. And now, you can discount that and say, maybe it’s disinformation. You can say maybe this was really an anticorruption measure, and in effect, that appears to be the case. It was sort of an anti-shakedown lecture.

But, nonetheless, what it tells us is the regime is vulnerable to criticism. It is afraid that its people will be polarized and mobilized by the things that we say about why they go hungry and why their children suffer. Doesn’t that suggest that we have more to tell the North Korean people about why they suffer? I could talk longer — I won’t — about how sanctions and the criticism of the regime can facilitate each other by attacking the security forces, by breaking down the regime’s immune system, and by helping the people to shift the balance of power with our help. It really does come down to, again, both elements, tough love. Either one by itself is not enough. So with that, thank you.

MR. EBERSTADT: And thank you very much for bringing up Emmanuel Kant. Next chapter, Emmanuel Kant, Korean unification and perpetual peace, no doubt. Before we get to a more general conversation with our audience here, I’d like to give each of our panelists an opportunity to reflect upon what they’ve heard. If there are things they would like to elaborate upon or respond to, this would be the time.

Let me also throw into the mix a question for your consideration. You respond to or not, as you see fit. Reunification planning, reification planning — to my eyes, there’s been remarkably little reunification planning since November of 1989, to pick a date at
random, either within the ROK or with the ROK and the ROK’s treaty allies with the ROK’s friends in the international community. Is reunification planning, in addition to its other possible virtues, an instrument that might help to promote human rights in the real existing northern half of the Korean Republic today? Yes or no? If so, why?

We went from Dave to Josh last time. Let me ask we go, Josh, you start off on whatever you’d like to respond to, then we’ll move down the aisle the other way.

MR. STANTON: Well, this is where it all gets extremely tricky because there are, of course, a lot of different scenarios that could play out if North Korea were to change. Change can mean a lot of things. I don’t use the word amnesty when I speak about people like Kim Won-hong or Kim Jong Un, but I sometimes use the word clemency out of a very reluctant recognition that sometimes you have to make terrible compromises in life to convince people that they may have a future in a reunified Korea. I don’t know exactly the form that it would take, but I know that any clemency would have to be contingent on the person making their critical decision at a critical moment that saves perhaps millions of lives. It is more important at the end of the day to end the crimes as quickly as possible and to prevent war than anything else.

As for the process and the end state, we have seen in many, many historical contexts that sudden social change brings great problems. And an immediate reunification without some kind of a plan for exactly how people will be given land, how land will be redistributed to the tiller, how people will be employed and resettled, how we will rebuild a civil society and infrastructure and health care, all of that is not going to be instant, and it’s going to be very hard and very expensive.

So it’s absolutely urgent that we do that planning in great detail and that we identify the resources, human and monetary, that we will need in order to do that. But it really I think fundamentally begins with a conversation with the North Korean people themselves about what kind of a society they want to live in and what kind of a country they want Korea to be someday, because it is their right to decide that.

MR. EBERSTADT: Bill, any thoughts on any of the questions?

MR. NEWCOMB: In terms of unification planning, it’s been a stepchild, and to the extent that there used to be offices that looked at that, that were sort of seated throughout the South Korean government, later these — just the sheer existence of those was something that was deemed not helpful, and so it’s a missing element that absolutely needs to be restored, but I have doubts that it will be.

What I’d like to talk about, given another fielder’s choice, is accountability. Accountability came up this morning, and I think accountability is crucial. Now, in the UN context, if you violate sanctions, you can be designated. And so a designation could be seen as accountability. But designation in the UN by the Security Council is not a judicial determination. It’s not based upon facts of the case. It’s a political decision. So
two entities can conduct the same offense, and one might be designated and another not because of the politics of the situation.

So when there’s a political decision, how do you get accountability? Well, the only way I see that you can start getting accountability is through the strong application of unilateral sanctions where individual member states can put teeth into the application of the sanctions measures. Secondary sanctions, our case in point of doing so. Designating entities that the UN Security Council could not come to agreement on to designate is another example. So there’s a tremendous amount more pressure that can be put on it.

