MONASH UNIVERSITY

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FLASHPOINTS OF DANGER IN NORTH KOREA –
A MONASH CONNECTION*

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MONASH, PASSCHENDAELE AND PERIL

It is unusual for a university to be named after a soldier. The ways of war are rarely the paths of peace that universities generally tread. Yet Monash University was named after a soldier, John Monash. There are

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others, I am sure; but the only other that I know of was named Atatürk University, in Erzurum Turkey. It was established in 1957. It was named after the nemesis of many Australian soldiers, Kemal Atatürk, victor at Gallipoli and the first President of the Turkish Republic. Each of these men, Monash and Atatürk, was a most unusual soldier. Each believed in the pre-eminence of knowledge, science and rational analysis. Each served a secular ideal for his society.

Exactly 100 years ago this day, John Monash was no longer in Turkey. Along with the other Allied soldiers, he had been evacuated from Gallipoli early in 1916. It was a brilliant withdrawal. Indeed, the withdrawal was one of the only truly brilliant and successful manoeuvres of the campaign at the Dardanelles. In northern Europe the Allies resolved to mount one further great effort to break the Hindenburg line; to end the stalemate; and to prevail over the German Empire at last. As we gather in Melbourne, surrounded by the symbols of civilisation and in the company of leaders of a great university, we should reflect on the fears, hardships, perils and dangers that were on the mind of Monash and his soldiers, exactly a century ago.

Analysis of the weather patterns in Belgium over earlier decades had convinced the Allied leaders that a fresh attack would be well timed. Field Marshall Douglas Haig was insistent on the offensive. It would occur near Passchendaele Ridge.1 David Lloyd George, Prime Minister of the United Kingdom, was sceptical. There had already been too much loss of manpower and treasure. He urged the generals to wait for the arrival of the fresh American troops, by them recently promised. However, the generals were insistent. They had special confidence in

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1 C.E.W. Bean, *The Australian Imperial Force in France 1917*, Sydney, Angus and Robertson, 1941, 875 ff.
the soldiers from Canada, South Africa and the ANZACs. But on this day, in 1917, there was a bad turn of events. The rains began early.

Continuous rain produced impassable mud and slime. Field guns, required for the attack, became bogged in the mud. It was a terrible scene. The losses on both sides were described as “extraordinarily high”. By stalling the Allies, the Germans won a strategic success. However, it was extremely costly to both sides. The weather conditions were roundly condemned as the worst of the campaign. Two Victoria Cross decorations were won at Passchendaele – the first British and the second to Captain Clarence Smith Jeffries of the 34th Australian Battalion. The Allies despaired that they would crack the German line.

It was not until the following year, 1918, that the first successful incursions arose. One of them, led by Monash, by then a Lieutenant-General, resulted in his being the first British military commander knighted in the field of battle in 300 years of warfare. Of course, Monash did not win the war alone. But he was famous for his devotion to the safety and nutrition of his soldiers. And to the intense planning and coordination of the soldiers, tanks, field guns and aircraft that was to mark the new mode of warfare for at least 50 years thereafter.

**ACCIDENTAL CAUSES – OPPORTUNITIES LOST**

So how did Monash and his men come to be floundering in the mud of Belgium? It is a story of accidental causes and opportunities needlessly lost. The story is well told in a recent history written by an Australian-born scholar who teaches history at Cambridge University (Sir
Christopher Clark).\(^2\) The causes could be traced to the archaic rules governing the succession to the throne of the Austro-Hungarian Empire.

