

# NORTH KOREA: HUMAN RIGHTS, REFUGEES, AND HUMANITARIAN CHALLENGES

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JOINT HEARING  
BEFORE THE  
SUBCOMMITTEE ON ASIA AND THE PACIFIC  
AND THE  
SUBCOMMITTEE ON  
INTERNATIONAL TERRORISM, NONPROLIFERATION  
AND HUMAN RIGHTS  
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## **NORTH KOREA: HUMAN RIGHTS, REFUGEES, AND HUMANITARIAN CHALLENGES**

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**WEDNESDAY, APRIL 28, 2004**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON ASIA AND THE PACIFIC, AND  
SUBCOMMITTEE ON INTERNATIONAL TERRORISM,  
NONPROLIFERATION AND HUMAN RIGHTS,  
COMMITTEE ON INTERNATIONAL RELATIONS,  
*Washington, DC.*

The Subcommittees met, pursuant to call, at 2:50 p.m., in Room 2172, Rayburn House Office Building, Hon. James A. Leach (Chairman of the Subcommittee of Asia and the Pacific) presiding.

Mr. LEACH. The joint hearing of the Subcommittee on Asia and the Pacific and the Subcommittee on International Terrorism, Nonproliferation and Human Rights regarding human rights, refugees, and humanitarian challenges in North Korea will come to order. And on behalf of the Committee, I would like to welcome our distinguished witnesses.

At the outset I would like to express my appreciation for Chairman Gallegly, Chris Smith, Ed Royce and Steve Chabot for their strong leadership in this issue. And I also note leadership on the Democratic side from Tom Lantos, Howard Berman, Eni Faleomavaega, and Gary Ackerman.

It is important to underscore that there are no significant partisan distinctions on human rights policy toward North Korea, and indeed no great distinctions between Administrations on these core humanitarian concerns. In this regard, I would like to express our sorrow at the news of the massive explosion at the Ryongcheon railway station inside North Korea last Thursday. The hearts of all Americans go out to the victims of the blast and to their families and particularly the many children still suffering from their wounds. I am pleased that the United States has offered to support the international relief effort to that devastated community. We must always distinguish between people-to-people and government-to-government relations, and it is in the context of people to people concerns that we extend humanitarian assistance, such as the several million tons of food that we have provided since 1995 to North Korea. Indeed, it is that humanitarian impulse which is the motive behind this hearing, behind the events of the North Korean Freedom Day and behind the North Korean Human Rights Act which the Committee considered favorably on March 31.

The people of North Korea have endured some of the great humanitarian traumas of our time. Inside North Korea, they suffer at the hands of a totalitarian dynasty that permits no dissent and

maintains an inhumane system of prison camps that house an estimated 200,000 political inmates. The regime strictly curtails freedoms of speech, press, religion, assembly and movement. Since the collapse of the centralized agricultural system in the 1990s, more than 2 million North Koreans are estimated to have died from starvation.

North Koreans outside of North Korea are also uniquely vulnerable. Many thousands are hiding inside China, which currently refuses to allow the U.N. High Commissioner for Refugees to evaluate and identify the genuine refugees among the North Korean migrant population. China forcibly returns North Koreans to North Korea, where they routinely face imprisonment, torture, and sometimes execution. Inside China, North Korean women and girls are particularly vulnerable to trafficking and sexual exploitation.

These crises prompted my introduction of H.R. 4011, the North Korean Human Rights Act of 2004. This broadly bipartisan legislation, which was approved by the Full Committee last month, aims to promote international cooperation, human rights, refugee protection and increased transparency in the provision of humanitarian assistance to the people of North Korea. On the human rights front, the bill underscores the importance of human rights issues in future negotiations with North Korea and authorizes \$2 million per year for programs to promote human rights, democracy, rule of law, and a market economy. It also authorizes a similar amount to increase availability of information sources not controlled by the North Korean Government. Finally, it urges additional North Korea-specific attention by appropriate U.N. human rights authorities.

On the humanitarian front, the bill authorizes increased funding for assistance to North Koreans outside of North Korea. It attempts to secure greater transparency for aid delivered inside North Korea by authorizing a significant increase in such aid by tying increases to substantive improvements in monitoring.

Finally, it conditions direct aid to the North Korean Government on human rights and transparency benchmarks, but allows the President to waive those restrictions for national security purposes after reporting to Congress.

In terms of refugee protection, the bill clarifies United States policy and urges the U.N. Human Rights Commission to use all available means to gain access to the North Koreans in China. It attempts to formulate prudent solutions to the practical and legal barriers that presently keep North Koreans from having effective access to United States refugee and asylum programs. It does not mandate the admission of any number of North Koreans to the United States, raise the annual U.S. refugee cap, or in any way limit the authority of the Department of Homeland Security to regulate and condition the entry of North Koreans into the United States on a case-by-case basis.

Although the principal responsibility for North Korean refugee resettlement naturally falls to the Government of South Korea, the United States should play a leadership role in focusing international attention on the plight of these refugees and formulating international solutions to that profound humanitarian dilemma, which may include accepting an unspecified but credible number of



refugees for domestic resettlement. Here it must be noted that our government must maintain a prudent case-by-case approach in part due to the circumstances that not only is the North Korean Government oppressive, it has instituted a virtual anti-American brain-washing of its population. Unlike refugees from the former communist bloc of eastern Europe, the North Korean people do not yet broadly share the idea that America is a beacon of freedom.

With regard to China, this bill is not solely critical; it is also aspirational. It makes clear that the United States and the world community stand ready to provide more assistance to help defray the costs associated with North Korean refugees present when China begins fulfilling its obligations as a party to the 1951 U.N. Refugee Convention. We genuinely hope for that opportunity.

We are honored by the presence of four North Korean witnesses who have endured some of the most demanding rigors of the human condition. Two of them are survivors of the North Korean gulag. All four of them spent time as refugees inside China before successfully escaping to South Korea. We look forward to receiving their testimony and that of our other expert witnesses.

[The prepared statement of Mr. Leach follows:]

PREPARED STATEMENT OF THE HONORABLE JAMES A. LEACH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA, AND CHAIRMAN, SUBCOMMITTEE ON ASIA AND THE PACIFIC

On behalf of the Committee, I would like to welcome our distinguished witnesses to this joint hearing of the Subcommittees on Asia and the Pacific and International Terrorism, Nonproliferation and Human Rights regarding human rights, refugees, and humanitarian challenges in North Korea.

At the outset, I would like to express my appreciation to Chairman Gallegly, Chris Smith, Ed Royce and Steve Chabot for their strong leadership on this issue. I would note as well the leadership on the democratic side from Tom Lantos, Howard Berman, Eni Faleomavaega and Gary Ackerman. It is important to underscore that there are no significant partisan distinctions on human rights policy toward North Korea, and indeed no great distinctions between Administrations on these core humanitarian concerns.

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Indeed, that humanitarian impulse is the motive force behind this hearing, behind the events of North Korean Freedom Day, and behind the North Korean Human Rights Act, which this Committee considered favorably on March 31st.

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North Koreans outside of North Korea are also uniquely vulnerable. Many thousands are hiding inside China, which currently refuses to allow the UN High Commissioner for Refugees (UNHCR) to evaluate and identify genuine refugees among the North Korean migrant population. China forcibly returns North Koreans to North Korea, where they routinely face imprisonment and torture, and sometimes execution. Inside China, North Korean women and girls are particularly vulnerable to trafficking and sexual exploitation.

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Mr. LEACH. Mr. Flake, do you wish to make an opening statement?

Mr. FLAKE. No.

Mr. LEACH. Let me introduce our panel. The first panel consists of L. Gordon Flake who is Executive Director of the Maureen and Mike Mansfield Foundation, the co-author of *Paved with Good Intentions*, the NGO experience of North Korea. Let me say to Mr. Flake, I had not known of the Mansfield Foundation, but anything identified with Mike Mansfield's name comes well recommended to this Committee.

Mr. FLAKE. Let me just add, anybody named Flake is got to be doing okay.

Mr. LEACH. The second witness is Tarik Radwan, who is Professor of law at Handong International Law School in Pohang, Korea and Assistant Director of the Jubilee Campaign, USA, a non-sectarian human rights organization.

Thirdly, we have Timothy A. Peters who is the founder and director of Helping Hands Korea, a humanitarian NGO based in

Seoul. Mr. Peters, who testified before us several years ago, has been intimately involved with efforts to provide assistance to North Koreans in need both inside and outside of North Korea.

And our final witness on the first panel is Suzanne Scholte, who is President of the Defense Forum Foundation, a founding board member of the U.S. Committee for Human Rights in North Korea, and a founding member of the North Korean Freedom Coalition.

I welcome you all and we will proceed in the order of the introductions, unless by previous agreement you change that. If not, Mr. Flake, proceed. All of your statements, without objection, will be placed fully in the record. I would be appreciative if you could summarize in less than 5 minutes.

But before proceeding, let me ask Mr. Sherman, do you have a statement you would like to make?

Mr. SHERMAN. I do indeed have a statement. We are concerned with human rights in North Korea. And while we, of course, are concerned with the residents of the Hermit Kingdom, there is another human rights issue; that is, the right of my constituents and yours, Mr. Chairman, to go to sleep tonight not having to worry that a nuclear weapon constructed in North Korea will be smuggled into America and exploded. And that is a human rights issue. Whether it is the actuality, which would be devastating, or even the potentiality, which is harmful to every American every night, is another human rights issue.

And this Administration has gone—well, before September 11, America was simply underengaged in dealing with the threat that nuclear weapons in terrible hands could bring to us. Since September 11, we have gone chasing off in a number of different directions, while North Korea now has, according to recent press reports, eight plutonium-based nuclear weapons. In other words, even after September 11, our policies have watched America become less and less secure. Now that they have eight to defend themselves against us, the ninth nuclear weapon they build can go on eBay. God knows who will buy it.

And yet this Administration refuses to talk about a nonaggression pact. Now, I am not saying we just give that away, but if we had inspections and we had the decommissioning of these eight weapons and the materials sent to Russia or the United States, where it would be safe, that would be very important. And yet this Administration says oh, but we can't sign a nonaggression pact because our bureaucracy says we have never done that before. Sounds like my DMV. And I know the diplomats now come to us and say, well, we are not talking about a nonaggression pact; therefore it is not important.

Just as importantly, we have not even hinted to the Chinese that their cooperation in putting economic pressure on that regime until it stops its nuclear weapon program is important enough to us that we would slightly effect our trade relationship with them or even temporarily suspend their trade relationship, or some aspects of it, with them until they are willing not just to give us moral support and not to speak out and say that they would prefer Korea not to have nuclear weapons, but to say that they are willing to take action to make sure those weapons are decommissioned and the processes that create them are ceased. Apparently the bureaucratic pro-

clivities of the State Department not to sign nonaggression treaties and the insatiable desire of American corporations for profits on imports from China are more important than whether my constituents and yours can go to sleep tonight not worried about what happens to those eight plutonium-based nuclear weapons. And I think that is the human rights concern. And it is not enough to have an aggressive foreign policy, we need a smart foreign policy. I yield back.

Mr. LEACH. I thank the gentleman for his comments.

Before turning to the panel, let me take leave as the Chair to make a modest correction to my distinguished friend, many of whose concerns I deeply share. But the Administration has publicly and privately made it very clear to the North Koreans, who were quite prepared to accept the giving of very formal assurances on aggression, and that is part of the public record and been part of the——

Mr. SHERMAN. If the Chairman will yield. We are quibbling about whether it would be a nonaggression pact or whether it would be some, presumably in the eyes of North Korea, lesser or less sought after written assurance. And that kind of failure to see what the North Koreans are asking for and to give it to them as part of an overall plan, but to get hung up on our own desire to avoid calling it a nonaggression pact is my concern.

Mr. LEACH. I appreciate what the gentleman is saying, but I want to caution him that a circumstance that might have existed a year and a half ago does not exist today with regard to that issue. I think we are very prepared, and the North Koreans recognize this, to offer assurances on the non-aggression issue.

Let me begin with Mr. Flake.

**STATEMENT OF L. GORDON FLAKE, EXECUTIVE DIRECTOR,  
THE MAUREEN AND MIKE MANSFIELD FOUNDATION**

Mr. FLAKE. Thank you, Mr. Chairman.

I am honored to be here today, although I must confess to being a square peg in a round hole and that I sit here primarily as a North Korean security and economist specialist in the company of some very renowned human rights specialists. And I will resist the temptation to respond about the nuclear issue and try to stay on topic about the human rights issue because it is of grave concern.

First and foremost, I would note there is little or no debate about the nature of the North Korean regime or the need for a regime change or need for a change in the nature of the regime, and there is also no need for debate about the suffering of the North Korean people.

There is little I can say here today that would add to the direct personal testimony you are going to hear from the next panel. In fact, I think most analysts that work on North Korea tend to assume the worst possible.

The real question and the real debate remains about how to effect change in North Korea. This is a question that is not unique to North Korea. The isolation versus engagement debate has surrounded rogue regimes since the beginning of time. The question with North Korea had not been raised in the past because we had no interaction with North Koreans. For the better part of our 50-

year history or the 50-year existence of the DPRK, we had no relations with them other than direct adversarial relations or deterrence.

It is only in the last decade we have begun to engage the North Koreans on an economic level, on a humanitarian level and a number of levels. We have, for the first time, some degree of interaction or leverage into which the human rights question might play. The real question is one of humanitarian aid, one of responding to the humanitarian crisis in North Korea, and how and when and where to apply the question of human rights.

The bulk of my written testimony really focuses on the question of humanitarian assistance and the role of nongovernmental organizations in North Korea. I will not go into that in too great of detail.

I would point out that we now stand almost 10 years after the first North Korean limited opening to the West to humanitarian aid organizations, to nongovernmental organizations. And it is very important to step back and take stock of what we have learned and some of the conclusions we can draw.

Early on, North Korea having lived up to its traditional moniker of the Korean Peninsula, the "Hermit Kingdom," we knew nothing about it. The NGO community, the U.N., the World Food Programme and others that went in there, having had no knowledge basically went in on North Korean terms. After a decade, I think it is time for us to kind of try to rebuild a new consensus for engagement of North Korea and reset the terms of engagement with North Korea, primarily because of the very important security issues that the congressman mentioned. Current context of engagement, as we have known it for the last decade, particularly in a post-9/11 world, is no longer sustainable.

If I can give the briefest of synopses of the experiences of the NGOs in North Korea, I would have to say it was mixed, at best, and generally a bad experience. The vast majority of the nongovernmental organizations that attempted to engage North Korea have pulled out. Many of them with strong voices of concern regarding the human rights system in North Korea, regarding their access and monitoring in North Korea. There have been a very limited number who have been relatively successful, but have operated largely under the radar screen and within a relatively limited scope.

A quick examination of the last decade of engagement with North Korea gives one little cause for hope or to believe in North Korea's protestations that they want a nonaggression treaty or we can gain or hope for CVID, complete verifiable irreversible disbandment of the North Korea nuclear program.

If I can just use the last few minutes I have got to focus on what I think are necessary and important steps that we should take in building our framework for sustainable engagement with North Korea, that is to suggest there is a line of thinking which suggests that we are past the period of engagement. At this point, the nuclear problem, the human rights problem, the other problems in North Korea cannot and will not be solved absent regime change in North Korea.

Unfortunately, just saying that alone is not likely to bring about the desired results. At the same time, as you mentioned at the very outset of this hearing, there are real humanitarian needs, whether the most recent disaster with the trains or the ongoing and chronic food shortages in North Korea. If one were to continue to adhere to the Reagan maxim that a hungry child knows no politics, the humanitarian issues cannot be ignored.

However, in the process of responding to humanitarian and other economic and human rights issues in North Korea, I think it is very important for the NGO community, the international aid community and governments as well to end the North Korean policy of exceptionalism. In other words, North Korea has continued to insist that organizations and individuals dealing with North Korea basically did so strictly on North Korean terms.

So it is very important for us to define and adhere to international standards of monitoring, international standards of access to the people we are trying to help and assist in North Korea. There is a very wise debate to be had that even the deliverance of aid to North Korea should be continuous on that monitoring and not tied to political and other issues.

I would almost advocate a policy of benign neglect for a period of time which would be necessary for North Korea to recalibrate its approach to the international humanitarian aid community.

Two other points I would make, about 10 years ago the United States and the countries surrounding the Korean Peninsula—Korea, China, Japan, Russia—all entered basically into a Faustian bargain that we did not want the North Korean regime to collapse because of the costs of unification, costs of conflict and the risk of a war accompanying that. But the people who have paid for that are the people sitting behind this panel, the North Koreans, approximately 1 million of them who have died from famine over the last decade.

The primary thrust, the international aid community has gone through, at North Korean behest, through the public distribution system in North Korea, so any future aid to North Korea, particularly that mentioned in the act that has been put forth by the Committee, really has to be targeted toward private sector organizations as much as possible away from the public distribution system. As much as possible, any efforts that can encourage market mechanisms in North Korea, I think, in the end, will be those types of actions that will best help the human rights situation there.

In conclusion, first and foremost, no matter what this Committee decides and what act Congress passes, ultimately our ability to effect these things unilaterally is almost nothing. The real standards and pressure that can be put on North Korea in terms of our assistance in aid and questions of human rights will only be significant when they are done on a multilateral basis. Our aid, no matter how well monitored it may be, really has little meaning as long as China and South Korea continue to provide aid and assistance that is not monitored at all.

My final point is, for the better part of a decade, most people involved in engaging North Korea did so out of the belief that they were leading toward a long-term, incremental change in North Korea. And that process of long-term, incremental change was

based on the 1994 Geneva Agreed Framework which no longer exists.

So I think it is very important, particularly given the remarks of Mr. Sherman and others, to recognize that even as we discuss a foundation for engagement, that it is quite possible given where we stand today that that foundation itself has dissolved.

Thank you.

[The prepared statement of Mr. Flake follows:]

PREPARED STATEMENT OF L. GORDON FLAKE, EXECUTIVE DIRECTOR, THE MAUREEN  
AND MIKE MANSFIELD FOUNDATION

#### INTRODUCTION

The scope of this hearing is a challenge. Though logically paired, the issues of humanitarian assistance and human rights have traditionally been separated on the Korean Peninsula and elsewhere. In North Korea in particular, this separation has gone beyond Ronald Reagan's maxim that "A hungry child knows no politics." Despite longstanding economic difficulties, chronic food shortages and even widespread starvation, the Democratic People's Republic of Korea (DPRK) has remained firmly in control and jealously guarded the intense isolation of its populace.