I mean, in the context of the UN, you know, let’s take a look at the Chong Chon Gang. Chon Chon Gang was a North Korean ship, sailed from Cuba. It was caught in the Panama Canal with a cargo hold full of arms, anti-aircraft missile systems and MIG fighters and brand new MIG engines and so forth. These were all loaded in Cuba, all right? Well, there were some good things that came of that. We designated office maritime management, and we got some ships listed as economic assets. What happened to Cuba? Nada. All right? No accountability. Did anything happen in Washington to hold Cuba to account? No. We were normalizing relations.

So we have a problem here that we need to resolve. We need to resolve our priorities. We’ve got to decide what they are. You’ve got to elevate the North Korean priority if we’re going to get this problem solved. It’s a problem going critical in the nuclear sense. So we need to have accountability. The EU has a way of making people accountable. The ROK identified Pan System in Pyongyang before it appeared in the UN report as providing these battlefield radio systems under the name Glocom. So there’s a way to get accountability, freeze assets, seize assets, but it’s not going to happen solely in the UN context. So every member state has a role to play. And like-minded states need to coordinate their actions, to encourage other member states to also step up and do their part. I could go on for an hour but I won’t.

MR. EBERSTADT: Thank you.

Taehyo.

MR. TAEHYO KIM: During the 10-year Sunshine Policy period, because of strategic assistance to North Korea, the Pyongyang government could solidify their allocation system for Pyongyang and the local people.

So rice and crude oil and cash are not good aid materials. These are helping them to strengthen the allocation and helping them to kill markets. Instead, we should give them DVDs and corn and non-rice nutrition and sometimes news and information and human exchanges. These are good because they are spreading local markets and weakening their central allocation system. And these are reforming process and helping us to accumulate the ground bases for the unification atmosphere.
And the Korean government's stance is very crucial. If the government argues that a 20-year long international economic sanction has not been successful, if they are argue that Kim Jong Un’s power grip is strengthened and if they argue that the unification cost is too much expensive, a US intelligence system cannot help then much, and there is no room for them to cooperate with each other.

If the South Korea government is really dedicated to a free, democratic, unified Korea, there will be a bunch of various menus for white and black operation. So it will be up to a political decision. But I can anticipate that differently from Russian Yeltsin period and differently from Ceausescu Romanian scenario, North Korean collapse will be a top-down process rather than bottom-up process because these people are very weak and unmobilized. So something should be happening from the top, and then it will be spreading toward the local. And at this momentum, political leadership from US and Korea will be very important.

MR. EBERSTADT: Thank you.

Sung-han.

MR. SUNG-HAN KIM: With respect to unification planning, I think there must be a two-dimensional kind of planning, external as well as internal. With respect to external unification planning, it refers to unification diplomacy in the sense that we have to show pluses will be prevailing over minuses in terms of the outcomes of the Korean unification towards the surrounding four countries. What kind of benefits and what kind of costs will be expected for US, China, Japan, and Russia? So this kind of — you know, to the processes will be expected.

Internally, first of all, we need to provide the whole Korean people with a more concrete vision of a unified Korea. We have been saying liberal, democratic, unified Korea, which is fine, but we need to go deeper into that kind of a very abstract vision. When it comes to a liberal unified Korea, some people could be reminded of very competitive economy without any kind of a welfare benefits, any kind of a transitional period in which South Korean — the unified government will provide the northern part of the Korean Peninsula with kind of a sustainable kind of a benefits for a certain period of time. So this kind of a concrete design should be made. That is I think very important.

And also, we have more or less 30,000 northern immigrants within South Korea. How we treat them with dignity, I think that is very important. You know, North Korean people will be learning or expecting how they will be treated after the unification out of this kind of policy of the South Korean government in dealing with Northern immigrants with dignity, with really enthusiastic kind of an emotional attachment.

MR. EBERSTADT: Thank you, Sung-han.

Dave.
MR. MAXWELL: In terms of unification, I think we suffer — particularly Korea suffers from what I would call strategic planning paralysis. I think what has happened in President Park’s Dresden initiative notwithstanding, you know, what has happened is nobody can really foresee that path to unification, and that paralyzes our thinking. And, you know, because it’s too horrific to think about the ways that we might get to unification.

So I think in terms of — four paths to unification, the most difficult path being peaceful unification. I know that sounds counterintuitive, but you know, if you plan for peaceful unification, both as a public way to plan, it’s most the difficult because you’ve got to plan for the complete integration of both systems. You’ve got to deal with two militaries, two political systems, two economic systems, and it is very, very difficult to plan for peaceful unification. But I would submit that planning for the hardest form of unification actually is good because whenever you plan for peaceful unification, it will be useful in whatever other path is taken to unification.