In 1889, at Mayerling, Rudolf, the liberal Crown Prince, and only son of the Emperor of Franz Josef I died in mysterious circumstances at the Imperial hunting lodge with his 17 year old lover, Baroness Mary Vetsera. This was the stuff of romantic plays, ballets and operas. But in the real world, it had produced destabilising dangers for the reconciliation of the Austrian and other faction in the multinational Empire. The Imperial succession passed to the Emperor’s brother Karl Ludwig, who renounced his claim. His son, Franz Ferdinand then became heir presumptive to the throne. However his wife, Sophie, was not of the blood royal. Accordingly, he was only permitted to marry her in a morganatic marriage and the status of his children was doubtful. It was against official advice and partly to shore up the position of Sophie, a woman keen to win approval that the imperial and royal couple travelled to Sarajevo in Serbia in June 1914. It was there that they were both murdered by a Serbian nationalist, Gavrilo Princip.\(^3\)

When war seemed imminent, Austria made eight demands on Serbia. These included the establishment of a commission of inquiry to investigate the circumstances surrounding the death of the imperial heir. Serbia accepted most of the Austrian conditions. However, there was a sticking point, namely the identity of the appointing power for the commission. Austria insisted on its primacy. After all, its heir apparent had been killed. But Serbia held out. The train timetables for the delivery of soldiers and materiel across the landmass of Europe were

introducing their own imperatives. Conventional military doctrine demanded a pre-emptive strike for victory if war were to come. Austria had to move quickly, before the imperial Russian juggernaut could move its troops. Kaiser Wilhelm II of Germany reluctantly abandoned a yachting cruise on the Baltic and returned to Berlin. Last minute efforts to stop the war failed. The Imperial German Army invaded neutral Belgium. The lights went out over Europe. The Great War began. At its end three mighty empires were no more in Berlin, Vienna and St Petersburg. Their leaders had moved like sleepwalkers towards the conflict that all rational analysis would have told them to prevent and settle quickly. In recent days, the UN Secretary-General (Antonio Gueterres) revived the metaphor of sleepwalking. In the context of the Korean Peninsula, he cautioned about the need to avoid walking mindlessly into an irreversible path to war.

If only the commission of inquiry proposed by Austria had been established. If only a formula had been adopted to agree on a neutral chairman. If only the commission had promptly established (as Serbia always claimed) that Gravilo Princip had acted alone and was not an agent of the Serbian state. If only this news had arrived in time to reverse the mobilisation and prevent the entry of Russia into the war at Serbia’s side. If only the Kaiser had gone to Berlin earlier, to attempt persuasion of the Austrians against impetuously rushing into a war in which they had more to lose and only pride to win.

The Great War, later called the First World War, inflicted enormous suffering on humanity. It did not end with the armistice in 1918 or the Treaty of Versailles of 1919. The incomplete business of Versailles led to the Second World War. In a sense, it led to the Vietnam War and
other wars that have followed. The Second War was, indeed, the progenitor of the Korean War. And that brings me to my engagement with a commission of inquiry about, the Korea Peninsula and the perils of war and the risk of war.

**FROM LEAGUE TO UNITED NATIONS AND THE COI**

Before the Great War broke out in 1914, an incident happened in late 1904 that was to influence future events. It occurred near the Dogger Bank in the North Sea. A conflict had broken out between the Russian Tzar and the Empire of Japan. The Russian fleet left home ports in the Baltic and steamed towards the North Sea on its way to the Far East. Rumours circulated that a Japanese naval force was waiting for the Russians. The Russian admiral authorised the sinking of vessels on the horizon. They turned out to be harmless British fisherman working in small boats. No one in London believed that an experienced seafarer could possibly mistake such tiny craft for Japanese war ships, far from their home bases. War between Britain and Russia seemed imminent.

The French Government brokered a peace deal. Invoking the *Hague Convention* of 1899, France hosted a commission of inquiry to investigate the Dogger Bank incident. The commission met quickly. It proceeded fairly. It produced a well written report that avoided provocations. It recommended Russian acceptance of responsibility, an apology, the payment of compensation and the erection of a war memorial in England. These proposals were accepted. War was
avoided. The idea of commissions of inquiry entered the international diplomatic lexicon.⁴

This idea of the national settlement of international conflicts became part and parcel of Woodrow Wilson’s solution to make the Great War that would end all wars. A League of Nations was proposed. Its *Covenant* was drawn up. It gave a special status to the great powers but allowed engagement with all nations then recognised. It provided for the conduct of inquiries to avoid the application of brute power alone in international relations.⁵ The League only came unstuck because the United States Senate refused to endorse Wilson’s proposal and Wilson would not budge to seek a compromise. When in the 1930s Hitler made his demands to reverse what he asserted were the injustices of Versailles, no commission of inquiry could be invoked. All that was available was the capitulation of Britain and France at Munich in 1938, followed quickly by the invasions of Czechoslovakia and Poland in 1939. The Second World War quickly followed.