As a result, to a degree not often seen in other countries facing humanitarian crises, North Korea has firmly controlled access to its people and set the price for entry. In effect, the humanitarian aid community has been thrust into the position of suitors asking the North Korean regime for the privilege of helping the North Korean people. This has not been a privilege easily granted. Organizations that were publicly or overly harshly critical of the regime were simply not granted entry to North Korea. It is no coincidence that the NGOs that have been most critical of the DPRK have been those that have pulled out and ceased their operations in country. Likewise, despite considerable evidence of need among the refugee population that has fled North Korea for China, organizations that hope to work inside North Korea have generally had to eschew work with refugees or other actions that might make them appear to be hostile to the regime in Pyongyang.

Likewise, the question of human rights has also been separated from questions of security, business or economic reform. The accepted logic has long been that the international community has little leverage over North Korea. During most of the history of the existence of the North Korean state, U.S. policy has been one of deterrence and isolation. International and regional concerns regarding the risk of war, the strength of North Korea's military and the development of weapons of mass destruction in North Korea have dominated the dialogue and have been assumed to trump concerns over human rights. This is not to say that concerns have not been raised on an ongoing basis. Rather, it is to say that the United States and the international community felt that they had little leverage with which to impact North Korea's human rights situation. More importantly, diplomats have feared that to strongly link human rights issues to progress in political dialogues would "gum up the works" of diplomacy, impede the prospects for opening and reform in North Korea and potentially handicap U.S. efforts to address important security issues.

I will be the first to confess my general ignorance about the intricacies of the debate surrounding human rights issues in the Democratic People's Republic of Korea. Despite focusing on Korea issues for over fifteen years, I attended my first conference on the question of human rights in North Korea only this past March. This has not been because of any delusions about the quality of life in North Korea. To the contrary, my assumption and that of most observers has been that the human rights situation in North Korea is as bad as it could be. The United Commission on Human Rights describes the violation of human rights in North Korea as "systemic, widespread, and grave."<sup>1</sup> And the State Department's annual report on human rights declares the North Korean record to be "extremely poor."<sup>2</sup> Even the venerable magazine *Parade* lists Kim Jong Il as the world's worst dictator.<sup>3</sup> Again, the question was not whether the human rights situation is bad in North Korea, but what leverage we had on the issue and what consequences would stem from linking human rights concerns to other issues.

<sup>1</sup><http://www.unhcr.ch/hurricane/hurricane.nsf/newsroom>

<sup>2</sup><http://www.state.gov/g/drl/rls/hrrpt/2003/27775.htm>

<sup>3</sup><http://archive.parade.com/2004/0222/0222—dictators.html>

The past decade of relatively benign “engagement” policies toward North Korea has arguably begun to change that fundamental equation. By almost any measure, North Korea has become increasingly dependant on international assistance and South Korean cash. In short, it now has more to lose. While admittedly minor on a national scale, the involvement in North Korea of U.S., South Korean and European non-governmental organizations (NGOs) has been viewed by many, not just as a vehicle for addressing the chronic humanitarian crisis in North Korea, but also as a potential lever with which pressure might be brought to bear upon the North Korean regime. If the experiences of the U.S. NGOs in North Korea are any measure, however, such expectations are likely held in vain.

#### THE U.S. NGO EXPERIENCE IN NORTH KOREA

The history of significant non-governmental organization (NGO) engagement in North Korea spans less than a decade. It was only in 1995 when, in response to chronic food shortages and severe flooding, the DPRK solicited assistance from the international community, and NGOs were able to get a foot in the door. Based on the presumption that five years of unprecedented NGO activity within North Korea might offer unique insights and understanding regarding the internal situation in North Korea, Scott Snyder and I initiated a three-year study of the experiences of NGOs in North Korea that culminated in a book published in the fall of 2003 entitled *Paved with Good Intentions: The NGO Experience in North Korea*. (Praeger, Westport, Connecticut, 2003). It is largely from this effort that I have culled the following selections summarizing the experience of U.S. NGOs working inside North Korea.

It should not be surprising that the initial experiences of U.S. NGOs in North Korea were characterized by mistrust, tension and misunderstanding, given the nature of the North Korean regime, the history of U.S.-Democratic People’s Republic of Korea (DPRK) relations and the intense politics surrounding any interaction with the North. Most U.S. humanitarian NGOs were not prepared for the working environment they found in North Korea when the opportunity to enter first came in fall 1995 and early 1996. Humanitarian NGOs had extensive experience dealing with crisis situations in Africa, Latin America and Southeast Asia, but isolated, socialist North Korea was an atypical aid recipient and constituted a unique environment for humanitarian work. In other regions where U.S. NGOs had worked, famine often resulted from natural disasters, failed political systems or a combination of the two, resulting in mass migration and refugee flows that made both the need and the solution relatively straightforward. Often such crises took place in war zones or in countries in varying states of anarchy, giving a clear mission to those providing assistance and putting the impetus on logistical capacity to deliver the most effective forms of sustenance at the points of greatest need.

In contrast, throughout the worst periods of the food shortage in North Korea, the DPRK government remained in full control—at least of the foreign community in North Korea, if not its own distribution system—and it continues today to balance the need for assistance with a deep suspicion of the outside world and a heavily institutionalized inclination toward state secrecy. Although the DPRK initially opened its doors with desperate pleas for humanitarian assistance, DPRK officials remained profoundly skeptical of outsiders and had a mandate to limit NGO access that made the relationship inherently challenging. The decision to solicit and accept assistance from outsiders constituted a fundamental challenge and overt contradiction to the regime’s stated history and ideology. While there had always been a willingness to make special exceptions to the *juche*<sup>4</sup> ideology, which appeared to prohibit relying on handouts from other nations, the solicitation of assistance—particularly from hostile states—required DPRK officials to address deeply ingrained institutional, historical, cultural and political barriers to access. The effect was a DPRK government that often seemed to be reaching out with an open hand, while wrapping itself up to protect its people from external influence. Ultimately, it would be this fundamental schizophrenia and continued ambivalence toward the demands of NGOs for effective access and monitoring capacities that would effectively lead to the closure of U.S. NGO operations in North Korea. Another important factor was that much greater levels of assistance delivered through the relatively less intrusive channel

<sup>4</sup>While *juche* is most often translated into English as “self-reliance,” this translation does not capture the full essence of the North Korean national ideology. *Juche* is probably best understood as a repudiation of the historical Korean mindset of “*sadaejuiui*” or “respecting the great.” While *juche* has gradually evolved into a nearly all-encompassing national ideology, the core concept remains that North Korea is to be the actor, not the acted upon. Thus, it is fine for the DPRK to accept assistance—as it did from China and the Soviet Union for many years—as long as North Korea is calling the shots and is the master of its own destiny.



of the UN World Food Program (WFP) made the WFP the DPRK's preferred interlocutor.

In addition to the inevitable obstacles accompanying the establishment of unprecedented relationships inside the DPRK, the political and security environment surrounding the peninsula added further layers of difficulty to the relationship. The DPRK nuclear program, the DPRK missile program, submarine incidents, incidents along the Demilitarized Zone (DMZ) and naval clashes are only a few of the issues that directly influenced the working environment as NGOs sought to assess and address the needs of North Korean victims of natural and manmade disasters. Often, the DPRK view of NGO activities was negatively influenced by political events, and politics, in turn, shaped U.S., South Korean and international public attitudes toward the situation in North Korea.

Despite repeated official claims to the contrary, U.S. humanitarian aid to North Korea became deeply entangled with ongoing political negotiations between the two governments. While the process of offering "food for talks" provided a means of advancing U.S.-DPRK dialogue—in form, if not in function—the effect of the politicization of aid was to greatly limit the negotiating leverage and relative influence of NGOs attempting to establish themselves in North Korea. Furthermore, politicization of food assistance confused North Korean officials, who already lacked a fundamental understanding of the nature, role and intent of NGOs. Ultimately, the link between politics and NGO donations would be poisonous to NGO independence and would cost credibility and the ability to directly negotiate access for those NGOs most directly involved with bilateral provision of food assistance from the U.S. government; namely, the members of the Private Voluntary Organization Consortium (PVOC).

At the peak of the DPRK food crisis, the country's leadership allowed an unprecedented number of NGOs to work with and in the DPRK, but it also took extraordinary measures to protect its population from the dangerous influence of outsiders. While not all NGOs were directly involved inside North Korea, approximately 130 organizations worldwide participated in the humanitarian response to the DPRK food crisis at some point during the humanitarian response effort. Of this number, approximately 30 were U.S. NGOs. With such a large number of organizations involved, there was a presumption that the window into North Korea was being pried open wider than ever before. Between monitoring food distribution, wrestling with the DPRK bureaucracy and exploring expanded activities in the fields of agriculture, medicine and development, NGO interaction with the DPRK was potentially significant. However, as might be anticipated, NGO efforts have paled in comparison with efforts led by government and international organizations, which have been significantly larger in scale and scope. Furthermore, the lack of experience of most U.S. NGOs in dealing with North Korea, the relative success of the DPRK government's efforts to limit and control NGO activities within North Korea, and the continuously difficult political and security environment all served to impede NGO efforts and capacity to work effectively in North Korea.

#### *Initial Entry Into North Korea: Terms, Conditions, and Obstacles*

U.S. NGOs had little or no experience in dealing with North Koreans and faced an unprecedented dearth of information about the DPRK's internal situation. In contrast to the experiences of NGOs elsewhere in the world—where representatives had either the relative freedom of movement and action that comes with anarchy or an established infrastructure of religious, social or international organizations through which to work—the initial challenge in North Korea was not a logistical challenge but rather the political challenge of steering through the political barriers to working inside the country.

Since the end of the Korean War, the DPRK has lived up to the traditional moniker of the Korean Peninsula, the "Hermit Kingdom." It was, and is, arguably the most closed and inscrutable regime on earth. There has, however, been some limited contact between the North and the South, as well as some activities and exchanges carried out by scholars and Korean-Americans. Much of the early contact in the humanitarian sphere took place between Korean-Americans with either religious motivations or familial ties to North Korea. Because the tragedy of the division of the Korean Peninsula extends to many individuals in the Korean-American community, a common subtext for visits to North Korea has been a desire to seek out long-lost relations. While there has been some variation, most of these exchanges have required—in a foreshadowing of what would be required of the broader NGO community—significant monetary or resource contributions in return for specialized and very controlled access to relatives. In addition to such ethnic links, there have been some other scholarly exchanges and limited cooperation with the UN following

North Korean membership in 1992. Despite such contacts, for most international and U.S. NGOs, however, North Korea has been a black hole.

Ignorance on the U.S. NGO side was amplified by deep North Korean suspicions of outsiders and the North Korean officials' resistance to permitting individuals who spoke or understood Korean to participate in NGO or other humanitarian activities. A virtual precondition to humanitarian work in North Korea, therefore, was an inability to communicate, especially with average North Koreans. This was early evidence of DPRK officials' concern that the North Korean populace should not be "contaminated" by outside influences. The effect of this prohibition on Korean language skills was that visitors to the DPRK were totally dependent on their interlocutors for information and interaction with counterparts. Even those NGOs able to operate relatively independently were unable to capture their own information about North Korea. Moreover, even if those rare foreigners with some Korean language ability should encounter an "average" North Korean, not only would they be unlikely to learn any useful information but their efforts to make such contact would quickly be reported back to the authorities, since average North Koreans are obliged to report to the authorities any contacts with foreigners. Frequent visitors to Pyongyang who escaped the confines of the government guesthouse or the Koryo Hotel reported that their DPRK "minders" knew details of their "independent and free" activities around the center of Pyongyang before they could get back to their hotels.

*Actors: Defining Characteristics Within the NGO Community*

The many types of NGOs and their relationships with national governments range from very close to quite distant and even antagonistic. For the purposes of understanding U.S. NGO interaction with North Korea, our study covered the activities of private organizations participating directly or indirectly in the provision of humanitarian aid, assistance or development. Distinctions among NGOs may derive from differences in funding sources, organizational missions or operational strategies. These organizations may raise funds directly through public appeals, or they may be far more institutionalized, with considerable resources. Some NGOs are essentially "food contractors" that provide delivery capacity for the U.S. government, while others seek to coordinate resources from both private sources and government. Yet another grouping includes denomination-specific religious NGOs, whose primary resource base is their own membership.

In the case of North Korea, the various types of NGOs sought to respond to North Korean food shortages through the following funding mechanisms:

- *Public campaigns:* Humanitarian aid organizations that relied on media campaigns to engender public sympathy and solicit donations through appeals to the public had a difficult time dealing with North Korea. The DPRK was very sensitive about its international image and treated attempts to portray images of starving children, and so on, as a national embarrassment. The result was a catch-22 for these NGOs, whose publicity efforts were opposed by a North Korean government that tried to show just enough distress to convince a suspicious community of the need while hiding the harshest realities of the crisis.
- *Conveyance NGOs:* These organizations coordinate closely with the U.S. government and often rely on the government for funding or supplies as administrators of U.S. government grants. The lack of real negotiating leverage with the DPRK led the U.S. government to "unofficially" link food aid with North Korean actions and even with specific negotiations. The result was that by the time U.S. government donations reached NGOs for distribution in North Korea, such assistance had already been "paid for" by the DPRK, thus depriving the NGOs of any real negotiating leverage on the ground.
- *Religious NGOs:* A third community involved organizations whose roots and resources were typically tied to religious organizations or beliefs. While generally smaller in scope, such organizations were frequently able to negotiate more effectively with the DPRK and respond more directly to needs as they arose, because they implemented their programs apart from political considerations and did not draw media attention to their efforts.

*Not Africa: A New Kind of Famine, a Different Type of Regime*

In the initial stages of the international response to the North Korean famine, one common refrain was that the DPRK was "not Africa." This was as true physically as it was politically. The food crisis in North Korea was largely systemic, although

conditions were worsened by natural disasters.<sup>5</sup> Due to political controls on access within the DPRK, as well as DPRK sensitivity about showing the worst cases, the North Korean famine was not nearly as visible as the famines in Africa. North Korea did not suffer from a debilitating, extended drought, but rather from crop failures, flooding, and food and water shortages that exacerbated distribution inequities and were caused by transportation bottlenecks inside North Korea. During the worst of the food crisis, the DPRK maintained remarkably strict controls over travel and access, although refugee flows to north-eastern China did constitute a safety valve and escape route for those North Koreans able to find their way across the border. The challenging physical terrain and lack of transportation infrastructure limited the movement of people, particularly those weakened by hunger. The result was what aid workers soon came to call a “silent famine,” reminiscent of the horrific famine in China that was estimated to have claimed nearly 30 million victims following the excesses of China’s Great Leap Forward<sup>6</sup> in the late 1950s and early 1960s.

Perversely, the relative control maintained by the DPRK government meant that in times of shortage and deprivation, North Koreans had few viable alternatives and thus had incentive to be more rather than less loyal to the regime. The only way to survive was to find ways to move closer to the centers of power, because the danger was that if one was too low on the priority list for distribution, there was no hope for survival. North Korea’s strict political control also meant that for the international community desiring to assist North Korea there was no option but to work with and, in some cases, through the DPRK government. Ironically, the international aid community’s reliance upon official government distribution mechanisms likely encouraged and enforced loyalty to the regime.

This is not to say that there was not a problem with displaced populations or refugees in North Korea. But compared with the more wide-scale and public movements in famines that have taken place in Africa and elsewhere, the signs that usually attract attention among NGOs and in the media were harder to pick up in North Korea. In fact, at the peak of the North Korean food shortages in late 1996 and through 1997, there were consistent reports of internal refugees within North Korea and external refugee flows into China. As might be anticipated, a review of a map of the areas in North Korea hardest hit by the famine shows an inverse relationship to the quality of the transportation infrastructure.<sup>7</sup> The transportation controls within the DPRK were as much a result of the regime’s failure as part of its efforts at controlling population movements. Either way, it was those with the least access to the transportation infrastructure who suffered most and had the least opportunity to vote with their feet.

The limitations of the DPRK transportation infrastructure also served to restrict the access of aid workers to the hardest-hit populations. For reasons both political and logistical, DPRK officials shielded foreign visitors from the worst of their people’s suffering, while struggling to make sure that they were exposed to sufficient suffering in the less hard-hit areas to engender sympathy and support for continued aid flows. Despite limited and tightly controlled site visits, the vast majority of NGO delegations were limited to specific geographical areas and often were taken to the same sites outside Pyongyang over and over again. In retrospect, Pyongyang was the worst possible vantage point from which to gauge the famine’s severity.

DPRK government involvement in all aspects of humanitarian relief posed a major challenge for NGOs—prima facie evidence of the low levels of mutual understanding and trust. NGOs regarded the DPRK government as an anachronistic communist dictatorship, not to be believed. Likewise, the DPRK had precious little experience in dealing with the outside world, particularly with organizations that purported to be “nongovernmental,” a concept totally alien to the North Korean system and practice. From a North Korean perspective, anything “organized” had to be sanctioned, if not supported, by the government. The close coordination between some NGOs and the U.S. government, in addition to the role of some NGOs in conveying and monitoring U.S. government food aid, reinforced this impression. Hence,

<sup>5</sup> Following the floods of August 1995, the DPRK gave annual play to localized droughts, floods and tidal surges in what became an almost ritualized effort by the government to save face by blaming the ongoing food shortages on a continuing stream of natural disasters beyond the regime’s control.

<sup>6</sup> See Jasper Becker, *Hungry Ghosts: Mao’s Secret Famine* (New York: Free Press, 1996).

<sup>7</sup> Another factor was the demographic distribution of the North Korean population. In contrast to South Korea and most other nations in the Asia-Pacific region, the population of North Korea is distributed throughout the country remarkably evenly, with very few major urban population centers. The official explanation for this is the regime’s aversion to large cities as targets for U.S. bombing. However, such distribution is also widely considered to be a control mechanism.

NGOs operating in North Korea had to deal with a DPRK regime that considered them a Trojan horse at worst and spies at best.