And I would say there are three other paths. You know, number one is war. And, again, I hate to say it this way but war is the easiest path to unification, except the tremendous expenditure of blood and treasure, which we don’t want to have happen. But, of course, war would eliminate the North Korean military, it would devastate the infrastructure, and it would be 1953 in North Korea again. And you’d have to rebuild. But you wouldn’t have a military threat to the scale that you have right now, and you wouldn’t have to integrate two militaries.

The second path is, of course, collapse, regime collapse. And, you know, the worst case in regime collapse, it could lead to war, so that’s — that path’s already taken. In regime collapse, I think if there is not full-out war, there is going to be some level of conflict, and that has to be dealt with. And it could be internal. It could — you know, implosion. It could spill over. But in the end, there’s going to have to be stabilization and then you will have to implement those plans and processes that you developed under peaceful unification.

The fourth, or the third of the three, you know, the fourth altogether, is really the outlier, and that’s — and Josh kind of hit on this — is that there’s some kind of new emergent regime that leads. And I know — you know, we talk about top-down regime change, but if there was to be a new leader emerge who sought peaceful unification, then you’d be back to the first path there, and all that planning for peaceful unification would again be employed.

You know, that is a difficult path to envision, but you know, we see evidence of changes internally in the North. And the question is, could someone like, you know, South Korea support and internal regime change? And I think some of the things that we mentioned here today, information, influence, support, you know, could lead to that. So those are the four paths to unification. And I think if we think about them that way, we might be able to overcome this strategic planning paralysis.

I’d just make two quick points. One, my point on taking a holistic approach to human rights and the nuclear program is because I think whenever you have stovepipe, one is going
to be always prioritized. And I think the nuclear program will always be prioritized over the human rights, and because it’s considered certainly in the United States more dangerous than the human rights, though the numbers we heard this morning I think, you know, more people are suffering from human rights than might suffer from a nuclear attack.

The second thing is that everybody on the panel today, if I were leading a planning team here, have mentioned many ways and means that would support a strategy. And so we could collect all of this to develop a strategy, but what is really key is not writing a strategy. It’s what we used to call at the National War College doing strategy. And that’s where we really fall down because we can write — I mean, papers have written, plans have been written, but it’s the ability to do strategy, and it has be an alliance function. And really unification obviously has to be led by the Republic of Korea. But we’ve got to be able to do strategy, which is really, you know, continuous assessment — you know, execution, assessment, adjusting and ensuring balance amongst ends, ways, and means. And it’s iterative. And so we can develop a framework but you’ve got to have the ability in both capitals — Seoul and DC — to be able to do the strategy. And I think that’s what we’ve got to evolve to.

MR. EBERSTADT: Thank you all. We have about 15 minutes left for conversation. And I want to see how many people in the audience might wish to ask questions or make statements — one, two, three. Okay. We’ve got a bunch of people. That’s good. Why don’t we start with maybe gathering three questions or comments and let our panelists respond and see if we get to the witching hour then, or an enlightening session or penalty session or whatever. Okay.

Let’s start with you, sir. Please wait for the microphone. And identify yourself and ask a question.

Q: Pete Kernsehouser (ph) — (inaudible) — these days and former military intelligence officer. Consider yourself in two positions: First, you are a senior military officer, strategist, perhaps the next president of South Korea. Sunshine One didn’t work out so well. If you didn’t like having tens of thousands of artillery tubes aimed at Seoul for the last couple of decades, you probably really don’t like having nuclear weapons aimed at you. Why is it in your interest, how is it in your interest, to continue to maintain the Kim regime in North Korea in power?

Second position: You are a senior military officer, strategist, some kind of Mandarin in Beijing. You have been feeding this snake in your backyard for the last 60 years, and now it has nuclear fangs. Washington, DC, is not within range of North Korea’s nuclear missiles yet, but you are. Why is it within your interest to continue to maintain and support the Kim regime?