Fresh from its victory against Russia in the Far East, the Japanese Empire proceeded swiftly in 1911 to invade and colonise Korea. For a thousand years, Korea had been a united polity. The Japanese kept it that way. But they super-imposed a harsh regime. Obeisance to the Japanese Emperor replaced local rule. The civilian population of Korea was tamed by an occupying army. Harsh instruments of punishment and torture were introduced. They are collected at the site of a Japanese prison in what is now central Seoul.

By the end of 1943, it became clear that the Allies would eventually prevail in the Second World War. In anticipation of Japan’s defeat, the Allied powers, at the Cairo Conference in 1943, agreed to the independence of Korea “in due course”. However, they decided that the Korean Peninsula would be divided at the 38th parallel. There would be two zones, one under United States influence in the South and the other a Soviet zone in the North. The Japanese occupation ended following the detonation of the atomic bombs over Hiroshima and Nagasaki in August 1945. Within days the United States had sent 25,000 troops to fulfil the plans agreed in Cairo. The Soviet Union sent its 25th Army to North Korea, where it established a Soviet-style civil administration." The Japanese departure from the Korean Peninsula was abrupt and final.

The Korean people themselves never participated in the decision to divide their nation. They were denied the basic right to self-determination that was a key feature of international law and policy, to wind up the colonial empires of the past and to hand political power back to the peoples whose lands had been ruled by others. In Korea, the world still faces the consequences of a legacy of the colonial age when mighty powers disposed of subject peoples.

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7 International Covenant on Economic, Social and Cultural Rights (1976) 993 UNTS 14531, Article 1; International Covenant on Civil and Political Rights (1976) 999 UNTS 171, Article 1 (“1. All peoples have the rights of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”)
Both North and South Korea came under the rule of autocratic rulers. The leader in the North, Kim Il-sung, believed in reunification of the Korean Peninsula under the Korean Workers Party. Each of the post-war Korean states, the Democratic People’s Republic of Korea (North Korea) (DPRK) and the Republic of Korea (South Korea) (ROK) wondered that they were the only legitimate government of Korea. Their constitutions assert as much. Their political arrangements act on this assumption. Their approach has led to animosity between the two states. That animosity was greatly sharpened by the Korean War. That war broke out in 1950 after Kim Il-sung persuaded a reluctant Stalin to allow him to invade the South. Soviet archives, now available to researchers, show that Stalin warned that he would not ‘lift a finger’ to help Kim, if he encountered difficulties, as he did. The archives show that it was the North that invaded the South, contrary to Kim’s assertions. They also reveal that Stalin warned him to make it look as if his state had been invaded by the South. This too was done.
The United Nations rapidly mobilised a force to defend South Korea from invasion. By a brilliant amphibious landing near Incheon (where the new international airport of Seoul is now found) General Macarthur turned the battle around. Kim Il-sung’s forces retreated rapidly. They were driven to the Yalu River. Then China entered the war in the form of “volunteers”. It was a most bloody conflagration. Each side suffered enormous casualties. The landscape was laid bare, especially in the North. Intensive bombing and use of napalm inflicted huge losses in the North. In the end, a stalemate was reached, acknowledged by an armistice. There has never been a peace treaty to settle this bitter fraternal confrontation.