Likewise, U.S. distrust of the DPRK regime made verification of both DPRK claims of need and the distribution of food within North Korea a political necessity. Verification of this sort is an essential part of any effective humanitarian relief effort. However, verification required monitoring and unprecedented access to the North Korean countryside. To this day, the issue remains one of the primary sources of contention between DPRK officials and donors from the UN and NGO communities. In the 1990s, NGO workers were accustomed to making inspections on demand, but DPRK officials insisted on allowing area visits only with prior notification and approval. Despite resistance on North Korea's part, political and donor pressures in the United States (partially driven by concerns of possible diversion of humanitarian aid to the DPRK military) reinforced demands for monitoring. However, from the perspective of officials in Pyongyang, most U.S. NGOs were not conveying sufficient quantities of aid to justify such access. Furthermore, those NGOs conveying assistance as part of the PVOC projects had little leverage, as the political deals for the aid had already been made at a governmental level.

#### *North Korea's Structure and Process for Handling U.S. NGOs*

If engagement with the DPRK proved a challenge for U.S. NGOs, conversely, the DPRK bureaucracy faced an even greater adjustment in its interactions with the United States. For decades, the DPRK has cultivated a deep mistrust of the outside world, particularly its archenemy, the United States. From a DPRK perspective, it was unlikely that NGOs were anything other than either "Trojan horses" intent on destroying the North Korean regime or intelligence-gathering tools of the U.S. intelligence community.

To understand how suspicious the DPRK must have been of the U.S. NGOs, one must understand how very tightly information is controlled in North Korea. The DPRK remains one of the most autarkic and secretive regimes in history. Even within North Korean society, information is generally shared on a need-to-know basis; there is little in the way of horizontal information sharing or government-level interagency coordination. Economic and health statistics, in particular, are generally regarded as state secrets and, even when released, are viewed as unreliable.

Faced with an increasingly open and democratic society to the South, the DPRK has relied upon strict government control over the flow of information, the movement of people and the means of production as important tools in the maintenance of its regime. Even as the socialist bloc has collapsed and former Asian socialist allies such as China have dramatically opened up, North Korea has gone to extremes to preserve its unprecedented level of control and limit the exposure of its citizenry to the polluting influences of the outside world.

One result of this level of suspicion and control was to greatly influence visiting NGO representatives' perceptions of the regime. In a number of cases, NGOs and other humanitarian organizations that approached North Korea with the intent of helping were converted into opponents of the regime and of aid provision in part because of the treatment they received at the hands of DPRK officials.

#### *A Different Kind of Donor-Recipient Relationship*

In contrast to the relative anarchy of providing aid in the context of failed systems, the DPRK regime has at times appeared to be the model of efficiency. Numerous international officials and NGO representatives who were among the first to enter the DPRK were amazed at the social order and relative functionality of state instruments such as the public distribution system (PDS). Such regime capacity certainly helped maintain social order and facilitated transportation and distribution in a relatively smoother manner than was the case in societies without a functional government. However, with that efficiency came a degree of government control that placed real limits on where and when NGO representatives could travel, what type of activities they could pursue and with whom they could interact.

After the initial shock of finding a country that was not typically "third world" wore off, NGO representatives quickly became frustrated as DPRK officials blocked some of the most common monitoring devices, including morbidity tracking, nutritional surveys, market surveys and price surveys. Perhaps most grating was the fact that even as the total amount of aid delivered increased and the time in country lengthened, international humanitarian officials and NGO representatives still had to negotiate and announce inspection and monitoring visits well in advance.

At the conclusion of a lengthy stay in North Korea, one UN official said of the PDS, "It's very efficient; I mean it works. But we are not naïve. We have 300 monitoring visits a month. They don't mean anything, because there are no random vis-

its.” Ultimately, such monitoring provided assurances on an institutional rather than an individual level. Through prearranged monitoring visits, it was possible to confirm that aid had reached a designated institution, but there was no way to monitor whom it reached within that institution. More important, individuals who were outside the institutional umbrella were not even on the distribution radar screen.

#### *Paying for Visits*

Another common difficulty for U.S. NGOs in particular was the difficulty of getting into North Korea. Since the United States does not have diplomatic relations with North Korea, obtaining a North Korean visa was a real challenge. NGO representatives would typically have to stop first in Beijing and hope that a visa would be waiting for them at the DPRK Embassy there. More significantly, approval for such visas on the North Korean side was not easily given. NGO representatives could not simply send a fact-finding mission to Pyongyang to decide whether or not to give aid. In fact, a Korean proverb often quoted by visitors—“*Bin sonulo omyon, andoinda*” or “One does not come with empty hands”—became the mantra for the host. Visiting delegations were expected, if not required, to bring at least token donations, and many NGOs timed their visits to the DPRK with the arrival of aid being shipped in to justify their visits in the eyes of Pyongyang. In some cases, DPRK officials were so demanding that NGOs felt they were “paying for visits with aid.” The expectation was higher still for organizations hoping to establish a presence on the ground in North Korea.

#### *Limiting Residence and Communication*

As uncomfortable as DPRK officials were about visits by NGO representatives, they were even more suspicious of the NGO desire to set up shop in Pyongyang. As a result, the question of resident staff in North Korea became an issue for nearly every NGO hoping to establish a longer-term operation in North Korea. This was particularly true for U.S. citizens to whom, largely due to the politics of the day, DPRK officials nearly always refused to grant ongoing residency. Even once residency was established, it was not open-ended, and regular visits to China for a new visa were required. This renewal, too, often depended on ongoing levels of aid that DPRK officials could use to justify the presence of “barbarians” in the capital.

In addition to the “entrepreneurial” demands of the Flood Damage Rehabilitation Committee (FDRC) officials for more aid as a justification to establish residency, many NGOs reported their impression that the Korean People’s Army was the most uncomfortable with the presence of “hostile” foreigners on the ground and commonly pressured the FDRC to limit, if not reduce, the number of resident NGO representatives in Pyongyang.

#### *Hard-Nosed Interlocutors*

The NGO and humanitarian aid communities that saw themselves as largely altruistic were unprepared for the sometimes hostile stance and aggressive negotiating tactics of North Korean officials. Furthermore, humanitarian aid NGOs had no leverage because they could not credibly threaten to walk away and take their aid with them, particularly since the terms of delivery and amounts had already been negotiated between the U.S. and DPRK governments. Even those that were independent of the U.S. government could not walk away, usually because their religious ideals prevented them from abandoning their efforts to help the needy just because of their interlocutors’ hostility. From this initial experience, some DPRK officials learned to hold their own populace hostage to their demands or conditions. In essence, the official DPRK response to NGO representatives was, “Do it our way or we won’t allow you to help our people.”

North Korean officials’ desire that the country not be seen as impoverished, to save face and not be treated as “third world” meant that much of the aid given to North Korea was offensive to the North Korean leadership, if not unacceptable. Even clothing or medical equipment that was old but in otherwise in good condition—and certainly better than much of what North Korea had on hand—often became an issue. As NGO contributions were often portrayed and received as gifts proffered by a visiting delegation—in North Korean eyes, in the same manner as official delegations to the Chinese imperial court came bearing gifts—the quality and presentation of these gifts came to represent the respect in which the court was held. Hence several NGO delegations reported encountering North Korean outrage and deep offense at receiving medical equipment that was usable but noticeably old or sloppily packaged.

Through these and many similar tactics, DPRK officials were successfully able to come across not as the beggar, but instead as the recipient of entreaties from the outside world. In contrast, the would-be donors, the NGOs, became the supplicants, asking the DPRK for the “privilege” of helping the North Korean people.

*Who is in Charge?: Institutional Frictions Within North Korea*

Another source of confusion for NGOs in dealing with the DPRK has been the relatively opaque nature of the country's government. There are apparent turf battles among the FDRC, the Foreign Ministry and the military. While the NGOs had little direct contact with the DPRK military, the Korean People's Army was a frequent bogeyman used to justify the inability of DPRK officials to organize visits, meetings, and so on. While the veracity of these claims is difficult to gauge, perhaps the DPRK officials were well versed in "good cop-bad cop" tactics, as these tactics were and continue to be an important factor in NGO efforts to engage DPRK officials.

Several NGOs observed that the ministries would quarrel over who had secured pledges of assistance and that they were very reluctant to allow contact with other ministries or organizations during the course of a visit to the DPRK. This is partially explained by a genuine lack of communication among DPRK government organs. An alternative explanation, however, is that the Ministry of Agriculture, the Ministry of Foreign Affairs, the Ministry of Health, and so on, were all competing—not only for access to the aid donated by the international community, but also for the credit and influence that might be gained internally for securing such aid. Despite the fact that the FDRC was purported to be an interagency creation, it quickly became a bureaucratic institution in its own right and joined the fray.

Local officials tended to accept NGOs much more readily and extend cooperation much more easily than officials on the national level. Not only were officials at the central level likely to be more politicized, they also had less immediate personal or local interest in the aid being delivered to the countryside. One European official quoted a DPRK deputy foreign minister as saying that the "DPRK is not really interested in NGOs and has accepted them until now because of the wishes of the donor countries."<sup>8</sup>

Yet another inhibiting factor involved constraints on the individual interlocutors between the NGOs and the DPRK government. NGOs reported a wide disparity of results depending on the quality and enthusiasm, or lack thereof, of their particular North Korean hosts. Such affiliations were also an issue for the individual North Koreans involved, as there was certainly a risk of being perceived as being "too close" or "too friendly" with representatives of the American imperialists.

Despite these and many other institutional obstacles within the North Korean bureaucracy, most of the NGOs that have remained engaged in North Korea over the long haul have observed a slow and fitful learning curve. Kathi Zellweger, a representative of Caritas International Hong Kong, who has made numerous trips to North Korea over the past decade, observed, "While the DPRK authorities have not fully accepted the concept of nongovernmental aid agencies operating on a long-term basis in their country, there is an understanding now that NGOs in many countries have a strong voice and thus can be quite influential."<sup>9</sup>

*Tools For Quarantine*

DPRK officials tasked with interacting with NGOs were given seemingly conflicting mandates: Get as much substantive assistance as possible, but limit the exposure of North Korea as much as possible. The initial DPRK response to this mandate was institutional; namely, to create or put forward organizations such as the FDRC or the PDS that would serve to limit the number of DPRK citizens with exposure to foreigners. A second strategy involved limiting the number of foreigners who could visit North Korea and restricting the ability of those who did make it into North Korea to travel or communicate.

Management of all external contacts through the FDRC provided an institutional buffer widely perceived by NGOs to be a further control mechanism. Almost invariably, NGOs that were invited to North Korea by the FDRC or otherwise assigned the FDRC as a principal interlocutor had a very difficult time "breaking out" of the FDRC track.

Similarly, DPRK officials' insistence that food aid be distributed through the PDS provided a vehicle for control over distribution of the resources provided by the international community, reinforcing the existing institutional, regional and social biases of the North Korean system. International officials accustomed to operating

<sup>8</sup> Giorgio Maragliano, "DPRK Current Status and Prospects. Six Years of Aid: A Balance and a Possible Way Forward" (paper presented at the Fourth International Symposium on Korea and the Search for Peace in Northeast Asia, Kyoto, Japan, 17–19 November 2001). Mr. Maragliano is the European Commission's Humanitarian Aid Office (ECHO) representative to the DPRK.

<sup>9</sup> Kathi Zellweger, "The Continuing Need for Food Aid and General Assistance" (presentation at the Third International NGO Conference on Humanitarian Assistance to North Korea: Cooperative Efforts Beyond Food Aid, Seoul, South Korea, 17–20 June 2001).

in environments where there was little or no infrastructure were initially eager to work through the PDS. While some were deeply suspicious of the PDS and argued that its use would only serve to legitimize and “prop up” the DPRK government, others claimed to eschew politics and be concerned only with getting food to needy people as efficiently as possible. In fact, compared with the manner in which NGOs usually work in the context of humanitarian disasters, the PVOC structure itself was a significant concession to the North Korean need to maintain control. Though its intentions were the opposite, the PVOC structure played into North Korean preferences for a limited number of representatives who would be easier to control. Furthermore, the PVOC’s unique structure—with different aspects of the projects being managed by different NGOs, all in a semi-collaborative relationship with the government—led to disagreements and, in some respects, poor management, particularly of the last PVOC mission.

#### *Innocents Abroad*

In discussing the many difficulties surrounding the treatment of NGOs by DPRK officials—the deep-seated DPRK suspicion of the outside world and the considerable efforts the DPRK made to limit NGO access and control exposure to outside influences—it is tempting to portray the challenges faced by NGOs as being one-sided. In fact, many of the problems NGOs faced were of their own making. NGO staff had little previous experience with Korean culture.

While NGOs were used to dealing with countries in chaos and government officials who had been humbled in some respect by their national failure, the average North Korean official remained, at least in public, fiercely defensive of the DPRK regime. DPRK officials maintained what many would consider an unjustified level of national pride, quickly taking offense at any treatment that suggested they were needy or underdeveloped. Thus, there was a heavy focus on materials rather than advice. This was particularly challenging for NGOs reared on the notion that “teach a man to fish and you will feed him for a lifetime.” North Koreans insisted not only that they knew how to fish, but that Kim Il Sung had invented fishing! For DPRK officials who were embarrassed enough to be asking for aid, it was a matter of pride and respect.

U.S. NGOs quickly learned that their statements and activities outside the DPRK could not be separated from their activities in the DPRK. Nowhere was this clearer than in the activities of many NGOs along the Chinese border with North Korea during the worst of the famine. Some NGOs, perhaps correctly, argued that it was impossible to get an accurate picture of the food shortages from within the DPRK, and that interviews with the North Korean refugees in the Chinese border areas were essential to gauging the true extent of the crisis in North Korea. Such activities, however, were an embarrassment to North Korea, which quickly came to view those NGOs active in the area as hostile to the regime. Likewise, NGO representatives who spoke too openly and vividly of the depravation in North Korea were reprimanded and told how much embarrassment their words had caused.

#### *External Factors*

Interaction between NGO representatives and DPRK officials would have been difficult in the best of circumstances. As it was, it took place in the most difficult of circumstances. Not only was North Korea wrestling with continuing economic decline, massive food shortages and a growing health crisis, but the regional security environment remained unstable. Submarine incidents and tensions along the DMZ between the North and South, the DPRK decision to test-fire a Taepo-dong missile over Japan in August 1998, lingering suspicions over North Korea’s compliance with the Agreed Framework, and a suspect underground facility added tensions to the U.S.-DPRK relationship, as if the famine alone were not enough.

Cooperation with NGOs was never a priority for the DPRK leadership. NGOs were courted when necessary and generally tolerated, but never reached the level of national priority. The DPRK appeared to view the NGO involvement as a favor to the international community and a bargaining chip to be used in its international negotiations. Even those NGOs most successful at drawing a clear distinction between themselves and the U.S. government would often see their efforts fall victim to periodic tensions in U.S.-DPRK relations.

#### *NGOs as a Source of Understanding About North Korea’s Internal Situation*

In the end, despite playing a niche role in addressing the immediate food crisis of the late 1990s in North Korea, the experience of U.S. NGOs in particular did not add significantly to the body of knowledge or understanding about the DPRK. This is not necessarily a criticism of the role of NGOs, but a recognition that any expectations one might have had about the degree to which NGOs could have opened our window on North Korea were misplaced. Most monitors focused so intensely on

fighting with the FDRC over bureaucratic details—such as the schedule and locations for monitoring visits—and were so isolated from the rest of the population that they hardly had an opportunity to learn about how North Korea actually worked. Andrew Natsios aptly expresses the challenge to NGOs of drawing accurate information about North Korea from their limited experience:

[I]n a country of 23 million people living in an area the size of Mississippi, how accurate an impression could 100 expatriate humanitarian aid workers expect to obtain? These workers, myself included, could not speak Korean, had no intimate economic or geographical knowledge of the country, and were taken on carefully supervised field trips where the citizens being visited were told ahead of time when to expect them. They were accompanied by carefully chosen government translators and transported along routes determined by central government authorities under a totalitarian political system with nearly complete control over the population. No humanitarian aid worker had ever worked in a country whose population had lived under 50 years of Orwellian control of every aspect of their lives, overseen by a secret police apparatus nearly unmatched in its pervasive control. It is not surprising that the aid workers were confused by what they saw.<sup>10</sup>

While NGO representatives may have had unprecedented access to North Korea, their experience has not proved to be an adequate source of understanding about North Korea. U.S. NGOs often pride themselves on their independence from the U.S. government, and many go to great lengths to establish and guard their reputations for independence. The ability of humanitarian NGOs in particular to work in some areas often relies upon their reputation for disinterest in, if not disdain for, taking sides in the political battles of the day and their focus on relieving human suffering. NGO representatives are often wary of compromising their ability to continue their work by asking too many questions or inquiring beyond the immediate scope of their particular projects. This is particularly true if it becomes clear that such inquiries will be greeted with suspicion, if not hostility. There is an even more understandable reluctance to address such sensitive issues in a public forum, particularly if an NGO has ongoing efforts in the country in question.

In addition to the questions about the inclination of NGOs to comprehend and convey a broader picture of political and economic development in North Korea, one must also question their capacity to function in this role. The North Korean resistance to aid workers with Korean language abilities and the general unfamiliarity of U.S. NGOs with North Korea meant that these NGOs were ill prepared to observe or assess broader developments in the country in which they were working.

The clearest and perhaps the most important lesson learned about North Korea through the experience of NGOs in that country is the lengths to which the DPRK regime will go to try to keep foreigners from perceiving reality, and the priority the government places on shielding that reality from the view of the outside world. The DPRK remains sufficiently well organized and wields sufficient political control to continue such a task. More than a decade after experts predicted the imminent collapse of the regime, the DPRK government remains in control. It has been more than a decade since the collapse of the Soviet Union and eight years since the death of Kim Il Sung, yet the DPRK goes on. Despite more than seven years of continuing food shortages and an unprecedented level of opening to the international humanitarian aid community, North Korea remains apparently unshaken—perhaps largely the result of its success in controlling foreigners' access to the majority of its populace.

#### TOWARDS A POLICY OF SUSTAINABLE ENGAGEMENT

While there is a legitimate debate to be had over the efficacy and even the morality of continued engagement of North Korea, even advocates of engagement should recognize the need for establishing a strategy for sustained engagement in the face of the current security crisis, growing concern over human rights and lingering concerns about access and monitoring in North Korea. Many of the challenges experienced by the NGO community and the larger humanitarian aid community in North Korea can justly be attributed to inexperience in one of the most isolated regimes on earth. However, nearly ten years after the DPRK first solicited outside assistance, we now have a considerable body of experience in dealing with North Korea. The lessons learned from this period need to be applied.