MR. EBERSTADT: Thank you very much. Now I saw questions over — let’s go this way to Mr. Nakai (ph) here. Yes.
Q: Thank you for coming. My name is Mitsuo Nakai (ph), Japan native, US citizen. I’ve been here about 45 years. I thank you for coming. Sung-han, Taehyo, both excellent presentations. The positive mark of the Asian countries and cultures are teamwork and team unity. My question is maybe there is because they had trilateral meetings a couple of teams. I didn’t follow up on it. But my question is why Japan is not helping you? Why South Korea is not asking for help? Forget about pride. Forget about what happened in the history. That was 70 years ago. Why can’t we get together and help each other, Asians for Asia? I mean, with the help of the US of course. So that’s my question. We need to help each other here.

MR. EBERSTADT: Thank you very much. Grace already asked a question. Let’s give someone who hasn’t had a chance to ask a question.

Q: Pat Spand (ph), retired government. When I was in Vietnam in ’70–’71, I remember bumping into the ROK troops, and they’re very profession and had a very great reputation for fighting. And I’m just wondering, has the ROK been able to maintain that level of proficiency as military? And also, how is the Kim regime, given limited resources, able to keep the military and the military families, you know, fed and happy? That’s always sort of amazed me.

MR. EBERSTADT: Thank you. And Daniel Lee I think has a question. Daniel Lee here has a question.

Q: Daniel Lee from Human Rights Watch. We often hear among a certain segment of the foreign policy establishment that sanctions are ineffective, that they have done very little to curb North Korea’s nuclear ambitions or the human rights abuses. And, unfortunately, increasingly, we’re hearing this kind of rhetoric from some of the highest levels of both US and South Korean government. And I think the vast majority of us are in agreement that, actually, sanctions have been very effective, and particularly the human rights sanctions we’re increasingly hearing have been in some ways more effective even than the nuclear-related sanctions. How can we best combat this narrative essentially that the sanctions don’t work and to — this effort that might undo years of efforts to build an international consensus around the sanctions regime?

MR. EBERSTADT: Thank you. All right, gents. We’re now in the penalty phase of the program. We have 10 minutes left before Ambassador Ahn’s remarks. Can you limit your fire, please, pick one issue or question you wish to address and devote no more than two minutes to it? We’ll start with you.

MR. STANTON: Yeah. I can’t resist the sanctions question obviously. That’s sort of just kind of spills out of me automatically. I think — you know, look, it requires education and repetition. Those who have read the sanctions — and no one has read them more than Mr. Newcomb here — but those who have read the sanctions and the designations, both at the US and UN and international level, know that they were really a lot of smoke and mirrors until fairly recently.
The United States had far stronger sanctions against Belarus and Zimbabwe as a practical matter until one year ago today — actually, well, until March 15 a year ago. And only since we have seen the first designations under Executive Order 13722 as that changed at the US level. But, as Mr. Newcomb points out, sanctions are not self-executing. So, internationally, we have to be willing to help enforce them. And that does involve diplomacy, and it means that we can’t cut diplomats, and you know, fire a bunch of diplomats, or lay them off and expect that this is all going to be effective by itself. But it also means that in addition to gentle persuasion, we have to be willing to impose consequences. And when almost all of that money is coming from foreign banks through correspondent accounts in New York and New Jersey, we have the means to affect that behavior. We may not have the will; we’ll soon see.

But the bottom line is that I would not sit here and say that sanctions are really working as intended yet. They’re just not. I know what it will look like when they are, but they can work if we enforce them.

MR. EBERSTADT: Thank you, Josh.

Bill?

MR. NEWCOMB: Well, I don’t have to talk about sanctions. Josh did an excellent job. Let me just to the very first question. Why is it in the interest — and I hope I’m not stepping on Dave’s toes or — let’s go back to the 1990s. North Korea’s in the midst of a great famine, right? It deindustrialized during the 1990s. Its economy collapsed. Why didn’t the state collapse along with it? People point to some inherent mechanism in North Korea, right, this resiliency?

Well, it was stressed beyond measure during the 1990s. North Korea today bears little resemblance to the North Korea of 1989, right? It didn’t collapse politically because it was not in the interests of its neighbors to collapse. It was not in the interest of the ROK to have it collapse, because after Kim Yong-sum left, even in his final days, I think he got very scared for the hard landing he had been advocating. It was not in the interest of China to have it collapse in a buffer state at that time. It was not in the interest of the US to have it collapse in North Korea at that time with other things going on. So North Korea exists because everyone decided it should continue to exist. And I would argue that it is because of all this continuing flow of foreign support that North Korea has continued to have at least a barely functioning economy.