In these facts lie the causes of the animosity that now motivates North Korea. South Korea, by remarkable developments of technology and trade has rapidly become one of the top ten economies of the world. It has concerned itself with other things. But in North Korea, the Korean War, the animosity for the Americans who led that war for the United Nations and the fear of destruction of their ‘distinctive’ ‘socialist’ society
under the Kim dynasty has retained animosity, danger and serious abuses of human rights.

The COI on North Korea produced its report swiftly and distinctively. It observed due process towards DPRK. It also adopted a distinctive methodology. It undertook public hearings in Geneva, Seoul, Tokyo, London and Washington DC. It recorded most of the testimony on film, at least when that was safe to do so. It uploaded the filmed testimony to the internet, so that the world could judge the veracity of the witnesses. It addressed the nine point mandate it had received from the Human Rights Council. It presented its report to the Human Rights Council in March 2014. The report was highly critical of DPRK’s human rights record. It found many abuses of human rights. It concluded that some of them amounted to crimes against humanity. It recommended referral of the latter to the International Criminal Court. That step would require a resolution by the Security Council. This also the COI recommended. It proposed opening up contacts between the two Korean states. It urged resumption of the Six Party Talks and the negotiation of a peace treaty to conclude the hostilities of the Korean War.\(^8\)

\(^8\) COI report, above n.6, 372 [1225(j)].
Following these recommendations, the COI report was endorsed by the Human Rights Council and the General Assembly by strong supportive votes.

After a brief ‘charm offensive’, DPRK denounced the COI and its report and refused cooperation. Moreover, it stepped up its nuclear weapons and missile testing program. It conducted its third underground nuclear test in February 2013; the fourth, in January 2016; the fifth, in September 2016 and the sixth (apparently a fusion bomb) on 3 September 2017. These steps were condemned by unanimous resolutions of the Security Council. That body also imposed ever increasing sanctions on trade and contacts. These sanctions were designed to reverse the DPRK’s posture.

Meantime, in South Korea there was an utter contrast in governmental chronicles. Upon reports of alleged influence and corruption by the ROK President, huge demonstrations in Seoul demanded the impeachment of President Park Geun-hye. Eventually, her administration fell. The Constitutional Court confirmed her impeachment. She was arrested and put on trial. She now resides not in the Blue House, the Palace of the President of ROK, but in prison awaiting trial. A national election took place in ROK it returned the Administration of President Moon Jae-in. He was a civil liberties lawyer and a follower of President Kim Dae-jung. The latter had been President of ROK from 1998-2003. He won the Nobel Prize for Peace in 2000 for his ‘Sunshine Policy’. He reached out to DPRK. He travelled to Pyongyang and met Kim Jong-Il. He provided economic and humanitarian support to DPRK in the hope of changing the danger of conflict on the Korean Peninsula. Critics said that DPRK had cynically proceeded with the development of its nuclear capability.
whilst pretending to peace and accepting funds for development. This is the fault line of politics in ROK.

Despite many discouragements, President Moon Jae-in appears to be committed to give peace a chance once again. So far, his gestures towards DPRK have been rebuffed. DPRK has declared that they will take his gestures more seriously when ROK discontinues its annual military exercises with the United States of America that have been a feature of the Korean scene for years.

Such is the Korean scene as we meet at the centenary of Passchendaele. Yet there is a twist that cannot be ignored. The dealmaker President Donald Trump has replaced the cerebral Barack Obama. Mr Trump is given to announcing his opinions and policies in personal tweets on the Twitter social network, often at 2am Washington time. These messages reflect the immediacy of policy evolution. However, they sometimes involve insulting, provocative and bellicose sentiments that make progress in of diplomacy more difficult. In tweets and speeches, including even in his first address to the General Assembly of the United Nations, President Trump insulted the Supreme Leader of DPRK, calling him “Little Rocket Man”; threatening to destroy DPRK; and to rain down “fire and fury” on its people. Inevitably these threats have produced responses. The Supreme Leader has called President Trump “mentally deranged”; and a “dotard”. He has promised to tame him with fire. The new technology has brought about the development of bombs of enormous destructive power. But also threats

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by international leaders, apparently with control over unleashing weapons of the most enormous potential.