<sup>10</sup> Andrew S. Natsios, *The Great North Korean Famine: Famine Politics and Foreign Policy* (Washington, D.C.: U.S. Institute of Peace Press, 2001), p. 40.



On the one hand, no matter how despised the North Korean regime, one cannot in good conscience ignore the genuine humanitarian needs of the people of North Korea. Despite justified concerns about in effect propping up the DPRK regime, the humanitarian aid given to North Korea over the past decade has certainly saved the lives of countless North Koreans who “know no politics.” The activities of the international aid community have also served to preserve lines of communication to an isolated regime and to offer up a more benign image of the outside world to a country that appears to be hard-wired for paranoia. A strong case can also be made that attempting to pursue a policy toward North Korea that is all stick and no carrot will not only inhibit change in North Korea but also likely back it into a dangerous corner.

For engagement to continue, however, it must take in to account recent changes in the security climate, a growing chorus of concern over human rights as evidenced by today’s events and the resulting changes in the political environment in the United States. Ultimately, a sustainable approach to North Korea will be one that is less solicitous of the DPRK, less sensitive perhaps to North Korea’s claims of exceptionalism and more market-based. Even absent the political and security overtones, a new approach will be required due to the donor fatigue of organizations attempting to continue work in North Korea. With crises in Afghanistan, Iraq and the Middle East competing for attention, North Korea’s unwillingness or inability to fully commit to necessary reforms further makes the case for ongoing aid to North Korea difficult to support. To some degree, the international community must take responsibility for the laggard pace of change in North Korea. By essentially complying with North Korean conditions, however well intentioned the motives, we have allowed the North Korean regime to further delay the key economic and social reforms that are the only possible solutions to its humanitarian crisis. It would be wrong, however, to overstate the role of the international aid community in this regard. It is still largely aid from China and in recent years from South Korea that has been unconditional and which continues to keep the North Korean regime afloat.

In essence, in order to continue engaging the North, the international community must take off the kid gloves. This is not to say that there is no need to be sensitive to the political realities in North Korea. However, North Korea should be required to comply with common international standards for the distribution and monitoring of humanitarian aid. Without strictly linking humanitarian aid such as food and medicine to human rights, or economic and security issues, stronger conditionality should be built into offers of any economic or development assistance. Increases in such aid should be contingent on improved conditions for distribution and monitoring. While not a policy of benign neglect, North Korea must ultimately be made to realize that the consequences of non-compliance will be decreasing aid.

A more difficult transition that needs to take place is transforming the primary vehicles for international assistance to North Korea. From the outset of the food crisis in the mid-1990s, UN and other officials were pleasantly surprised by the efficiency and ease of using the North Korean public distribution system (PDS). However, by using the PDS, the international community has directly served to support the DPRK regime and indirectly discouraged the emergence of market based mechanisms in response to food shortages. While the modalities for doing so are limited in North Korea, every effort should be made to encourage regional and institutional competition for resources. Likewise, as much as possible, market mechanisms should be utilized.

#### CONCLUSIONS

At a minimum, the experience of the humanitarian aid community in North Korea to date offers a sobering reality check for those who harbor hopes of satisfactory North Korean compliance with the U.S. demands for the “complete, verifiable, and irreversible dismantlement (CVID) of North Korea’s nuclear program. If North Korea had such difficulty in allowing access to activities as innocuous as monitoring food aid, it strains reason to expect that the DPRK will fully comply with demands to inspect its most sensitive military secrets.

While the current attempt to craft a multilateral coalition as seen in the ongoing Six Party Talks process is primarily focused on efforts to convince North Korea to abandon its nuclear program, the humanitarian issue provides further evidence of the futility of a strictly bilateral approach. Not only does the United States lack a sufficiently nuanced security stick with which to pressure North Korea, but given the political climate in Washington, it is also almost completely devoid of carrots. It is only with a coordinated multilateral approach that combines the sticks and carrots of the United States, South Korea, China, Japan and Russia that there is any real prospect of prodding and coaxing North Korea away from its current position.

This also applies to humanitarian assistance. Without a significant improvement in coordination, particularly including China and South Korea, conditionality on food aid is meaningless. Likewise, any attempt to reward significant concessions or changes within North Korea will require a coordinated regional effort.

In a final sobering thought, it is important for those hoping to maintain a policy of engagement to keep expectations in bounds. It is important to remember that the foundation for engagement was the relative stability in security issues afforded by the 1994 Geneva Agreed Framework. Without the Agreed Framework there could have been no "Sunshine Policy" and even the scope of humanitarian aid over the past decade would have been considerably constricted. Despite an apparent lull between now and the November elections during which period both Washington and Pyongyang appear to be content with a policy of "No Crisis/No Compromise," the Geneva Agreed Framework is irreparably fractured and the security foundation for long-term engagement appears non-existent.

Mr. LEACH. Thank you, Mr. Flake.  
Mr. Radwan?

**STATEMENT OF TARIK M. RADWAN, JUBILEE CAMPAIGN USA  
AND PROFESSOR OF LAW, HANDONG INTERNATIONAL LAW  
SCHOOL**

Mr. RADWAN. Thank you, Mr. Chairman.

I fell into the whole issue of North Korea sort of backwards. Two summers ago, I was invited to co-teach a class on human rights and refugee law at a law school in South Korea. And I got to the critical mass point where I was expecting the students to sort of get it and echo back some of the concepts.

At that point, one of the students raised her hand and said, "If that is the law," referring to refugee law, "why aren't they applying it to Koreans in China?" Until that point, I had not focused on Koreans in China, and I didn't know how to answer the question.

I asked for some time to look into it and get back to her. I have been licensed to practice law for almost 20 years, and in all of those years, as I have become accustomed to people's initial suspicion as to motives and malice, it is quite a pleasure to disabuse them of that when I can find something in the law that is a legitimate reason for why things are the way they are.

This is one of those maybe 5 percent of occasions where instead of being able to show that there is a legitimate legal reason for what is happening, in fact, what I kept coming up with was there is no legitimate reason. This is a horrible situation.

What is supposed to happen is clear: The law is clear, but it has been neglected by those who are supposed to be the caretakers of international protection. There is plenty of fault to go around, and it is really not my interest to point blame. I think that the written record here will answer all of the detailed questions that you might raise.

In short, to say this, China has obligations. It has not met them. It knows how to take care of refugees. It has taken care of some 300,000 Indochinese refugees, and it has not taken care of a single North Korean refugee. It knows how to do it; it just has chosen not to.

The UNHCR obviously knows how to take care of refugees. That is its mandate. I would ask you to consider asking the next panel that steps up, who among them was aided by the Chinese government in seeking refugee protection or by the UNHCR? I think what you will find it's not a one. Not only on this panel, but virtually

not a one has been able to avail themselves of the institutions that exist to protect refugees.

I think back to that student two summers ago, and the angst and the tone of her voice suggested to me she was not just trying to get a legal concept. What she was asking is, does the rest of the world really see Koreans as somehow less than equal? Is there one standard for everybody else on earth, but for Koreans, it is acceptable to disregard that standard?

My answer to that is, no, it is not acceptable. It cannot be acceptable. The longer we accept this dissonance, the more we become complicit in a crime against humanity.

I do not delve into the big political social issues. It is not my place. And as a guest in Korea, I simply will not cross the line. Korean politics are a matter for the Korean people.

But the rule of law is my business. When the law says one thing and people disregard it, that gets my attention. I think, in this case, what I would ask the panel members to do is to go through the detailed discussion of this in the written format and see if we cannot begin to light more of a fire beneath those who are charged with taking care of refugees.

There is plenty that can be done. My paradigm is a legal one—as a practitioner of law, teacher now—not a political one. I think there are plenty of legal solutions that can be had here.

Let me mention one last thing in closing, and that is, if one were to be a genuine North Korean refugee in China and wanted to vindicate their case, actually wanted to present a case for vindication, how would they do that? The answer we have received basically is, there is no way. They cannot get to the UNHCR. There is policemen inside, and all access to Beijing is pretty much foreclosed. They cannot go to the foreign ministry office because they are arrested and never heard from again.

The only way of being able to vindicate their claim of a refugee status is to attempt to escape the country or to get into a foreign Embassy for asylum. Those are the only ones that have managed. The irony of this is they are apprehended at the border as they leave China, leaving by boat or land.

So in effect, China is acting as sort of the ultimate gatekeeper for North Korea instead of as a sovereign, independent state interested in the rule of law.

Let me just end with that and urge the commission to pay close attention to things that can be done and should be done in this respect. Thank you, Mr. Chairman.

[The prepared statement of Mr. Radwan follows:]

**U.S. House of Representatives  
Committee on International Relations  
Subcommittee on Asia and the Pacific**

April 28, 2004

Hearing on: North Korea: Human Rights, Refugees, and Humanitarian Challenges

Statement of

Tarik M. Radwan

Assistant Professor of Law, Handong International Law School, Pohang, Korea, and  
Advocate with Jubilee Campaign, USA

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  7. UN Commission on Human Rights Resolution on the Situation of Human Rights in the DPRK, of April 8, 2004, (E/CN.4/2004/L.21).
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Mr. Chairman, and members of the Subcommittee, thank you for extending this opportunity to provide testimony on the matter of North Korean human rights, refugees and humanitarian challenges.

**Background**

Permit me to briefly explain how it is that Jubilee Campaign USA and I personally have become involved with these issues. Jubilee Campaign USA is a non-profit organization that advocates on behalf of individuals and people groups that face persecution on account of their faith. It is an affiliate of the original Jubilee Campaign launched by British parliamentarians in the mid-80s to campaign on behalf of the "Siberian seven" Soviet religious asylum seekers holed up inside the U.S. embassy in Moscow. I have participated in assorted projects of Jubilee since 1993. All work has been *pro bono*.

Two summers ago, I accompanied the director of Jubilee Campaign, USA, Ann Buwalda, to co-teach a class on international refugee and human rights law at a law school in South Korea. The school, known as Handong International Law School, is part of Handong Global University, in Pohang, South Korea. It teaches law on the American law school model (a three-year program, following a baccalaureate degree, using the case law method). Closer to my heart, however, is its commitment to incorporate the principles of Micah 6:8, to do justice, love mercy and walk humbly with God.

During the class on international refugee law, as we approached what I thought was the “aha” moment where students begin to capture the legal concepts, a student raised her hand and asked a simple question. She said, “If that’s the law, then why aren’t they applying it to North Koreans in China?” The tone of her question suggested a deeper angst, “Does the rest of the world regard Koreans as less than equals?”

The truth is that prior to that moment, I hadn’t given much thought to Korean refugees as such. I didn’t know enough about their situation to answer the question. The best that I could do was to say that I didn’t know, but would be willing to look it up. Her question merited a legitimate answer, and I was hoping that the answer would satisfy her unspoken concern as well.

Over the years, I have become accustomed to finding legitimate law-related reasons for most things that might at first appear to have questionable motives. I figured that would be the case here. Not so. There is no legitimate answer to that question.

That simple question propelled me, and Jubilee Campaign, to actively engage those charged with protecting refugees to reconcile their complete failure to protect Koreans with the law and their mandate. It should compel us all until the rule of law is vindicated.

#### **Disclaimer**

Two months ago I joined the faculty of Handong International Law School (HILS) full time as an assistant professor of law. My work on behalf of Jubilee Campaign preceded that appointment. My comments here do not necessarily reflect the views of the law school or university where I now work.

As a grateful guest in Korea, it is neither my place nor intention to trespass into any matters of a domestic political nature. Korean politics is a matter for Koreans. I am happily disengaged from such. My comments here are in no way intended as comments on South Korean law, policies or politics.

#### **Paradigm**

As a student, and teacher of the law, however, I am very interested in the rule of law. That is the paradigm that comes most naturally to me, and, thankfully, is politically neutral. Applying that paradigm to the issues here simply means that Korean refugees are entitled to the same dignity and legal recourse to international protection, as are all other refugees around the globe. To insist on this is to reconcile the facts with the law. To tolerate the dissonance makes us complicit in the crimes against the most vulnerable. That is not an option.

# I. Forcing the Legal Question.

1. The International Court of Justice. Both the Convention and Protocol Respecting the Status of Refugees, give the International Court of Justice (ICJ) jurisdiction to decide disputes between the State Parties as to any the respective provisions. However, China exempted itself from the provision in the Protocol conferring jurisdiction to the ICJ. That basically means that the only way this matter would be submitted to the ICJ is by China's special agreement. There is no reason to expect that.
2. Advisory Opinion of the ICJ. Another way to get this to the ICJ is by requesting an advisory opinion. Select organs of the United Nations have that authority, including the General Assembly, the Economic and Social Council (ECOSOC) and the Security Council. Interestingly, the precursor entity to the UNHCR, known then as the World Refugee Organization, had the authority to request advisory opinions of the ICJ. That was not extended to the UNHCR. In short, to request an advisory opinion now would require a resolution from the UN General Assembly, ECOSOC or the Security Council. Alternatively, the General Assembly could authorize the UNCHR to do so.
3. Binding Arbitration. The bilateral agreement that the UNCHR has with China, whereby it maintains its Regional Office in Beijing, has a binding arbitration provision. Jubilee Campaign has been urging the UNHCR to invoke this provision since September 2002. This option is developed in more detail subsequently. For purposes of this summary, it suffices to note either China or the UNHCR has been free to take any dispute arising under the Agreement to a panel of three arbitrators, whose decision shall be binding.
4. Chinese Courts. This option is developed in greater detail subsequently. In short, however, China maintains that its international treaty obligations supersede any national laws to the contrary. What is more, the treaty obligations may be directly invoked in Chinese courts. All of the treaties, and official statements are also available in Chinese. It remains only for patriotic Chinese lawyers to step up to the bar. Lawyers who value their own country and the rule of law.
5. Other Courts. In its most recent report to the UN General Assembly, the International Law Commission reported on draft articles on international legal liability incurred by international organizations that engage in wrongful acts of commission or omission. A serious case can be made that the UNHCR's failure to carry out its legal obligation to protect refugees, promote durable solutions to their plight, and supervise China's compliance with its obligations under the Convention and Protocol, makes it liable under international law. (See excerpts from the report of the International Law Commission attached).
6. Alien Tort Claims Act. Another option, less direct, is to bring actions against individuals acting contrary to international law.

## II. Questions and Answers on China's Duty to North Korean Refugees

**Question:** *What is China's legal obligation toward North Korean refugees in China?*

**Answer:**

As a Party to the 1951 Geneva Convention Relating to the Status of Refugees, and the 1967 Protocol by the same name, China is obliged to extend the following protections to North Korean refugees:

- Convention protection without discrimination on account of race, religion or nationality. (Article 3).<sup>1</sup>
- Freedom of religion as accorded to its own nationals. (Article 4).
- Right of association as accorded to other aliens. (Article 15).
- Free access to the courts of law. (Article 16).
- Right to work as accorded to other aliens. (Article 17).
- Right to housing as accorded to other aliens. (Article 21).
- Right to primary education as accorded to its own nationals and beyond that as accorded to other aliens. (Article 22).
- Right to public relief and assistance as accorded to its own nationals. (Article 23).
- Freedom to choose place of residence and to move within the territory as accorded to other aliens. (Article 26).
- Right to an identity paper. (Article 27).
- Right to travel documents. (Article 28).
- Immunity from penalties for illegal entry or presence for certain refugees who came directly from a territory where their life or freedom was threatened (Article 31).
- Protection from expulsion from the country (Article 32).
- Protection from "*refoulement*," which is the forcible return of a refugee to a territory where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion. (Article 33).

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**Question:** *China maintains that all North Koreans cannot even qualify as refugees. Is that possible?*

**Answer:**

Not according to the law. Article 3 of the Convention obligates China to apply the provisions of the Convention to all of its refugees, without discrimination as to race, religion or country of origin.

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<sup>1</sup> All references to articles are to the 1951 Convention Relating to the Status of Refugees, which are made applicable in this case by China's accession to the 1967 Protocol Relating to the Status of Refugees.

It is obvious to the world that China does indeed discriminate against ethnic Korean refugees. How else can one explain that China protects close to 300,000 Indo-Chinese refugees, but not one of the approximately 300,000 Korean refugees. The United Nations Committee on the Elimination of Discrimination formally recorded this discrimination in its annual conclusion in August 2001.<sup>2</sup> Regrettably nothing has changed.

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**Question:** *China repeatedly declares North Koreans en masse as "irregular migrants" or "economic migrants." What is the legal significance of that declaration with respect to China's obligations under the Refugee Convention?*

**Answer:**

There is no legal significance to such statements. First of all, the statement is further evidence of prohibited discrimination on the basis of race and national origin. Beyond that, it is a nullity. It has no legal effect.

Refugee law requires an individual adjudication of refugee eligibility. There is an exception for what is known as *prima facie* refugees.<sup>3</sup> That is, a state party to the Convention can provide refugee protection to a mass of people similarly situated, without requiring individual adjudications. In that case, they all retain refugee protection until such time as an individual adjudication determines that some are not.

However, there is no principle in refugee law that does what China purports to do, which is to declare an entire people as *prima facie* not refugees. That simply does not exist.

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<sup>2</sup> A/56/18, paragraph 246: While noting the State party's efforts to facilitate integration and naturalization of Indo-Chinese refugees in mainland China, the Committee is concerned that different standards of treatment are applied to Indo-Chinese asylum-seekers, on the one hand, and asylum-seekers of other national origins on the other, notably with regard to the right to work and education. Particular concern is expressed regarding the treatment of asylum seekers from the People's Democratic Republic of Korea, who are reportedly systematically refused asylum and returned, even in cases when they have been considered to be refugees by UNHCR. The Committee recommends that the State party take the necessary measures to ensure that all refugees and asylum-seekers receive equal treatment. To this end, the Committee recommends that the State party consider pursuing the adoption of formal legislative or administrative provisions in order to implement objective criteria for the determination of refugee status.