Now, some people say the economy is growing, that it’s getting a little better. Or it could be that the resources flow is all dedicated into higher living standards in Pyongyang but, you know, go out into the rest of the country, where you see the 80 percent of the populous that continues to be malnourished. It is disgraceful that a country like North Korea, after almost 30 years, cannot resolve its own food problem.

MR. TAEHYO KIM: I’ll only talk about Korea-Japan relations. After the conclusion of the Second World War, I think the US alliance policy towards Japan and Korea has been
too much successful. And each of Japan and Korea believe that their only bilateral alliance with the US could suffice to protect their own security without going to include Japan or Korea into the trilateral cooperation. So this is a paradox. The bilateral alliance in Asia has grown as if these two separate alliances do not have anything to do with the other because of the past history.

And in the case of Korean politics for the last four years, the nationalism dominates. And it’s an easier way for politicians to resort to anti-Japanese sentiment to collect short-term support, the immediate election period. As a leader, you should be knowledgeable what exactly happened 20 or 10 years ago regarding education issues, comfort women issues, territory issues. And then, you should be very clear-cut and cultivate a very easy and persuasive logic to your people that how can — until when can come up with positive consequences in terms of win-win game for both Koreans and Japanese?

This is a difficult job for any leader to handle Japan-Korea relations. So before some serious security crisis occurs for Japan and Korea, I think Japan and Korean leaders will still choose the easier way to deal with their borders. So it’s important for the people to voluntarily exchange their network and express their own opinions and push the government and administrations to make more braver actions.

MR. EBERSTADT: Thank you.

Sung-han?

MR. SUNG-HAN KIM: I think North Korea’s Kim dynasty is a rogue regime that poses existential threat to South Korea as well as others. It’s a regime that doesn’t contribute anything to the public good of the international community. Nevertheless, you know, the South Korean government has been facing kind of some obstacles to eliminate that regime.

The first obstacle I would say is the principle of peaceful unification, for the past several decades, we have been sticking to that principle. Second, China is taking North Korea as a kind of a buffer state between China itself and the United States by providing, you know, economic as well as other benefits. And, thirdly, the South Korea itself is quite polarized. You know, we have another half who is very sympathetic towards North Korea and has been showing unlimited amount of patience. So I think this is our internal problem, which needs to be overcome as soon as possible.

And my final comment about North and South Korean military — you know, North Korea has been existing on the basis of a military-first policy by making them happier and happier, by providing them with the Mercedes Benz and all kinds of luxury goods. I think I’m very much part of the South Korea military, which have had a lot of experiences starting from the Vietnam War and learning from combined military exercises from the US. But I think this is the almost timing for the South Korean military to learn how to conduct a war, not just a combat, how to conduct a war, larger-scale war, you know, on the Korean Peninsula rather that just continuously relying on the US military presence. Even though I give highest
credit to the combined forces, the power to deter and defeat North Korea, but at the same time, South Korean military needs to do more to make them more effective and reliable.

MR. MAXWELL: Quick comments. You know, I echo what Bill said, although, Bill, I think that we’ve made the 1994 Agreed Framework based on the assumption that the regime would eventually collapse. And I think we made that assumption, but I agree that it was in nobody’s interest to have North Korea collapse. From China’s perspective though, you know, no war, no collapse, no nukes. You know, they’re batting 600. And I think the no war, no collapse is more important than the nukes. Last time I was in China, asked our counterparts at the National Defense University, they did not fear a nuclear attack from the North or from terrorists, for that matter, when we pressed them on that. So collapse or war, I think that’s why don’t want to see any change, and that’s why we see the status quo.

In terms of the South Korean military, you know, I’ve been engaged with the South Korean military since 1986 pretty much to the present, and I have complete confidence in them. And I have confidence that they could fight on their own as well as well at the highest levels. But I think that as long as there’s an alliance, we should have a combined forces command. If we’re going to commit US troops, the combined forces command is the best way to go.

But you should keep in mind that even though they have not conducted major combat operations since you saw them in Vietnam, you know, recall that it was from that time period until 1991 that the US military did not conduct major combat operations either. Good training, good equipment will make them combat ready. Of course, the same thing can be true for China, North Korea, and everybody else if you have good training and good resources. But I have confidence in the South Korean military. I’ll stop there.