At this fragile moment it is somewhat reassuring, to note the restraint displayed by President Moon Jae-in. His counterpart, Kim Jong-un, appears to delight in his new weapons and in threatening to use them. He has also apparently been involved in the execution of suspected rivals, including his uncle by marriage Jang Song-thaek\(^\text{10}\) in December 2013 and his half-brother Kim Jong-nam, reportedly exposed to a chemical weapon at Kuala Lumpur International Airport in March 2017. At the same time as South Korea was following its constitutional norms to change its leadership, North Korea was apparently engaging in extrajudicial killing and rapid nuclear weapons development. Here indeed is a study in contrasts. The whole world is watching. Rightly, the international community is deeply concerned about peace and security. Rightly also it is concerned for the state of human rights within DPRK, as revealed by the United Nations COI report. What then is to be done?

\textit{A MONASH CONNECTION: SHIM JAE-KWON}

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\(^{10}\) COI report above n.6, 49 [180].
Here I introduce the Monash connection. In the early 1990s a young student from South Korea, Shim Jae-kwon travelled to Melbourne to undertake post-graduate studies. He chose Monash University’s Department of Politics. He proposed to undertake the degree of Doctor of Philosophy. That degree was conferred on him in 1994. In due course Dr Shim returned to South Korea. He welcomed the election of President of Kim Dae-Jung. Later, Dr Shim was himself elected to the National Assembly of Korea. For a time he was destined to serve in the Opposition. However, in 2017 he was elected as Chair of the Foreign Affairs and Unification Committee, in the ROK National Assembly. It was in that capacity that I called on him in Seoul earlier this year.

Dr Shim received me within days of the election of President Moon Jae-in, in his large office in the ROK National Assembly. His political alignment and the changing landscape of politics in his country had suddenly thrust him into a position of considerable political importance. When I met him, he talked with affection and appreciation of the years during which he had studied in Melbourne and of the contribution that Monash University had made to the formation of his thinking about Korean safety, politics and reunification.

On my return to Australia, I received the great honour of being invited to deliver the Richard Larkins Oration for 2017. I decided to speak about Korea and specifically Dr Shim. I enquired about his thesis topic. The text was quickly produced for me. It could not have addressed a subject more relevant to the world of 2017. The thesis was titled: Towards Peace in the Korean Peninsula: Nuclear Deterrence and Alternative Security Approaches. Examining the text, the reader derives insight into the values of a Korean national whom fate has now delivered to a
significant role at a fragile moment in the history of his country, of the region and the world.

The starting point of the thesis is an identification of the large and growing dangers of nuclear weapons systems. On page 2, Dr Shim points out:

“…[N]uclear weapons systems [have] developed dramatically in quantity and quality. Nuclear warheads can be delivered not only by aircraft, missiles launched from underground silos and underwater submarines, but also by artillery shells fired from mobile cannons and by ships which drop them into the seas as depth charges and torpedos. Speed of delivery and accuracy have also progressed tremendously. Nuclear warheads themselves have also been elaborated becoming smaller in size, lighter in weight, and more powerful in yield.

In his thesis, Dr Shim proceeds:

As to the effects of a nuclear war, a study by the US Congressional Office of Technology Assessment in 1980, which was undertaken at the request of the US Senate Committee on Foreign Relations, reported that if the United States and the Soviet Union exchanged a nuclear attack of 1MT airburst over a single Soviet city, Leningrad, and a single US city, Detroit… immediate deaths by nuclear fire-ball and blast in each city would amount to 0.9 million and 0.5 million respectively. … In the case of the Soviet Union launching a pre-emptive attack against the United States and the latter launching a full retaliatory attack against the former, the study predicted that between 70 million and 160 million in the United