<sup>3</sup> Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979, paragraph 44:

44. While refugee status must normally be determined on an individual basis, situations have also arisen in which entire groups have been displaced under circumstances indicating that members of the group could be considered individually as refugees. In such situations the need to provide assistance is often extremely urgent and it may not be possible for purely practical reasons to carry out an individual determination of refugee status for each member of the group. Recourse has therefore been had to so-called "group determination" of refugee status, whereby each member of the group is regarded *prima facie* (i.e. in the absence of evidence to the contrary) as a refugee.



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**Question:** *Are persons barred from qualifying as refugees if their original motivation for departing their country was economic?*

**Answer:**

No, a person may become a refugee at a later time. This is generally known as becoming a refugee *sur place*. The key is not the reason for leaving one's country, but rather the reason for being unwilling to return to it.<sup>4</sup>

In addition, the fact of severe penalties for having departed unlawfully or having remained abroad without authorization will justify refugee protection where either the leaving or remaining abroad are related to a well founded fear of persecution on account of race, religion, membership in a particular social group, nationality, or political opinion.<sup>5</sup> North Korea's punishment of precisely those who departed without permission and remained away for extended periods of time is notorious. (See Resolution of the UN Commission on Human Rights on the situation of human rights in the Democratic People's Republic of Korea, of April 8, 2004 (E/CN.4/2004/L.21), attached.

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**Question:** *If China maintains that a particular North Korean asylum seeker is not entitled to refugee protection, is that binding on the UNHCR?*

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<sup>4</sup> Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979, paragraphs 94-96:

94. The requirement that a person must be outside his country to be a refugee does not mean that he must necessarily have left that country illegally, or even that he must have left it on account of well-founded fear. He may have decided to ask for recognition of his refugee status after having already been abroad for some time. A person who was not a refugee when he left his country, but who becomes a refugee at a later date, is called a refugee "*sur place*".

95. A person becomes a refugee "*sur place*" due to circumstances arising in his country of origin during his absence. Diplomats and other officials serving abroad, prisoners of war, students, migrant workers and others have applied for refugee status during their residence abroad and have been recognized as refugees.

96. A person may become a refugee "*sur place*" as a result of his own actions, such as associating with refugees already recognized, or expressing his political views in his country of residence. Whether such actions are sufficient to justify a well-founded fear of persecution must be determined by a careful examination of the circumstances. Regard should be had in particular to whether such actions may have come to the notice of the authorities of the person's country of origin and how they are likely to be viewed by those authorities.

<sup>5</sup> Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979, paragraph 61.

**Answer:**

No. There are two types of refugees: "Convention refugees," and "mandate refugees."

Convention refugees are those who have been recognized as refugees by a State Party to the Convention Respecting the Status of Refugees and/or the Protocol by the same name. The term convention refugee shall apply to any person who:

Owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.<sup>6</sup>

Mandate refugees are those who have received the protection of the UNHCR under its mandate, given to it by the United Nations.<sup>7</sup>

China's denying someone convention refugee protection does not in any way prevent the UNHCR from extending mandate refugee protection to that person.<sup>8</sup>

<sup>6</sup> 1951 Convention Respecting the Status of Refugees, Article 1A(2), as modified by the 1967 Protocol Respecting the Status of Refugees, Article I, paragraphs 2 and 3.

<sup>7</sup> Statute of the Office of the UN High Commissioner for Refugees, annexed to UN General Assembly Resolution 428 (V) of 14 Dec. 1950. Paragraph 6:

6. The competence of the High Commissioner shall extend to ... **B.** Any other person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.

<sup>8</sup> Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979, paragraphs 14-17:

14. Pursuant to a decision of the General Assembly, the Office of the United Nations High Commissioner for Refugees ("UNHCR") was established as of 1 January 1951. The Statute of the Office is annexed to Resolution 428 (V), adopted by the General Assembly on 14 December 1950. According to the Statute, the High Commissioner is called upon—*inter alia*—to provide international protection, under the auspices of the United Nations, to refugees falling within the competence of his Office.

15. The Statute contains definitions of those persons to whom the High Commissioner's competence extends, which are very close to, though not identical with, the definition contained in the 1951 Convention. By virtue of these definitions the High Commissioner is competent for refugees irrespective of any dateline or geographic limitation.

16. Thus a person who meets the criteria of the UNHCR Statute qualifies for the protection of the United Nations provided by the High Commissioner, regardless of whether or not he is in a country that is a party to the 1951 Convention or the 1967 Protocol or whether or not he has been recognized by his host country as a refugee under either of these instruments. Such refugees, being within the High Commissioner's mandate, are usually referred to as "mandate refugees".

**Question:** *China has consistently denied the UNHCR access to North Korean asylum seekers on the grounds that it does not consider them refugees. Is that lawful?*

**Answer:**

Not at all. China has obligations towards the UNCHR, just as it has towards refugees. In its bilateral agreement with the United Nations, China has agreed that "... UNHCR personnel may at all times have unimpeded access to refugees."<sup>9</sup> This bilateral agreement is in furtherance of China's obligation under the Refugee Convention and Protocol to cooperate with the UNHCR in the latter's exercise of its functions.<sup>10</sup> In fact, on December 13, 2001, China joined the other 140 State Parties to the Convention and/or the Protocol and "[r]eaffirmed the fundamental importance of the UNHCR as the multilateral institution with the mandate to provide international protection to refugees and to promote durable solutions, and recalled its obligation as a State Party to cooperate with the UNHCR in the exercise of its functions."<sup>11</sup>

The Executive Committee of the UNCHR, which includes China, has issued numerous annual conclusions on point. It has "... stressed the importance of UNHCR's being granted access to asylum applicants and refugees in order to enable the Office to carry out its protection functions in an effective manner."<sup>12</sup> It has called attention to "... the need for rapid, unimpeded and safe UNHCR access to persons of concern to the High Commissioner."<sup>13</sup> It has also "[r]ecommended that refugees and asylum-seekers who are detained be provided with the opportunity to contact the office of the UNHCR."<sup>14</sup>

This principle of ensuring that the UNHCR have unimpeded access to refugees or persons of concern to has been enforced by Security Council resolutions, of which Council China sits as a veto member. In resolutions passed on November 9, 1995, and December 21, 1995, the U.N. Security Council demanded that the "...Bosnian Serb party

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17. From the foregoing, it will be seen that a person can simultaneously be both a mandate refugee *and* a refugee under the 1951 Convention or the 1967 Protocol. He may, however, be in a country that is not bound by either of these instruments, or he may be excluded from recognition as a Convention refugee by the application of the dateline or the geographic limitation. In such cases he would still qualify for protection by the High Commissioner under the terms of the Statute.

<sup>9</sup> Article III, paragraph 5 of the "UNITED NATIONS (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES) and CHINA Agreement on the upgrading of the UNHCR Mission in the People's Republic of China to UNHCR branch office in the People's Republic of China." Signed at Geneva on 1 December 1995. UN Treaty Series, Vol. 1898/1899, I-32371, pages 61-71.

<sup>10</sup> 1951 Convention Respecting the Status of Refugees, Article 35; and 1967 Protocol Respecting the Status of Refugees, Article II.

<sup>11</sup> DECLARATION OF STATES PARTIES TO THE 1951 CONVENTION AND/OR ITS 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES, as adopted on December 13, 2001 in Geneva at the Ministerial Meeting of the 141 State Parties, which included China. HCR/MMSP/2001/09. Operative Paragraph 8.

<sup>12</sup> EXCOM Conclusions, (XXXV), No. 33(h), 1984.

<sup>13</sup> EXCOM Conclusions, (XLVII), No. 82(d)(iv), 1997.

<sup>14</sup> EXCOM Conclusions, (XXXVII), No. 44, 1986.

give immediate and unimpeded access to representatives of the United Nations High Commissioner for Refugees ...” to displaced, detained and missing persons.<sup>15</sup> This is significant, because China's bilateral agreement with the UNHCR, ensuring the UNHCR's right to unimpeded access to refugees in China, was signed on December 1, 1995; right in between these two Security Council resolutions. The Security Council has continued to demand unimpeded access by the UNHCR in various situations.<sup>16</sup>

Of note, the Chinese-UNHCR bilateral Agreement of 1995 permits either one to invoke binding arbitration in the event that they are unable to resolve their disputes. The UNCHR has been denied access to North Koreans since 1999. All of its requests have been denied or ignored. The High Commissioner's declaration concerning North Koreans in China at the most recent Executive Committee session actually perfects the case for arbitration.<sup>17</sup> If China persists in denying the UNHCR access to North Koreans in China, the UNHCR has a legal and moral mandate to invoke binding arbitration.

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**Question:** *China maintains that its conduct towards displaced North Koreans is in keeping with international law, national law and humanitarian principles.<sup>18</sup> Is this accurate?*

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<sup>15</sup> S/RES/1019, 9 Nov. 1995 at operative paragraph 2, and S/RES/1034, 21 Dec. 1995 at operative paragraph 5.

<sup>16</sup> See for instance: S/RES/1199, 23 Sep. 1998 at operative paragraph 4(c); and S/RES/1441, 8 Nov. 2002.

<sup>17</sup> “In China, the plight of North Koreans who leave their country illegally remains a serious concern. For a number of years UNHCR has been making efforts to obtain access to them, but this has consistently been denied. An analysis of currently available information recently carried out by our Department of International Protection concludes that many North Koreans may well be considered refugees. In view of their protection needs, the group is of concern to UNHCR. For those in need of assistance, UNHCR is ready to work with partners in meeting their needs. Above all, the principle of *non-refoulement* must be respected.” (Sept. 29, 2003, High Commissioner's Statement to the UNHCR Executive Committee).

<sup>18</sup> See for instance the following assorted references:

*Beijing Zhongguo Xinwen She* (China's official news service for overseas Chinese), January 11, 2000. Article entitled: *More on Spokesman on Handling Illegal DPRK Entrants*. Translated by Foreign Broadcast Information Service (FBIS). FBIS Document Number: FBIS-CHI-2000-0111. “Foreign Ministry spokesman Zhu Bangzao indicated here today that the seven North Korean citizens whom Russia recently handed over to China are not refugees. He said China will handle these people according to its consistent policy. ... Answering a reporter's question at a Foreign Ministry news briefing today, Zhu Bangzao said: In recent years, some North Korean citizens have indeed entered China in areas along the border between China and the Democratic People's Republic of Korea. However, both in terms of the international law and their purposes, these North Korean citizens who have illegally crossed the border are not refugees. He said China has been handling this issue according to international norms and Chinese law while taking into consideration humanitarian needs and the maintenance of peace and stability in the Korean Peninsula.”

*Beijing Xinhua News Agency*, in English, June 8, 2000, article entitled: *PRC Spokeswoman on Illegal Crossing of DPRK Citizens*, reprinted by Foreign Broadcast Information Service (FBIS). FBIS Document Number: FBIS-CHI-2000-0608. “China handled the illegal crossing of border of citizens of Democratic People's Republic of Korea (DPRK) in accordance with international law and common practice in the world. Although China did not regard these DPRK people as refugees, China has treated them in a humanitarian way, said Zhang Qiyue, Chinese Foreign Ministry spokeswoman a relevant

**Answer:**

Nothing could be further from the truth.

To comply with international law, China needs to comply with the Convention and Protocol Respecting the Status of Refugees. It needs to make available fair and efficient asylum adjudication to North Korean asylum seekers. It needs to stop “*refoulement*” of North Koreans. It needs to permit the UNHCR unimpeded access to persons of concern to the UNHCR.

China does not even comply with its own national laws. Its own constitution at article 32 gives aliens a right to apply for asylum. China maintains to the United Nations that once it affirms an international treaty, its obligations become binding as Chinese law.<sup>19</sup> In the event of a conflict with national law, the international treaty takes precedence.<sup>20</sup>

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question. She added that China has taken into consideration the security and stability in the Korean Peninsula while handling this issue.”

*Yonhap News Agency*, June 28, 2001, article entitled: *Wu Promises Efforts to help Settle N.K. Defectors Issue*. Transcribed by Foreign Broadcast Information Service (FBIS). FBIS Number: FBIS-EAS-2001-0628. “Chinese Ambassador to Seoul Wu Dawei said Thursday that China follows several principles in tackling issues involving the two Koreas, such as the current North Korean defector matter. “We first pay heed to which way is more advantageous for peace and stability on the Korean Peninsula, and also ponder whether the issues are of help for inter-Korean relations,” Wu said.”

*Agence France Press*, June 24, 2002. Article entitled: *China May End Up in New DPRK Refugee Tangle Before Long*. “The Chinese said they will deal with this kind of matter according to international law, local law and in a humanitarian spirit,” said the South Korean official.”

*Seoul Choson Ilbo* (Internet Version-WWW) in English, August 26, 2002. Article entitled: *China Urged To Address 'Hard-Line' Policy on DPRK Escapees*. Transcribed by Foreign Broadcast Information Service (FBIS). FBIS Number: FBIS-CHI-2002-0624. “The Chinese government needs to remember that in June, it agreed with the Korean government that the issue of Northerners who have left the North illegally and are in China should be “solved in accordance with domestic (Chinese) law, international law, and the principles of humanitarianism.”

<sup>19</sup> HRI/CORE/1/Add.21/Rev.2, 11 June 2001. China’s Core Document that it has filed at the United Nations. Paragraph 51:

51. To render international human rights agreements consistent with domestic law and make them a part of the domestic legal system, under article 67, subsection 14, of the Constitution, accession by China to an international human rights agreement must be approved by the Standing Committee of the National People’s Congress. **Once approved, the instrument is binding under Chinese law and China must honour the corresponding obligations: no further special legal transformation is required to turn it into domestic law.** (Emphasis added).

<sup>20</sup> HRI/CORE/1/Add.21/Rev.2, 11 June 2001. China’s Core Document that it has filed at the United Nations. Paragraph 52 and 53:

52. Can an international convention cause a conflict with domestic law? Simply stated, when China concludes or becomes party to an international treaty, it pays very close attention to the question of harmony between the treaty and domestic law, and no conflict of principle can arise. **In the event of a discrepancy between the international treaty and domestic law on any specific provision, the treaty takes precedence unless China entered a reservation upon ratifying or acceding to it.** This is clearly stated in a

Significantly, it is the official Chinese position that international treaties that China has ratified are binding on Chinese law enforcement and judicial organs.<sup>21</sup> They may be

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number of pieces of legislation. As regards punishment, where an international human rights instrument makes no specific provision a domestic law corresponding in purpose to the treaty is used for guidance in such a manner as to preserve the thrust of the human rights agreement. (Emphasis added).

53. In China, any international human rights agreement, after approval by the legislature, establishes obligations which China must comply with. The judicial and executive authorities and all public associations concerned then apply the agreement within their respective spheres of competence. To resolve specific questions of penalties for which an agreement makes no provision, the overwhelming majority of treaties have to be enforced by means of domestic laws corresponding in purpose. **In the event of discrepancies between domestic law and an international human rights agreement ratified or acceded to by China, the international agreement will take precedence unless China has entered a reservation to it.** (Emphasis added).

<sup>21</sup> CAT/C/SR.419, 12 May 2000. Summary of the 419<sup>th</sup> Meeting of the U.N. Committee Against Torture. Verbatim excerpt follows:

At the invitation of the Chairman, the delegation of China took places at the Committee table.

The CHAIRMAN invited the delegation of China to present its replies to the questions put by Committee members.

Mr. QIAO Zonghuai (China) said his delegation would do its best to clarify the questions raised. Answers that could not be provided immediately would be forwarded to the Committee at a later date.

Replying to a question raised by Mr. Mavrommatis, he said that China adhered to the principle of pacta sunt servanda. **Under the Chinese legal system, the international instruments to which that country was party were considered part of Chinese law and legally binding. In the event of conflict between an international instrument and a domestic law, the provisions of the international instrument took precedence, unless contrary reservations applied. The Convention against Torture, having been ratified by the Standing Committee of the National People's Congress, was binding on Chinese law enforcement and judicial organs.** Special domestic measures nevertheless had to be taken to give effect to the provisions of international treaties. (Emphasis added).

Since the Convention against Torture was part of Chinese law, the definition of torture contained in that instrument applied. **In practice, the Convention could be invoked before the Chinese courts.** China's Criminal Law contained a detailed description of what constituted an act of torture, including the extortion of a confession under torture, the extraction of testimony by the use of force, and mistreating or abusing a person in custody. Any direct or indirect act of physical abuse, and any act involving intimidation, threats or the infliction of mental suffering, committed by a judicial officer for the purpose of extorting a confession was a crime. Illegal search, illegal detention and humiliation were also seen as torture related crimes, whether carried out by a public official or a non-public person. (Emphasis added).

The regulations of the Supreme People's Procuratorate on filing a case were merely an interpretation of the Criminal Law, and in no way restricted the scope of the crime of torture. The Criminal Law established a distinction between a crime and an unlawful act; a minor offence that did not constitute a crime was nevertheless subject to administrative or disciplinary sanctions.

Under Chinese law, any law enforcement officer who committed an act of torture or other cruel, inhuman or degrading treatment or punishment was severely sanctioned. If the perpetrator invoked the order of a superior as justification, the criminal responsibility of both would be investigated.

invoked in Chinese courts as Chinese law.<sup>22</sup> In addition to the Convention and Protocol Respecting the Status of Refugees, China has also ratified the Convention Against Torture, or Other Cruel, Inhuman or Degrading Punishment. This Convention prohibits repatriating anyone to a territory where it is likely that he or she will be tortured, regardless of the motivation for the torture.

Based on China's position before the United Nations Committee Against Torture, all that is required is for Chinese officials to prosecute those in China who have violated the Convention Against Torture by repatriating North Koreans to a country that is likely to torture them.

Perhaps when China extends to ethnic Korean asylum-seekers the same protection that it has extended to Indo-Chinese refugees, the world might begin to believe China's claim that it observes "humanitarian principles."

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<sup>22</sup> *Ibid.*

### III. Matters Pertaining to the UNHCR

#### The High Commissioner's Statement

In China, the plight of North Koreans who leave their country illegally remains a serious concern. For a number of years UNHCR has been making efforts to obtain access to them, but this has consistently been denied. An analysis of currently available information recently carried out by our Department of International Protection concludes that many North Koreans may well be considered refugees. In view of their protection needs, the group is of concern to UNHCR. For those in need of assistance, UNHCR is ready to work with partners in meeting their needs. Above all, the principle of *non-refoulement* must be respected. (Sept. 29, 2003, EXCOM).