MR. EBERSTADT: Thank you very much. Please join me in thanking our panel. (Applause.) Tremendous session. And also, in welcoming our speaker for our closing remarks, Ambassador Ahn Ho-Young from ROK.

Welcome to AEI headquarters. The stage is yours.

AHN HO-YOUNG: Well, I know you had a long day, so I guess maybe I shouldn’t be wasting any time, and then I’d better begin to speak. But, at the same time, this is a very interesting arrangement in the sense that, well, Nick, what should I be doing? Should I just take a seat or just try to stand up, right? This is just in between. I hope you can hear me. Can you? You can hear me? Right. Thank you. Thank you so much.

I just look around the room, and I usually begin by saying, good afternoon. Well, that’s not loud enough. Good afternoon.

AUDIENCE: Good afternoon.

AMB. HO-YOUNG: Thank you so much. Thank you so much. This is what I always do. That’s what Nick remembers from me.
But, today, thank you so much for being here today. And then, there are three words on my mental notepad, and somehow those three words start, all three of them start with T. Let me try. First T, thank you. Then, of course, when I say thank you, then I should be thanking Justice Kirby; I should be thanking the Commission of Inquiry. And then, of course, it was back in 2014 that you came out with your seminal report on North Korea. And then the reason why I say it’s a seminal report, it is because of what it did, in the sense that it aroused international interest. It aroused an international conscience about this very important issue, issue of our time, which is human rights in North Korea.

So I should be thanking Justice Kirby and then all members of COI, and then thank you for what you have done during that one-year commission but, at the same time, in the coming three years after that. So thank you so much.

And I should be thanking Nick and AEI, and I should be thanking Ambassador Lee, Professor and Ambassador Lee, Yonsei University for Human Liberty. At the same time, I should be thanking Greg Scarlatoiu and the HRNK for organizing this very important and timely meeting.

And, of course, to many of you, you do not need me to remind you that it’s already three years that we have been organizing this kind of seminar every year. So the report of the Human Rights Commission COI, the report was in 2014. In 2015, ’16, and ’17, we are having this seminar every year for the past three years here in Washington, DC. And that’s one way of maintaining this very important momentum which has been created by the COI report.

But at the same time, I should be thanking each and every one of you. I’m looking at you. I should be thanking each and every one of you for your interest in human rights in North Korea because I just (say for ?) myself 24 million people who live in North Korea, they are prisoners in their own country. There is very little they can do in order to improve their situation. So unless we do, but we can’t — (inaudible) — North Korea, then they’re helpless. So thank you so much for your interest in North Korea. Thank you so much for your interest in human rights situation in North Korea. And then thank you so much for what you do.

So there is my first T, thank you. My second T, there is theme, theme for today’s seminar, which is human rights problem of a belligerent state. I looked at the theme, and I really liked it. Why? Because, let us just think about it. Human rights issue on the one hand and belligerency of North Korea on the other hand. When I say belligerency, then of course we have to think about the nuclear issue. We have to think about the missile issue. We have to now think about all those chemical weapons, biological weapons in the stock in North Korea.

In my mind, they in fact have the same root: violation of human rights on the one hand and all those belligerency on the other hand. In my mind, they have the same root. I often think about them in 1989 — 1989 the Berlin Wall collapsed. It led to many important
things happening in large or almost all the former communist countries. Political liberalization, economic liberalization, improvement of human rights. That’s what happened in Eastern Europe. That’s what happened in Southeast Asia. Somehow, they didn’t happen in North Korea. Somehow it went just the other way. It deepened its isolation. It began to put more people into concentration camps, and then it began to develop nuclear weapons. It began to develop missiles.

And from time to time, for the past several decades, I was raising this question to me, why? Why did North Korea go the other way when almost all the other countries went one way? And I think one possible answer may be this, which is preservation of dynasty in North Korea. That very well could be the reason why North Korea did it, and then there is the reason why in my mind, human rights, belligerency, they in fact have the same root, which in fact is preservation of North Korean dynasty. So there is the theme I think about and then that in fact is the compliment I should be giving to Nick and all the organizers of this seminar.