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12 Jae-kwon, Shim, loc cit.
States would be killed (i.e. 35-77% of the US population) during only the first 30 days, and in the Soviet Union 50 million to 100 million (i.e. 20-40% of the Soviet population) in the same period… Even a nuclear war apparently limited to one country would also put at risk citizens of neighbouring non-belligerent countries affected by radiation fall out. As the Chernobyl accident in 1986 demonstrated… nuclear explosions would create fires… and the smoke fires from these fires would absorb sunlight causing “twilight at noon”… [T]he ‘single nuclear winter’ theory: large amounts of dust and dark soot following blast and fire would absorb sunlight, subsequently heating the atmosphere, cooling the earth’s surface, and resulting in severe and prolonged low temperatures, which would bring about ecological and genetic damage, pestilence and widespread crop failure and famine… [W]ind currents would sweep away most of the ozone layer… critical to life on earth because it absorbs solar ultraviolet radiation. If it were depleted, sunlight, the ‘life-giver’, would become a ‘life-extinguisher’ for both mammals and plant life.”

People of my age who lived through the dramatic images of the destruction and suffering that followed Hiroshima and Nagasaki have these horrible memories etched forever in their minds. Younger people have mostly forgotten them, if they ever knew them. The thesis of Dr Shim Jae-kwon directly brings these perils back to the front of our minds. We are not talking of toys. We are talking of grim dangers to the survival of our beautiful planet. Such dangers could sweep away, in a matter days, the miracles of J.S. Bach’s music; of Shakespeare’s words; of Darwin’s insights about our evolution; and the wonder of the Cassini satellite which a month ago, wove a path through the rings of the planet Saturn to bring back to us on earth vivid images from the mighty universe far from the magnificent space that we inhabit.
It is against this portrait of the dangers that we face, expressed so vividly in Dr Shim’s thesis, that he embarks on the exploration of his theme. It concerns the concept of “deterrence”, which is the supposed merit and advantages of the possession of nuclear weapons and their main philosophical foundation. He concludes that:13

“Far from its basic aim of ‘war prevention’, however, nuclear deterrence has evolved in theory and in practice many risks of ‘war-fighting’, and thus various alternative ideas have been proposed… [T]he Korean Peninsula has long been a highly inflammable potential nuclear theatre which could ignite even a third world war among nuclear armed big powers. Moreover, South Korean attempts to develop nuclear weapons in the 1970s and recent controversies surrounding the North Korean nuclear potential have raised even the possibility of the two Korea’s own nuclearisation.”

Against these dangers, stemming from the superabundance of nuclear stockpiles and the perils of mistakes on the part of humans and machines, that Dr Shin then embarks on alternative strategies that would enlarge the prospects of human survival, both in the Koreas and beyond. Suddenly, the subject of his thesis has a new, sharper, reality. We too must share his expressed gratitude to Professors Hugh Emy, David Kemp and Tony O’Grady of the Monash Department of Politics. As he observed: “They always encouraged my study with warmth while understanding my difficulties as an overseas student.”

Dr Shim thanks the National Korean Studies Centre in Australia and a number of Australian and Korean people, whom he I met here, for their friendship. But it is we who must thank him because his text jolts us back to reality from the dream world in which we have buried every present dangers at the very backs of our minds. Time does now allow an exploration of the nuances of Dr Shim’s thesis. Instead I move directly, to his conclusions, stated in 1994, and ask if they may still be valid or perhaps even have heightened validity in the world of 2017:\[14\]

“[After Hiroshima the nuclear] weapon had already come into existence. The justification for the existence and use of nuclear weapons thus necessitated the concept of ‘deterrence’. In other words, the existence and use of nuclear weapons could be rationalised essentially as an instrument of war-restraint. Unlike the conventional idea of deterrence therefore, given that even one breakdown in the system of nuclear deterrence could be fatal, this system is to remain always perfect while also being permanently unused… Nuclear deterrence assumes that both the deterrer and the deterred will weigh and assess rationally potential gains and costs. However, the history of war has witnessed how irrational political decision-makers often could be.