#### Summary of Issues

1. What exactly is the level of protection offered to North Koreans in China?
2. How will it be implemented?
3. What is the timeline for re-evaluating the value of the current approach?

#### Recommendations

1. Authorize the Inspector General of the UNHCR to determine the extent to which there was a systemic or individual failure to protect North Koreans in China since 1999. Determine why no account of denial of access was raised by UNHCR in its annual reports to ECOSOC or General Assembly for years 1999, 2001 and 2002. It appears that EXCOM was also not advised, since all Conclusions bearing on right to access and denial thereof precede this timeframe. Determine how high up the chain this information was conveyed. There are a number of humanitarian aid workers who can attest to the lack of cooperation in helping refugees from the Beijing Regional Office of the UNCHR. The findings should be made available to EXCOM.
2. Relieve the Asia and Pacific Region Bureau Director of supervision on matters involving protection of North Koreans in China pending the conclusions of the Inspector General.
3. Replace the Beijing Regional Office Representative pending the conclusion of the Inspector General. As a minimum, instruct him to quit conducting press interviews lauding China's conduct toward refugees.
4. Establish a timeline for cooperation by China on access to refugees and protection thereof, and posture consistent with preparation of a solid case for arbitration.
5. Make it clear that quiet diplomacy while negotiating solutions with States does not excuse remaining silent about their violations.
6. Most critically: Instill a culture of giving priority to the mandates: 1) protect refugees, 2) promote durable solutions, and 3) supervise State Party compliance



with their Convention/Protocol obligations. This has to supplant the current culture of subordinating the mandates to maintaining cordial relations with States.

7. Be prepared to be put to the test by offending States, and be prepared to hold firm. If this institution does not respect the primacy of its mandate, it cannot expect States to do so.

#### Charting a Course for Arbitration

- Evict the Chinese police guard located inside the UNHCR compound since 1999 under Chinese insistence. This is diplomatic property, and the presence of the officer serves to prevent would-be asylum seekers, and intimidate UNCHR personnel.
- Preserve the record of all previous requests for access to North Koreans in China at least as far back as 1999, when UNHCR was denied access to the border regions.
- Compile a complete summary of all such request, identifying when each request was made, for whom, why it was requested, how it was communicated, the outcome and replies, if any.
- Reinstate a request in writing to see all the foregoing in light of the High Commissioner's Statement. Find out who among them have been repatriated, when, where and how. (This might help to locate them).
- The High Commissioner should communicate in writing to the Chinese government the meaning of his statement, and formally request access to persons in the protected group. The communication should detail the history of lack of cooperation, and be easily understood by a potential panel of arbitrators.
- Commission a team to prepare a case for binding arbitration under the UNHCR's bilateral agreement with China to ensure access to North Koreans in China in the event that cooperation is not forthcoming or falters again.

### The Case for Arbitration

#### The UNHCR Mandate

The UNHCR is mandated by the United Nations to lead and coordinate international action for the worldwide protection of refugees and the resolution of refugee problems.

UNHCR's primary purpose is to safeguard the rights and well-being of refugees. In its efforts to achieve this objective, UNHCR strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another state, and to return home voluntarily. [UNHCR Global Appeal 2003, page 3].

#### The UNHCR's Bilateral Agreement with China

On December 1, 1995, the UNHCR entered into a bilateral agreement with China upgrading its presence in China from a mission to a branch office.

Under the Agreement, the primary function of the UNHCR office in China is to provide international protection and humanitarian assistance to refugees there. [Art. II, and Art III,1]. China welcomes this. [Art. IV,1]. The office is to fulfill its functions in China in accordance with the UNHCR mandate, described above. [Art. II, Art. IV,2, and Art. IV,4].

In carrying out its function, UNHCR personnel may at all times have unimpeded access to refugees and to sites of UNHCR projects. [Art. III,5]. Finally, in the event of an unresolved dispute arising out of or in connection with the Agreement, the UNHCR may invoke a binding arbitration. [Art. XVI].

#### Unresolved Dispute

The UNHCR office in China has repeatedly sought access to displaced North Koreans in China. The government of China has refused access by the UNHCR to this population, and has denied access to the UNHCR by this population. In addition, the government of China has foreclosed even the possibility of individual grants of asylum among them. It declares all of them to be conclusively non-refugees, and makes no provision for individual adjudication to the contrary.<sup>23</sup> The UNHCR condemns this practice as unlawful refouling, and it insists on unimpeded access to these persons. At issue is the UNHCR's right to unimpeded access to these persons under Article III,5, and its duty to protect refugees and provide humanitarian assistance under Article III,1.

#### Binding Arbitration

The UNHCR can vindicate its mandate by invoking binding arbitration of this dispute.

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<sup>23</sup> This is why some North Koreans, at great personal risk, have attempted to gain sanctuary in foreign embassies in Beijing. All other doors are closed to them. The Chinese government's solution to this refugee problem is to put barbed wires around foreign embassies and systematically rout and refool the remaining North Koreans.

Key Provisions of 1995 Treaty Between China and the UNHCR<sup>24</sup>

- Agreement provides basic conditions under which UNHCR shall, within its mandate,
  - cooperate with China
  - upgrade its mission to a branch office
  - perform the function of international protection and humanitarian assistance in the interest of refugees in China [Art II].
- UNCHR and China's cooperation in field of international protection of humanitarian assistance to refugees shall be carried out on basis of:
  - Statute of UNHCR
  - Relevant UN resolutions and decisions
  - Article 35 of the 1951 Convention Relating to Status of Refugees
  - Article 2 of the 1967 Protocol Relating to Status of Refugees [Art III,1]
- "In consultation and cooperation with the Government, UNCHR personnel may at all times have unimpeded access to refugees and to the sites of UNHCR projects in order to monitor all phases of their implementation." [Art III,5]
- China welcomes the upgrade "for the purpose of providing international protection and humanitarian assistance to refugees in the host country [China]" [Art IV,1]
- UNHCR office shall fulfill its functions in accordance with UNHCR's mandate. [Art IV,2]
- UNCHR office will exercise functions as assigned by the High Commissioner in relation to her mandate for refugees. [Art IV,4].
- "Any disputes between the Government and the UNHCR arising out of or relating to this Agreement shall be settled amicably by negotiation or other agreed mode of settlement. If this fails, such dispute shall be submitted to arbitration at the request of either Party. In that case, each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairman. If within thirty days of the request for arbitration neither Party has appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. All decisions of the arbitrators shall require a vote of two of them. The procedure of the arbitration shall be fixed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute." [Art XVI]
- "Any other matters not covered by this Agreement shall be settled by the Parties in keeping with the relevant resolutions and decisions of the appropriate organs of the United Nations. Each Party shall give full and sympathetic consideration to any proposal advanced by the other Party under this paragraph." [Art XVII]

<sup>24</sup> "UNITED NATIONS (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES and CHINA Agreement on the upgrading of the UNHCR Mission in the People's Republic of China to UNHCR branch office in the People's Republic of China." Signed at Geneva on 1 December 1995. UN Treaty Series, Vol. 1898/1899, I-32371, pages 61-71.

### **1995 Agreement Between the UNHCR and China<sup>25</sup>**

#### Role of UNHCR Office in China

The UNHCR office is to perform the function of international protection and humanitarian assistance to refugees in China. [Art. II, and Art III,1]. China welcomes this function. [Art. IV,1].

The UNHCR office will also exercise functions assigned to it by the High Commissioner in relation to his mandate for refugees. [Art. IV,4].

#### Primacy of the UNHCR Mandate

The UNHCR office shall fulfill all of its functions in accordance with the UNHCR mandate. [Art. II, Art. IV,2, and Art. IV,4].

#### Cooperation Between UNHCR and China

The Agreement is entered in the spirit of conducting friendly cooperation. [last paragraph before numbered clauses].

The Agreement provides for the basic conditions under which UNHCR shall, within its mandate, cooperate with the Government. [Art. II].

Cooperation regarding international protection of and humanitarian assistance to refugees shall be carried out on the basis of:

- Statute of the UNHCR,
- Relevant UN resolutions and decisions,
- Article 35 of the 1951 Convention Relating to the Status of Refugees, and
- Article 2 of the 1967 Protocol Relating to the Status of Refugees. [Art. III,1].

#### UNHCR's Right to Unimpeded Access

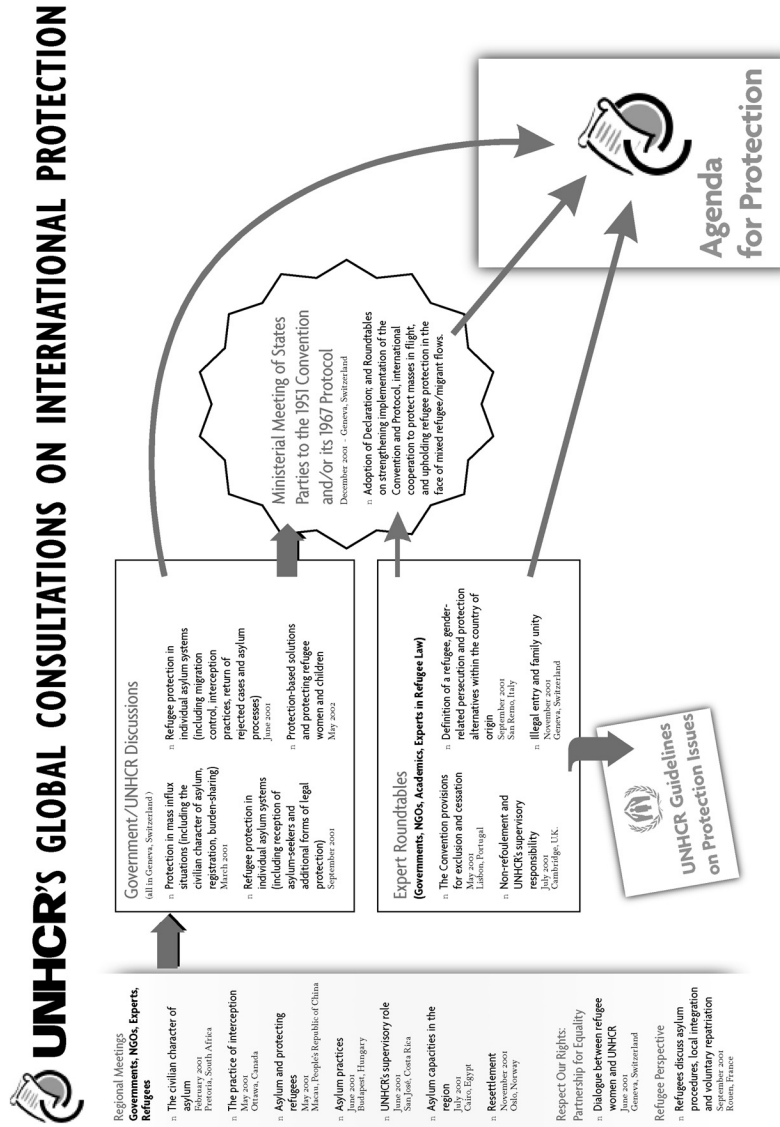
"In consultation and cooperation with the Government, UNHCR personnel may at all times have unimpeded access to refugees and to the sites of UNHCR projects in order to monitor all phases of their implementation." [Art. III,5].

#### Resolving Disputes

The UNHCR has the right to submit an unresolved dispute with China that arises out of or relates to this Agreement to binding arbitration. Each party is given 30 days to appoint an arbitrator, and the two arbitrators are given 15 days to appoint a third, who shall be the chairman. If arbitrators have not been appointed within this time, either party may ask the President of the International Court of Justice to appoint

<sup>25</sup> "UNITED NATIONS (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES and CHINA Agreement on the upgrading of the UNHCR Mission in the People's Republic of China to UNHCR branch office in the People's Republic of China." Signed at Geneva on 1 December 1995. UN Treaty Series, Vol. 1898/1899, I-32371, pages 61-71.

one. All decisions shall require a vote of two of them. The arbitral award shall be accepted by the Parties as the final adjudication of the dispute. [Art. XVI].



Ministerial Meeting of States Parties  
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and/or its 1967 Protocol  
relating to the status of refugees

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DECLARATION OF STATES PARTIES  
TO THE 1951 CONVENTION AND OR ITS 1967 PROTOCOL  
RELATING TO THE STATUS OF REFUGEES<sup>1</sup>

Preamble

We, representatives of States Parties to the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol, assembled in the first meeting of States Parties in Geneva on 12 and 13 December 2001 at the invitation of the Government of Switzerland and the United Nations High Commissioner for Refugees (UNHCR),

1. Cognizant of the fact that the year 2001 marks the 50<sup>th</sup> anniversary of the 1951 Geneva Convention relating to the Status of Refugees,
2. Recognizing the enduring importance of the 1951 Convention, as the primary refugee protection instrument which, as amended by its 1967 Protocol, sets out rights, including human rights, and minimum standards of treatment that apply to persons falling within its scope,
3. Recognizing the importance of other human rights and regional refugee protection instruments, including the 1969 Organisation of African Unity (OAU) Convention governing the Specific Aspects of the Refugee Problem in Africa and the 1984 Cartagena Declaration, and recognizing also the importance of the common European asylum system developed since the 1999 Tampere European Council Conclusions, as well as the Programme of Action of the 1996 Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States,
4. Acknowledging the continuing relevance and resilience of this international regime of rights and principles, including at its core the principle of *non-refoulement*, whose applicability is embedded in customary international law,
5. Commending the positive and constructive role played by refugee-hosting countries and recognizing at the same time the heavy burden borne by some, particularly developing countries and countries with economies in transition, as well as the protracted nature of many refugee situations and the absence of timely and safe solutions,

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<sup>1</sup> As adopted on 13 December 2001 in Geneva at the Ministerial Meeting of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees

Page 2

6. Taking note of complex features of the evolving environment in which refugee protection has to be provided, including the nature of armed conflict, ongoing violations of human rights and international humanitarian law, current patterns of displacement, mixed population flows, the high costs of hosting large numbers of refugees and asylum-seekers and of maintaining asylum systems, the growth of associated trafficking and smuggling of persons, the problems of safeguarding asylum systems against abuse and of excluding and returning those not entitled to or in need of international protection, as well as the lack of resolution of long-standing refugee situations,

7. Reaffirming that the 1951 Convention, as amended by the 1967 Protocol, has a central place in the international refugee protection regime, and believing also that this regime should be developed further, as appropriate, in a way that complements and strengthens the 1951 Convention and its Protocol,

8. Stressing that respect by States for their protection responsibilities towards refugees is strengthened by international solidarity involving all members of the international community and that the refugee protection regime is enhanced through committed international cooperation in a spirit of solidarity and effective responsibility and burden-sharing among all States,

#### Operative Paragraphs

1. Solemnly reaffirm our commitment to implement our obligations under the 1951 Convention and/or its 1967 Protocol fully and effectively in accordance with the object and purpose of these instruments;

2. Reaffirm our continued commitment, in recognition of the social and humanitarian nature of the problem of refugees, to upholding the values and principles embodied in these instruments, which are consistent with Article 14 of the Universal Declaration of Human Rights, and which require respect for the rights and freedoms of refugees, international cooperation to resolve their plight, and action to address the causes of refugee movements, as well as to prevent them, *inter alia*, through the promotion of peace, stability and dialogue, from becoming a source of tension between States;

3. Recognize the importance of promoting universal adherence to the 1951 Convention and/or its 1967 Protocol, while acknowledging that there are countries of asylum which have not yet acceded to these instruments and which do continue generously to host large numbers of refugees;

4. Encourage all States that have not yet done so to accede to the 1951 Convention and/or its 1967 Protocol, as far as possible without reservation;

5. Also encourage States Parties maintaining the geographical limitation or other reservations to consider withdrawing them;

6. Call upon all States, consistent with applicable international standards, to take or continue to take measures to strengthen asylum and render protection more effective including through the adoption and implementation of national refugee legislation and procedures for the determination of refugee status and for the treatment of asylum-seekers and



refugees, giving special attention to vulnerable groups and individuals with special needs, including women, children and the elderly;

7. Call upon States to continue their efforts aimed at ensuring the integrity of the asylum institution, *inter alia*, by means of carefully applying Articles 1F and 33 (2) of the 1951 Convention, in particular in light of new threats and challenges;

8. Reaffirm the fundamental importance of UNHCR as the multilateral institution with the mandate to provide international protection to refugees and to promote durable solutions, and recall our obligations as State Parties to cooperate with UNHCR in the exercise of its functions;

9. Urge all States to consider ways that may be required to strengthen the implementation of the 1951 Convention and/or 1967 Protocol and to ensure closer cooperation between States parties and UNHCR to facilitate UNHCR's duty of supervising the application of the provisions of these instruments;

10. Urge all States to respond promptly, predictably and adequately to funding appeals issued by UNHCR so as to ensure that the needs of persons under the mandate of the Office of the High Commissioner are fully met;

11. Recognize the valuable contributions made by many non-governmental organizations to the well-being of asylum-seekers and refugees in their reception, counselling and care, in finding durable solutions based on full respect of refugees, and in assisting States and UNHCR to maintain the integrity of the international refugee protection regime, notably through advocacy, as well as public awareness and information activities aimed at combating racism, racial discrimination, xenophobia and related intolerance, and gaining public support for refugees;

12. Commit ourselves to providing, within the framework of international solidarity and burden-sharing, better refugee protection through comprehensive strategies, notably regionally and internationally, in order to build capacity, in particular in developing countries and countries with economies in transition, especially those which are hosting large-scale influxes or protracted refugee situations, and to strengthening response mechanisms, so as to ensure that refugees have access to safer and better conditions of stay and timely solutions to their problems;

13. Recognize that prevention is the best way to avoid refugee situations and emphasize that the ultimate goal of international protection is to achieve a durable solution for refugees, consistent with the principle of *non-refoulement*, and commend States that continue to facilitate these solutions, notably voluntary repatriation and, where appropriate and feasible, local integration and resettlement, while recognizing that voluntary repatriation in conditions of safety and dignity remains the preferred solution for refugees;

14. Extend our gratitude to the Government and people of Switzerland for generously hosting the Ministerial Meeting of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees.