My third and last T, that is transition. Transition that is happening in Washington, DC. Soon enough there will be a transition in Seoul. And then this is what I already told you. Back in 2014, there was this COI report, Commission of Inquiry report, and that report in fact started this good momentum of awakening international interest in human rights in North Korea, of in a sense arousing international conscience on human rights in North Korea. That’s what we experienced. That’s the momentum we experienced over the past three years, or four years. I very much hope that this momentum will survive the transition in Washington, DC, and will survive the transition in Seoul — not only surviving, but thrive in the days to come.

So they are the three Ts which came in my mind. Thank you for being here today. And then thank you for this very relevant theme you chose for the seminar this year, and then let’s be resolved that we will survive the transition — double transition in Washington, DC, as well as in Seoul. Thank you so much. And God bless you. Thank you. (Applause.)

MR. SCARLATOIU: Ambassador Ahn, once again, thank you so much. You have truly honored us with your presence. You’re always such a great source of inspiration for all of us.

I hope you’ll agree with me that it has been a day well spent. We have had a very fruitful discussion. We have had an opportunity to discuss the way forward. It’s a good step in the direction of coming up with the task lists not only for governments, but also for international organizations, UN agencies in particular. Why not civil society organizations? It is great to get together for this celebration of the UN COI. We’re always grateful to now that Justice Michael Kirby takes the time and goes to great pains to fly all the way to Washington, DC.

It is also a tame celebration as well because there is so much work ahead. And we surely do hope that in the coming years, this will move beyond the stage. We will have another fruitful discussion of the many wonderful years that have happened for the previous
And I think it’s very important to remember that we do have a powerful message for the people of North Korea. Ultimately, it is Koreans living on the northern half of the peninsula, as Professor David Maxwell puts it, that we are so deeply concerned about.

And our message to them is: You are not forgotten. And perhaps as difficult, as overwhelming as this task might be, perhaps we could have a message for the regime of North Korea, at the very least for some of the senior officials of North Korea. And that message is that there is a different way. The way does not have to be the way of crimes against humanity, abysmal human rights violations. Perhaps you will listen to us, and perhaps you will realize that there is a different way that leads to the ultimate goal of a free, prosperous, united, democratic Republic of Korea. Thank you very much for joining us today.

Nick, I’ll turn it over to you. (Applause.)

AMB. LEE: Thank you, Greg. I’ve already spoken quite a bit in the morning so I’ll be very short. Let me also thank ambassador of the Republic of Korea, who has represented Korea in Washington, DC, with so much dignity and grace and has been very helpful with our endeavor, in my endeavor, in North Korean human rights issue. So, again, thank you very much.

If I were to give a grade to this conference, I think it certainly deserves an A. It was an excellent conference. I really enjoyed both sessions really. There was much to learn. I would just point out two things. Why we continue to do this and why we have to continue to do this as we move forward is because Koreans in North Korea or North Koreans are not able to do this on their own. And, therefore, we have to continue to do this on their behalf until North Koreans are able to help themselves. But, under the current circumstances, that is not the case.

One more important point that I’ve drawn from the conference is that it seems that, in the end, the reunification of the Korean Peninsula is really the answer — the ultimate sole answer to all the problems that we have at hand. And some discussions on peaceful unification and so forth, but I will just remind you that in the history of civilization, between two completely opposing political forces, I don’t recall ever there being a peaceful unification, in other words, a negotiated unification. It just doesn’t happen.

We have in our constitution, ROK Constitution, Article Four, which very specifically states the type of unification that is constitutionally backed, which is a liberal democratic unification. So I think that is something — if this is the solution that we all agree on, then we have to aggressively pursue this as the ultimate solution to all the problems that we have on the Korean Peninsula. And perhaps we can focus on this more the next time that we have this, the fourth anniversary event hopefully here, maybe, at AEI.

So thank you, Nick. Thank you, AEI. And thank you, Greg and the HRNK for this wonderful gathering. And thank you all for staying the whole day to participate. Thank you. (Applause.)
MR. EBERSTADT: Ambassador Lee, thank you very much. This concludes our comments. And for my final concluding words, let me take off my AEI hat and put on my hat as like an American citizen or a human being, whatever it is.

There was a time when I was a Marxist, and when I was a Marxist I believed in the theory of historical inevitability. But when I became a grown-up, I realized that human beings make their own events and make their own choices. And these choices lie in front of us. If we were to summarize everything that we heard here today, I think we could put it very briefly, which is seek the truth, speak the truth, name the crimes, seek justice, and don’t give up.

Thank you, all. (Applause.)

(END)