On the practical level, too, even for the enhancement for the credibility of nuclear deterrence… possibilities of nuclear war-fighting and war-winning, including possibilities of various limited nuclear exchanges, have been stressed: nuclear weapons have to be more ‘useable’, nuclear war has to be more ‘thinkable’, and if possible, ‘winnable’. Not surprisingly, in that the massive destruction of one’s own society can never be allowed, and in that in some sense it is meaningless to retaliate

against the enemy’s military targets after the nuclear weapons located there have already been launched, the strategic requirement of a ‘pre-emptive strike’ has always been emphasised.”

The enormous danger of this deterrence approach to weapons of such potential destructiveness is summarised by Dr Shim:15

“Human survival now requires a new thinking of security, beyond the realist ideology… The strategy of nuclear deterrence should be given up, and nuclear weapons should be abolished. Instead, for the common prosperity of all human beings, a comprehensive security system should be provided.”

Here too, I believe that Dr Shim has shown prescience and accurate prediction.

**THE WORLD COURT’S OPINION & THE BAN TREATY**

First, in 1996, the International Court of Justice, at the request of the UN General Assembly16 was asked urgently to render an advisory opinion on the question whether “the threat or use of nuclear weapons in any circumstances [is] permitted under international law?” On 8 July 1996 nearly 8 months after oral argument, the court rendered its opinion. A majority could not say that deterrence, by the threat of the use of nuclear weapons or the possession of them, was specifically outlawed by international law. It was Judge Christopher Weeramantry (Sri Lanka),

15 Ibid, 316.
16 United Nations, General Assembly A/res/49/75K.
one time Professor at Monash University, and judges from Guyana and Sierra Leone\textsuperscript{17} who dissented on this point.

However, there were more dissenters from the proposition that the threat or use of nuclear weaponry in armed conflict was consistent with the principles and rules of international humanitarian law. In addition to Judge Weeramantry, the judges who concurred with this opinion included Judge Schwebel (United States), Judge Oda (Japan), Judge Guillaume (France) and Judge Higgins (United Kingdom). Vice President Schwebel in particular remarked:

“It cannot be accepted that the use of nuclear weapons on a scale which would – or could – result in the deaths of many millions in an indiscriminate inferno and by far-reaching fall out, have pernicious effects in space and time, and render uninhabitable much of all the earth, could be lawful.”

Yet even this the majority of the court could not embrace. Nonetheless, the World Court, unanimously concluded that:\textsuperscript{18}

“There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.”

Sadly, the international group of nuclear armed states has failed to conform to that unanimous conclusion of the World Court. In 2017, the

\textsuperscript{17} Judge Christopher Weeramantry (Sri Lanka); Judge Mohommed Shahabuddeen (Guyana); Judge Abdul G. Korama (Sierra Leone).

\textsuperscript{18} International Court of Justice, Legality of the Threat of use of Nuclear Weapons, Advisory Opinion of the Court, 8 July 1996; General List No. 95 (1996) [105], sect. 2F.
rest of the world began to respond. A proposal was advanced in the General Assembly for the adoption of a “Ban Treaty”. This was a treaty that would render unlawful in international law the possession, use and threat of use of nuclear weapons. It gained no traction with the nuclear armed powers, including the five Permanent Members of the Security Council. They enjoy a privileged voting right under the Charter of the United Nations. Although that Charter is expressed in the name of all of the peoples of the earth, the ‘P5’ nations have failed to exercise their powers as the Court declared was mandatory.

When the non-nuclear nations initiated the Ban Treaty, their initiative was based on earlier similar steps, including the adoption of the International Convention to prohibit the possession, use and threat of use of Land Mines (Ottawa Treaty). That initiative succeeded and passed into law. I know from earlier work for the United Nations in Cambodia that it has been a useful step in ridding the world of the scourge of those weapons. Yet who will rid us of the scourge of nuclear weapons? The international community, in large numbers, has finally taken the matter into its own hands.