中华人民共和国常驻联合国日内瓦办事处和瑞士其他国际组织代表团  
PERMANENT MISSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE UNITED NATIONS OFFICE  
AT GENEVA AND OTHER INTERNATIONAL ORGANIZATIONS IN SWITZERLAND



**Statement by H. E. Mr. Wang Guangya, Vice Foreign Minister of the People's Republic of China, at the Ministerial Meeting of States Parties to the 1951 Convention Relating to the Status of Refugees(12 December 2001)**

Mr. Chairman,

Fifty years ago, in the wake of fading smoke of the World War II, representatives from 26 countries drafted and adopted the "Magna Carta of International Refugee Law"——the Convention Relating to the Status of Refugees in Geneva. It is undoubtedly of great significance for us to gather here today in this beautiful city again to review its past, discuss future prospects and commemorate the 50th Anniversary of the adoption of the Convention. Here, I wish to express my thanks to the Federal Government of Switzerland and the Office of the UN High Commissioner for Refugees (UNHCR) for initiating and co-sponsoring this conference. I am convinced that, under your Chairmanship and with our common efforts, the Conference will be a complete success.

Mr. Chairman,

The Convention Relating to the Status of Refugees and its 1967 Protocol are the most important international legal instruments in the field of international protection of refugees. Among the many international humanitarian documents, it is this Convention, which has only a few pages, that defines the basic concept of refugee and the relevant rights and obligations and fills in the gap in the legal field of international protection of refugees. To the helpless refugees who wander overseas after leaving their homeland, the Convention is the candlelight of hope in the dark. To the regime for international protection of refugees, the Convention is the cornerstone for its smooth operation. To people who are engaged in humanitarian work of protecting and assisting refugees, the Convention serves as a guide to action. It has played an essential role in the field of international protection of refugees and has won universal attention. This has become the common understanding of the international community.

The Convention has covered a five-decade course of stormy events. For the past 50 years, a total of over 50 million people have been sheltered in the edifice of international protection of refugees built under the Convention. The number of States Parties to the Convention has increased to nearly 140. Here, I wish to take this opportunity to fully affirm the active role played by the Convention in the past 50 years. Meanwhile, I wish to express my appreciation of the endeavors made by the supervisory agency of the Convention——the UNHCR in ensuring the implementation of the Convention over the years.

Mr. Chairman,

Today, as mankind has marched into the new century, the international situation is undergoing complicated and profound changes. Economic globalization is picking up pace, the trend towards political multipolarity is gaining momentum, science and technology keep advancing by leaps and bounds, and the productive forces are on the rise as never before. Mankind boasts of material and spiritual wealth more abundant than any time in history. The desire of the world's people for a

peaceful and happy life is stronger than ever. The development and progress of human society is faced with unprecedented opportunities. Meanwhile, we must be soberly aware that neither of the two themes of our times--peace and development--has been resolved so far. Democratized international relations is still far from reality. The unjust and irrational international political and economic order has not been transformed fundamentally. There are still constant armed conflicts, external intervention, ethnic confrontation and religious clashes. Against this background, the situation of refugees has been very grim, with undulating tides of refugees and their total number staying high for a long period since the birth of the Convention half a century ago. Today as we mark the Anniversary of the Convention, the number of persons of concern to the UNHCR is as high as 21 million and more. At the same time, the abuse of refugee asylum policies and procedures as well as the protection of vulnerable refugee groups, including women, children and the elderly, remain most striking issues.

It is an arduous task faced by the international community to eradicate the root causes of refugees. A thorough solution of the refugee problem is our common aspiration and also the lofty target pursued by the Convention. For this, I wish to make the following proposals:

1. To safeguard world peace, promote common development. We should address the existing refugee issues while seeking their durable solutions. The 50-year history tells us that the unjust and irrational international political and economic order is the root cause of refugee issues. While coping with refugee crisis, the international community should work together to handle international affairs on the basis of equality and in an equitable manner, resolve international disputes through peaceful means, achieve the democratization of international relations, promote the common prosperity and development of all countries and prevent the emergence of refugees at the root.
2. To effectively uphold the authority of the Convention and the existing regime for international protection and actively explore new ways and means for resolving the refugee problem. As the world has entered the new century, the Convention plays an important and essential role in the international protection of refugees, and the basic principles and spirit established by the Convention are by no means obsolete. It is of most important historical and practical significance to continue to bring into full play the positive role of the Convention and its Protocol. In the meantime, countries should actively seek new and effective measures consistent with the principles and spirit of the Convention in order to address new issues and problems in the international refugee field.
3. To adhere to the principles of "international solidarity" and "burden sharing" and carry out international cooperation effectively. The refugee problem is a global one, and closer international cooperation is an effective way for its resolution. At present, developing countries have paid a heavy price for resolving this problem by providing asylum to three-fourths of the total global refugee population. Members of the international community, developed countries in particular, are duty-bound to face the realities squarely, fully recognize the tremendous contribution made by the developing countries and continue to provide help to host countries in the developing world that have provided shelter to refugees and to undertake the corresponding resettlement obligations in accordance with the principles of "international solidarity" and "burden sharing" as enshrined in the Convention.
4. To draw a clear line between the refugee issue and others, preventing the abuse of the protection regime and asylum policies as prescribed in the Convention. Unrestrained expansion of the asylum procedures of the Convention would result in a negative impact on the international protection regime, conniving at illegal immigration and allowing criminals to go unpunished, thus doing harm to peace and stability of states and regions. The States Parties must step up the process to determine refugee status in accordance with the purposes and principles of the Convention. The UNHCR should also work strictly within its mandate so as to ensure that while refugees are duly protected,

the asylum policies and procedures are not abused so that the Convention serves as a true guarantee for refugee protection.

Mr. Chairman,

China has always attached importance to the protection of refugees and has long taken an active part in the work in this connection. Following its accession to the Convention and its Protocol in 1982, China has, as always, conscientiously fulfilled its international obligations and earnestly engaged in domestic legislation on refugee affairs. The Chinese Government has received and extended effective protection to more than 280,000 Indo-Chinese refugees in spite of its own difficulties. As of now, some of them have been voluntarily repatriated in line with the principles and spirit of the Convention. The Chinese Government stands ready to continue to cooperate with the relevant countries and the UNHCR for an appropriate solution of the leftover issues of the Indo-Chinese refugees in China. It will go on honoring its international obligations, enhancing its cooperation with the international community, including the UNHCR, and pressing ahead towards resolving the global refugee issue.

Thank you, Mr. Chairman.

(Translation)

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Permanent Mission of the People's Republic of China to the United Nations office at Geneva and other International Organizations in Switzerland



## General Assembly

Distr.: General  
26 February 2002

Fifty-sixth session  
Agenda item 119 (b)

## Resolution adopted by the General Assembly

[on the report of the Third Committee (A/56/583/Add.2)]

## 56/166. Human rights and mass exoduses

*The General Assembly,*

*Deeply disturbed by the scale and magnitude of exoduses and displacements of people in many regions of the world and by the human suffering of refugees and displaced persons, a high proportion of whom are women and children,*

*Recalling its previous resolutions on this subject, as well as those of the Commission on Human Rights, and the conclusions of the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993,<sup>1</sup> which recognized, inter alia, that gross violations of human rights, persecution, political and ethnic conflicts, famine and economic insecurity, poverty and generalized violence were among the root causes leading to mass exoduses and displacements of people,*

*Mindful of the three open debates that have taken place within the Security Council on the protection of civilians in armed conflict and the two reports of the Secretary-General on that subject,<sup>2</sup>*

*Welcoming the fiftieth anniversary of the 1951 Convention relating to the Status of Refugees,<sup>3</sup> and noting the continuing relevance of the provisions of the Convention to the situation of people in mass exoduses,*

*Welcoming also the process of global consultations on international protection launched by the Office of the United Nations High Commissioner for Refugees, and in particular the discussions that took place in March 2001 on the protection of refugees in mass influx situations,*

*Welcoming further the increased attention being given by the United Nations, including the Office of the High Commissioner, to the problem of camp security, including through the development of operational guidelines on the separation of armed elements from refugee populations,*

*Stressing the importance of adherence to international humanitarian, human rights and refugee law in order to avert mass exoduses and to protect refugees and*

<sup>1</sup> A/CONF.157/24 (Part I), chap. III.

<sup>2</sup> S/1999/957 and S/2001/331.

<sup>3</sup> United Nations, *Treaty Series*, vol. 189, No. 2545.

internally displaced persons, and expressing its deep concern at the lack of respect for those laws and principles, especially during armed conflict, including the denial of safe and unimpeded access to the displaced,

*Reaffirming* the primary responsibility of States to ensure the protection of refugees and internally displaced persons,

*Noting with satisfaction* the efforts by the United Nations system to develop a comprehensive approach to addressing the root causes and effects of movements of refugees and other displaced persons and strengthening emergency preparedness and response mechanisms,

*Recognizing* that the human rights machinery of the United Nations, including the mechanisms of the Commission on Human Rights and the human rights treaty bodies, has important capabilities to address human rights violations that cause movements of refugees and displaced persons or prevent durable solutions to their plight,

*Recognizing also* the complementarity between the systems for the protection of human rights and for humanitarian action, in particular the mandates of the United Nations High Commissioner for Human Rights and the United Nations High Commissioner for Refugees, as well as the work of the Representative of the Secretary-General on internally displaced persons and the Special Representative of the Secretary-General for Children and Armed Conflict, and that cooperation between them, in accordance with their respective mandates, as well as coordination between the human rights, political and security components of United Nations operations, make important contributions to the promotion and protection of the human rights of persons forced into mass exodus and displacement,

*Acknowledging with appreciation* the coordination within, as well as the independent work of, the International Red Cross and Red Crescent Movement in protecting and assisting refugees and internally displaced persons, in cooperation with relevant United Nations bodies,

1. *Takes note* of the report of the Secretary-General;<sup>4</sup>
2. *Strongly deplores* ethnic and other forms of intolerance as one of the major causes of forced migratory movements, and urges States to take all necessary steps to ensure respect for human rights, especially the rights of persons belonging to minorities;
3. *Reaffirms* the need for all Governments, intergovernmental bodies and relevant international organizations to intensify their cooperation and assistance in worldwide efforts to address human rights situations that lead to, as well as the serious problems that result from, mass exoduses of refugees and displaced persons;
4. *Urges* the Secretary-General to continue to give high priority to the consolidation and strengthening of emergency preparedness and response mechanisms, including early warning activities in the humanitarian area, so that, inter alia, effective action is taken to identify all human rights abuses that contribute to mass exoduses of persons;

<sup>4</sup> A/56/334.

5. *Encourages* States that have not already done so to consider acceding to the 1951 Convention<sup>5</sup> and the 1967 Protocol<sup>5</sup> relating to the Status of Refugees and to other regional instruments concerning refugees, as applicable, and relevant international instruments of human rights and humanitarian law, and to take appropriate measures to disseminate and implement those instruments domestically to encourage compliance with provisions against arbitrary and forcible displacement and greater respect for the rights of those who flee;

6. *Emphasizes* the responsibility of all States and international organizations to cooperate with those countries affected by mass exoduses of refugees and displaced persons, in particular developing countries;

7. *Calls upon* Governments, the United Nations High Commissioner for Human Rights, the United Nations High Commissioner for Refugees and other relevant parts of the United Nations system, as well as relevant international and non-governmental organizations, to continue to respond to the assistance and protection needs of refugees and other displaced persons worldwide, including to promote durable solutions to their plight;

8. *Urges* States to uphold the civilian and humanitarian character of refugee camps and settlements, consistent with international law, inter alia, through effective measures to prevent the infiltration of armed elements, to identify and separate any such armed elements from refugee populations, to settle refugees at safe locations, where possible away from the border, and to ensure prompt and unhindered access to them by humanitarian personnel;

9. *Encourages* the special rapporteurs, special representatives and working groups of the Commission on Human Rights and the United Nations human rights treaty bodies, acting within their mandates, to seek information, where appropriate, on human rights problems that may result in mass exoduses of populations or impede their voluntary return home and, where appropriate, to include such information, together with recommendations thereon, in their reports and to bring such information to the attention of the United Nations High Commissioner for Human Rights for appropriate action in fulfilment of her mandate, in consultation with the United Nations High Commissioner for Refugees;

10. *Requests* all United Nations bodies, acting within their mandates, the specialized agencies and governmental, intergovernmental and non-governmental organizations to cooperate fully with all mechanisms of the Commission on Human Rights and, in particular, to provide them with all relevant information in their possession on the human rights situations creating or affecting refugees and displaced persons;

11. *Requests* the United Nations High Commissioner for Human Rights, in the exercise of her mandate, as set out in General Assembly resolution 48/141 of 20 December 1993, to coordinate human rights activities throughout the United Nations system and, in cooperation with the United Nations High Commissioner for Refugees, to pay particular attention to situations that cause or threaten to cause mass exoduses or displacements and to contribute to efforts to address such situations effectively and promote sustainable returns through promotion and protection measures, including human rights monitoring in respect of those who fled or have returned as part of mass exoduses, emergency preparedness and response

<sup>5</sup> United Nations, *Treaty Series*, vol. 606, No. 8791.

mechanisms, early warning and information-sharing, technical advice, expertise and cooperation in countries of origin as well as host countries;

12. *Welcomes* the efforts of the United Nations High Commissioner for Human Rights to contribute to the creation of an environment viable for return in post-conflict societies through initiatives such as the rehabilitation of the justice system, the creation of national institutions capable of defending human rights and broad-based programmes of human rights education and the strengthening of local non-governmental organizations through field presences and programmes of advisory services and technical cooperation;

13. *Requests* the Secretary-General to prepare and submit to the General Assembly at its fifty-eighth session a report on the implementation of the present resolution as it pertains to all aspects of human rights and mass exoduses, with particular emphasis on efforts by the United Nations system to enhance the protection of those who become displaced during mass exoduses and to facilitate their return and reintegration, as well as information on efforts to continue to enhance the capacity of the United Nations to avert new flows of refugees and other displaced persons and to tackle the root causes of such flows;

14. *Decides* to continue its consideration of this question at its fifty-eighth session.

*88th plenary meeting  
19 December 2001*



No. 32371

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**UNITED NATIONS  
(UNITED NATIONS HIGH  
COMMISSIONER FOR REFUGEES)  
and  
CHINA**

**Agreement on the upgrading of the UNHCR Mission in the  
People's Republic of China to UNHCR branch office in  
the People's Republic of China. Signed at Geneva on  
1 December 1995**

*Authentic texts: English and Chinese.*

*Registered ex officio on 1 December 1995.*

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**ORGANISATION DES NATIONS UNIES  
(HAUT COMMISSARIAT  
DES NATIONS UNIES POUR LES RÉFUGIÉS)  
et  
CHINE**

**Accord relatif au reclassement de la Mission du HCR en  
République populaire de Chine en délégation du HCR  
en République populaire de Chine. Signé à Genève le  
1<sup>er</sup> décembre 1995**

*Textes authentiques : anglais et chinois.*

*Enregistré d'office le 1<sup>er</sup> décembre 1995.*

AGREEMENT<sup>1</sup> BETWEEN THE GOVERNMENT OF THE PEOPLE'S  
REPUBLIC OF CHINA AND THE OFFICE OF THE UNITED  
NATIONS HIGH COMMISSIONER FOR REFUGEES ON THE  
UPGRADING OF THE UNHCR MISSION IN THE PEOPLE'S  
REPUBLIC OF CHINA TO UNHCR BRANCH OFFICE IN THE  
PEOPLE'S REPUBLIC OF CHINA

**WHEREAS** the Office of the United Nations High Commissioner for Refugees was established in accordance with the United Nations General Assembly Resolution 319(IV) of 3 December 1949,<sup>2</sup>

**WHEREAS** the Statute of the Office of the United Nations High Commissioner for Refugees, adopted through the United Nations General Assembly in its resolution 428(V) of 14 December 1950,<sup>3</sup> provides, *inter alia*, that the High Commissioner, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the statute and of seeking permanent solutions for the problem of refugees by assisting governments and, subject to the approval of the governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities,

**WHEREAS** the Office of the United Nations High Commissioner for Refugees, a subsidiary organ established by the General Assembly pursuant to Article 22 of the Charter of the United Nations, is an integral part of the United Nations which should enjoy the status, privileges and immunities as provided for in the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946,<sup>4</sup>

**WHEREAS** the Government of the People's Republic of China is a party signatory to the 1951 Convention Relating to the Status of Refugees<sup>5</sup> and its 1967 Protocol,<sup>6</sup>

**WHEREAS** the Government of the People's Republic of China and the Office of the United Nations High Commissioner for Refugees wish to establish the

<sup>1</sup> Came into force on 1 December 1995 by signature, in accordance with article XVII (1).

<sup>2</sup> United Nations, *Official Records of the General Assembly, Fourth Session (A/1251)*, p. 36.

<sup>3</sup> *Ibid.*, *Fifth Session, Supplement No. 20 (A/1775)*, p. 46.

<sup>4</sup> *Ibid.*, *Treaty Series*, vol. 1, p. 15 and vol. 90, p. 327 (corrigendum to vol. 1, p. 18).

<sup>5</sup> *Ibid.*, vol. 189, p. 137.

<sup>6</sup> *Ibid.*, vol. 606, p. 267.

**terms and conditions under which the Office of the United Nations High Commissioner for refugees shall establish a branch office to replace the present UNHCR Mission in the People's Republic of China,**

**NOW, the Government of the People's Republic of China and the Office of the United Nations High Commissioner for Refugees have entered into this Agreement in the spirit of conducting friendly cooperation.**

#### **ARTICLE I. DEFINITIONS**

**For the purpose of this Agreement, the following definitions shall apply:**

1. **"Host Country" or "Country" means the People's Republic of China,**
2. **"Government" means the Government of the People's Republic of China,**
3. **"UNHCR" means the Office of the United Nations High Commissioner for Refugees,**
4. **"High Commissioner" means the United Nations High Commissioner for Refugees or the Acting High Commissioner,**
5. **"Parties" means the Government and UNHCR,**
6. **"Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946,**
7. **"UNHCR Office" means all the Offices and premises, installations and facilities occupied or maintained by the UNHCR Branch Office in the country,**
8. **"UNHCR Representative" means the chief UNHCR official of the UNHCR Office in the country,**
9. **"UNHCR officials" means all the staff members of UNHCR employed under the Staff Regulations and Rules of the United Nations, except those who are recruited locally and paid by the hour as provided for in the General Assembly resolution 76(I),<sup>1</sup>**

<sup>1</sup> United Nations, *Official Records of the General Assembly, First Session, second part (A/64/Add.1)*, p. 139.