Despite the opposition of the nuclear armed states, with their enormous stockpiles of nuclear weapons that could render the earth to little more than ‘insects and grass’, as Dr Shim described it, 122 countries agreed to participate in the drafting of the Ban Treaty that culminated on 7 July 2017. Australia took no part in this process. Its Prime Minister declared that we were satisfied, sheltering under the ‘umbrella of United

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States’ nuclear deterrence. In such an existential matter, being “formed at the hip” might be a dangerous and irreversible connection that surrenders our influence, for ourselves and for humanity.

In Korea the new Administration of Moon Jae-in walks a difficult line. It cannot ignore the dangers from the North. But it has rightly concluded that bellicose insults and threats of using nuclear weapons are getting us nowhere. They expose Korea and the world to unimaginable dangers. Even if deliberate warfare using these weapons is set aside, there remain the dangers of accident, mistake, misreading of data and now automated systems speaking to each other in the hope of seizing the momentary advantage of a pre-emptive strike.

That something better is needed in the world. There is such a frightening disproportionality between available time and irreversible destruction. It is our duty, as rational human beings, to protect and defend human decision-making and to reduce the dimension of such decisions, personally reposed in so few hands.

The scope of our danger was remembered this year with the death of Stanislav Petrov. He was the Soviet officer on duty near Moscow in September 1983 who rejected the systems’ warning of the launch of a missile strike on the Soviet Union.\(^{20}\) A newly installed system had screamed that a missile attack had been launched. Petrov’s rational mind told him that it was unlikely that such an attack would involve a mere six missiles. Indeed, the cause of the alarm turned out to be a response to sunlight striking clouds. A trigger-happy official might have set in train a very dangerous retaliatory strike. We owe it to humanity to

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\(^{20}\) BBC World Today “Stanislav Petrov … has died at 77.
remove such perils entirely from the equation. Dr Shim acknowledged in his thesis the difficulty of securing a nuclear weapons free world.\(^{21}\) However, he saw clearly the need for step by step responses. Now, in the ROK National Assembly, he is putting his insights into action.

On 14 May 2017,\(^{22}\) as a member of the Korean National Assembly, Dr Shim called for increased cooperation between the peoples of the two Korean states. In this he was reflecting a recommendation of the COI on DPRK. He also called for an agreement on denuclearisation of the Korean Peninsula and institutionalisation of inter-Korean cooperation. Out of such moves it could be possible to build a peace treaty, “if both Koreas become able to build mutual trust”. This also was a proposal in the COI report.\(^{23}\) Dr Shim also appealed for economic cooperation and for both Koran societies to learn from the “humanitarian policies” of President Kim Dae-Jung. So far, there is no evidence of a change of heart on the part of DPRK. But now, at last, there are many voices being raised. Not all of them are shouting insults and threats across the Korean Demilitarised Zone.

**THE LESSONS WE MUST LEARN**

I began this Oration with some lessons from history. The Dogger Bank, Passchendaele and Versailles may seem events long ago. Yet in terms of history, they are recent. They teach us lessons about the risks of mistakes and errors of judgement arising from human vanity. Those lessons are now greatly magnified by the technology of the weapons of

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\(^{21}\) Shim above n.11, 316.
\(^{23}\) COI report, above n.6, 372 [1225(j)].
today. Around the corner are even more interactive technologies of heightened potential dangers.

Are we still acting like sleepwalkers? Is our Sarajevo now upon us? What can we do to build effective institutional responses? Is blind belief in nuclear umbrellas a sensible strategy? Or does being ‘joined at the hip’ to a power with 36,000 nuclear warheads simply extend the unprovable faith in human survival which now confronts existential dangers?

There is a lot of wisdom in the PhD thesis of our Monash graduate, Shim Jae-kwon. To the specifically Korean dangers, and nuclear dangers that he mentioned in his Monash thesis, we need to add the dangers of human pride, arrogance and folly. For the sake of the world and the sake of our species, we must embrace institutional and legal protections that reduce the perils and enhance the margins of safety. Not only is this essential for international peace and security. It is vital to the protection of universal human rights. Especially the human right to life, health and happiness.