10. "Experts on mission" means individuals undertaking missions for UNHCR other than UNHCR officials,
11. "UNHCR personnel" means UNHCR officials and experts on mission.

#### **ARTICLE II. PURPOSE OF THIS AGREEMENT**

This Agreement provides for the basic conditions under which UNHCR shall, within its mandate, cooperate with the Government, upgrade its mission in the country to a branch office, and perform the function of international protection and humanitarian assistance in the interest of refugees in the host country.

#### **ARTICLE III. COOPERATION BETWEEN THE GOVERNMENT AND UNHCR**

1. Cooperation between the Government and UNHCR in the field of international protection of and humanitarian assistance to refugees shall be carried out on the basis of the Statute of UNHCR, other relevant decisions and resolutions adopted by United Nations, article 35 of the Convention Relating to the Status of Refugees of 1951 and article 2 of the Protocol Relating to the Status of Refugees of 1967.
2. Full respect for the state sovereignty of the People's Republic of China is the essential basic principle of all stipulations in this Agreement.
3. The UNHCR office shall maintain consultations and cooperation with the Government with respect to the preparation and review of projects for refugees.
4. For any UNHCR-funded projects to be implemented by the Government, the terms and conditions including the commitments made by the Government and the High Commissioner to the furnishing of funds, daily necessities, equipment and services or other assistance to refugees, shall be set forth in project agreements to be signed by the Government and UNHCR.
5. In consultation and cooperation with the Government, UNHCR personnel may at all times have unimpeded access to refugees and to the sites of UNHCR projects in order to monitor all phases of their implementation.

**ARTICLE IV. UNHCR OFFICE**

1. The Government welcomes the fact that UNHCR upgrades its mission in Beijing, capital of the country, to a branch office, for the purpose of providing international protection and humanitarian assistance to refugees in the host country.
2. The UNHCR Branch Office shall fulfil its functions in accordance with UNHCR's mandate, and besides, it will continue to carry out the mandate of the former UNHCR Mission, namely, to assist the Government in the settlement of the Indo-Chinese refugees in the country, and where possible, assist and promote their voluntary repatriation.
3. UNHCR may designate, with the consent of the Government, the UNHCR office in the country to serve as a regional office and the Government shall be notified in writing of the number and level of the officials assigned to it.
4. The UNHCR office will exercise functions as assigned by the High commissioner, in relation to her mandate for refugees, including the establishment of relations between UNHCR and non-governmental organizations legally registered in the country relevant to its work with the permission of the Government.
5. The UNHCR office shall establish contacts with the relevant departments of the Government, and notify the latter of relevant UNHCR policies, guidelines and procedures as well as other United Nations humanitarian actions and programmes.

**ARTICLE V. UNHCR PERSONNEL**

1. UNHCR may, with the consent of the Government, increase UNHCR officials or experts on mission assigned to the UNHCR office in the country as UNHCR deems it necessary for carrying out its functions of international protection and humanitarian assistance more effectively.
2. UNHCR may dispatch officials to visit the country for the purpose of consulting and cooperating with the corresponding officials of the Government or other parties involved in the refugee work in connection with:  
(a) the review, preparation, monitoring and evaluation of international protection and humanitarian assistance programmes; (b) the shipment,

receipt, distribution or use of the daily necessities, equipment, and other materials supplied by UNHCR; (c) seeking permanent solutions to the problem of refugees; and (d) any other matters relating to the application of this Agreement.

#### **ARTICLE VI. FACILITIES FOR IMPLEMENTATION OF UNHCR HUMANITARIAN PROGRAMMES**

1. The Government, in agreement with UNHCR, shall grant UNHCR officials and experts on mission facilities necessary for the speedy and efficient execution of UNHCR humanitarian programmes for refugees in the country.
2. The Government, in agreement with UNHCR, shall assist the UNHCR officials in finding appropriate office premises.
3. The Government shall ensure that the UNHCR office is at all times supplied with the necessary utility services, and that such services are supplied on equitable terms.
4. The Government shall take the necessary measures to ensure the security and protection of the premises of the UNHCR office and its personnel.
5. The Government shall provide facilities to UNHCR personnel recruited internationally in their efforts to find suitable housing accommodation.

#### **ARTICLE VII. PRIVILEGES AND IMMUNITIES**

1. The Government shall apply to UNHCR, its property, funds and assets, and to its officials the relevant provisions of the Convention on the Privileges and Immunities of the United Nations to which the Government became a party on 11 September 1979.<sup>1</sup>
2. Without prejudice to paragraph 1 of this Article and without contravening the law and regulations of the host country, the Government shall in particular extend to UNHCR the privileges, immunities, rights and facilities provided for in Articles VIII to XIV of this Agreement.

<sup>1</sup> United Nations, *Treaty Series*, vol. 1144, p. 302.

Vol. 1899, I-32371

**ARTICLE VIII. PROPERTIES AND FUNDS OF UNHCR OFFICE**

1. UNHCR, its properties and funds, wherever they are located and whoever holds them, shall be immune from legal process of whatever form, except in special cases for which it has expressly waived its immunity.
2. The premises of UNHCR office shall be inviolable. Its properties and funds, wherever they are located and whoever keeps them, shall be immune from search, requisition, confiscation, and any other form of interference, whether by executive, judicial or legislative action.
3. The archives of UNHCR, and all the documents belonging to or held by it, shall be inviolable.
4. For the funds, assets, income and other properties of UNHCR:
  - (a) The articles imported by UNHCR for its direct official use shall be exempt from customs duties and other taxation in accordance with the relevant regulations of the Government.
  - (b) The import and export of formal UNHCR publications shall be exempt from customs duties and other related import taxation, and shall not be prohibited or restricted.
5. Any materials imported or exported by UNHCR, by national or international bodies duly entrusted by UNHCR to act on its behalf in connection with humanitarian assistance for refugees, shall not be prohibited or restricted and shall be exempt from all customs duties and other related import taxation.
6. UNHCR shall enjoy the most favourable legal rate of exchange.

**ARTICLE IX. COMMUNICATION FACILITIES**

1. UNHCR shall enjoy, in respect of its official communications, the same favourable treatment as that has been accorded by the Government to other intergovernmental and international organizations.
2. The Government shall ensure the inviolability of the official communications and correspondence of UNHCR and shall not apply any censorship to its communications and correspondence.

3. UNHCR shall have the right to use codes and to despatch and receive correspondence by courier or in sealed bags which shall have the same privileges and immunities as diplomatic couriers and bags.

4. UNHCR shall have the right to operate radio and other communications equipment, on UN registered frequencies, and those allocated by the Government, between its offices, within and outside the country, and in particular with UNHCR Headquarters in Geneva.

#### **ARTICLE X. UNHCR OFFICIALS**

1. All UNHCR Professionals above the grade of P2, who are not citizens of the country, shall enjoy, while in the country, the following facilities, privileges and immunities:

- (a) Immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
- (b) Immunity from inspection and seizure of their official articles;
- (c) Immunity from military service or any other obligations;
- (d) Exemption from taxation in respect of the salaries and all other remunerations paid to them by UNHCR;
- (e) Processing and issuance, free of charge, of visas to or from the country, and of licenses or work permits, if required, and free movement to or within the cities and regions of the country open to foreigners, to the extent necessary for the carrying out of UNHCR international protection and humanitarian assistance programmes;
- (f) Freedom to hold or keep within the country, foreign exchange, foreign currency accounts and movable property and the right upon termination of employment with UNHCR to take out of the host country their lawful possessions with good reasons;
- (g) The same protection and repatriation facilities with respect to themselves, their spouses and their minor children in time of international crises as are accorded to diplomatic envoys;



- (h) The right to import duty-free articles and household necessities for their personal use within the quantity of direct needs, including motor vehicles in keeping with the relevant regulations of the country.

2. UNHCR administrative and technical staff members shall enjoy the privileges and immunities provided for in the above-mentioned X. 1.(h), when importing household necessities, including motor vehicles in keeping with relevant regulations of the host country within six months of their arrival.

#### ARTICLE XI. EXPERTS ON MISSION

Experts above the grade of P2, who are not citizens of the country, performing mission for UNHCR shall be accorded such facilities, privileges and immunities as are necessary for the independent exercise of their functions. In particular they shall be accorded:

1. Immunity from personal arrest or detention;
2. Immunity from legal process of words spoken or written and acts done by them in the course of the performance of their mission;
3. The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
4. The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

#### ARTICLE XII. NOTIFICATION

1. UNHCR shall notify the Government in advance or in time, of the names and positions of members of the UNHCR office in the host country and their dependents, of the names and positions of the experts on mission, and of changes in, i.e. the status of, such individuals.
2. The Government shall provide a special identity card to UNHCR officials and experts on mission and their dependents to certify their status pursuant to this Agreement.

**ARTICLE XIII. WAIVER OF IMMUNITY**

Privileges and immunities are granted to UNHCR personnel in the interests of the UNHCR and not for the personal benefit of the individuals concerned. The Secretary-General of the United Nations may waive the immunity of any of UNHCR personnel in any case where, in his opinion, the immunity would impede the course of justice and its waiver would not prejudice the interests of UNHCR.

**ARTICLE XIV. ABUSE OF PRIVILEGES AND IMMUNITIES**

UNHCR shall take measures to ensure that the privileges and immunities provided for in this Agreement not be abused, and shall conduct immediate consultations with the Government in case of abuse.

**ARTICLE XV. OBSERVANCE OF LAWS OF THE HOST COUNTRY**

UNHCR personnel enjoying privileges and immunities shall have the duty to observe the laws and regulations of the host country, and the duty not to interfere in the internal affairs of the host country. The premises, funds, properties, etc. of the UNHCR office shall not be used for purposes other than those provided by UNHCR mandate.

**ARTICLE XVI. SETTLEMENT OF DISPUTES**

Any disputes between the Government and UNHCR arising out of or relating to this Agreement shall be settled amicably by negotiation or other agreed mode of settlement. If this fails, such a dispute shall be submitted to arbitration at the request of either Party. In that case, each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairman. If within thirty days of the request for arbitration neither Party has appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. All decisions of the arbitrators shall require a vote of two of them. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

**ARTICLE XVII. GENERAL PROVISIONS**

1. This Agreement shall enter into force on the date of its signature by both Parties and shall continue to be effective until the date of termination under paragraph 4 of this Article.

2. Any other matters not covered by this Agreement shall be settled by the Parties in keeping with the relevant resolutions and decisions of the appropriate organs of the United Nations. Each Party shall give full and sympathetic consideration to any proposal advanced by the other Party under this paragraph.

3. Consultations with a view to amending this Agreement may be held at the request of the Government or UNHCR. Amendments shall be made in the form of a written agreement by the two Parties.

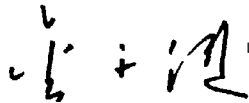
4. This Agreement shall cease to be in force six months after either of the contracting Parties gives notice in writing to the other of its decision to terminate the Agreement.

IN WITNESS THEREOF the undersigned, being duly appointed representatives of the Government and the Office of the United Nations High Commissioner for Refugees, respectively, have on behalf of the Parties signed this Agreement in the English and Chinese languages, in two copies. Both the English and Chinese texts shall be equally authentic.  
Done at Geneva this 31<sup>st</sup> day of Dec. 1995.

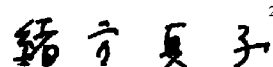
For the Government  
of the People's Republic of China:

For the Office of the United Nations  
High Commissioner for Refugees:

Signed:



Signed:



<sup>1</sup> Yong Jian Jing.  
<sup>2</sup> Sadako Ogata.

**C. Text of draft articles on responsibility of international organizations provisionally adopted so far by the Commission**

**1. Text of draft articles**

53. The text of draft articles provisionally adopted so far by the Commission is reproduced below.

**RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS**

**Article 1**

**Scope of the present draft articles**

1. The present draft articles apply to the international responsibility of an international organization for an act that is wrongful under international law.
2. The present draft articles also apply to the international responsibility of a State for the internationally wrongful act of an international organization.

**Article 2**

**Use of terms**

For the purposes of the present draft articles, the term “international organization” refers to an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities.

**Article 3**

**General principles**

1. Every internationally wrongful act of an international organization entails the international responsibility of the international organization.
2. There is an internationally wrongful act of an international organization when conduct consisting of an action or omission:
  - (a) Is attributable to the international organization under international law; and
  - (b) Constitutes a breach of an international obligation of that international organization.

(14) It is obvious that only with regard to States that are members of an international organization does the question of the international responsibility of States as members arise. Only this question, as well as the question of the international responsibility of international organizations as members of another organization will be considered in the draft articles. The presence of other entities as members of an international organization will be examined only insofar as it may affect the international responsibility of States and international organizations.

### **Article 3**

#### **General principles**

1. Every internationally wrongful act of an international organization entails the international responsibility of the international organization.
2. There is an internationally wrongful act of an international organization when conduct consisting of an action or omission:
  - (a) Is attributable to the international organization under international law; and
  - (b) Constitutes a breach of an international obligation of that international organization.

#### **Commentary**

- (1) Article 3 has an introductory character. It states general principles that apply to the most frequent cases occurring within the scope of the draft articles as defined in articles 1 and 2: those in which an international organization is internationally responsible for its own internationally wrongful acts. The statement of general principles in article 3 is without prejudice to the existence of cases in which an organization's international responsibility may be established for conduct of a State or of another organization. Moreover, the general principles clearly do not apply to the issues of State responsibility referred to in article 1, paragraph 2.
- (2) The general principles, as stated in article 3, are more generally applicable to States according to articles 1 and 2 of the articles on the responsibility of States for internationally

wrongful acts.<sup>56</sup> There seems to be little reason for stating these principles in another manner. It is noteworthy that in a report on peacekeeping operations the United Nations Secretary-General referred to:

“the principle of State responsibility - widely accepted to be applicable to international organizations - that damage caused in breach of an international obligation and which is attributable to the State (or to the Organization) entails the international responsibility of the State (or of the Organization) [...]”.<sup>57</sup>

(3) The order and wording of the two paragraphs in article 3 are identical to those appearing in articles 1 and 2 of the articles on the responsibility of States for internationally wrongful acts, but for the replacement of the word “State” with “international organization”. Since the two principles are closely interrelated and the first one states a consequence of the second one, it seems preferable to include them in a single article.

(4) As in the case of States, the attribution of conduct to an international organization is one of the two essential elements for an internationally wrongful act to occur. The term “conduct” is intended to cover both acts and omissions on the part of the international organization. The other essential element is that conduct constitutes the breach of an obligation under international law. The obligation may result either from a treaty binding the international organization or from any other source of international law applicable to the organization. Again as in the case of States, damage does not appear to be an element necessary for international responsibility of an international organization to arise.

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<sup>56</sup> Supra, note 26, pp. 63 and 68. The classical analysis that led the Commission to outline these articles is contained in Roberto Ago’s Third Report on State Responsibility, *Yearbook ... 1971*, vol. II, pp. 214-223, paras. 49-75.

<sup>57</sup> Document A/51/389, p. 4, para. 6.

(5) When an international organization commits an internationally wrongful act, its international responsibility is entailed. One may find a statement of this principle in the advisory opinion of the International Court of Justice on *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, in which the Court said:

“[...] the Court wishes to point out that the question of immunity from legal process is distinct from the issue of compensation for any damages incurred as a result of acts performed by the United Nations or by its agents acting in their official capacity.

“The United Nations may be required to bear responsibility for the damage arising from such acts.”<sup>58</sup>

(6) The meaning of international responsibility is not defined in article 3, nor is it in the corresponding provisions of the articles on responsibility of States for internationally wrongful acts. There the consequences of an internationally wrongful act only result from Part Two of the text, which concerns the “content of the international responsibility of a State”.<sup>59</sup> Also in the present draft articles the content of international responsibility will result from further articles.

(7) Neither for States nor for international organizations is the legal relationship arising out of an internationally wrongful act necessarily bilateral. The breach of the obligation may well affect more than one subject of international law or the international community as a whole. Thus in appropriate circumstances more than one subject may invoke, as an injured subject or otherwise, the international responsibility of an international organization.

(8) The fact that an international organization is responsible for an internationally wrongful act does not exclude the existence of parallel responsibility of other subjects of international law in the same set of circumstances. For instance, an international organization may have cooperated with a State in the breach of an obligation imposed on both.

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<sup>58</sup> *I.C.J. Reports*, 1999, pp. 88-89, para. 66.

<sup>59</sup> *Supra*, note 26, p. 211 ff.

UNITED  
NATIONS

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**Economic and Social  
Council**

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COMMISSION ON HUMAN RIGHTS  
Sixtieth session  
Agenda item 9

**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL  
FREEDOMS IN ANY PART OF THE WORLD**

**Andorra\*, Australia, Austria, Belgium\*, Bulgaria\*, Canada\*, Cyprus\*,  
Czech Republic\*, Denmark\*, Estonia\*, Finland\*, France, Germany,  
Greece\*, Hungary, Iceland\*, Ireland, Italy, Japan, Latvia\*, Lithuania\*,  
Luxembourg\*, Malta\*, Monaco\*, Netherlands, Nicaragua\*, New Zealand\*,  
Norway\*, Poland\*, Portugal\*, Romania\*, Slovakia\*, Slovenia\*, Spain\*,  
Sweden, Switzerland\*, United Kingdom of Great Britain and  
Northern Ireland, United States of America: draft resolution**

**2004/... Situation of human rights in the Democratic People's Republic of Korea**

*The Commission on Human Rights,*

*Guided* by the Charter of the United Nations, the Universal Declaration of Human Rights,  
the International Covenants on Human Rights and other human rights instruments,

*Reaffirming* that all States Members of the United Nations have the obligation to promote  
and protect human rights and fundamental freedoms and to implement the obligations they have  
assumed under international instruments,

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\* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional  
commissions of the Economic and Social Council.



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*Mindful* that the Democratic People's Republic of Korea is a party to the International Covenant on Civil and Political Rights and to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women,

*Recalling* its resolution 2003/10 of 16 April 2003,

*Noting* the submission by the Democratic People's Republic of Korea of its second periodic report concerning the implementation of the International Covenant on Economic, Social and Cultural Rights (E/1990/6/Add.35), and its second periodic report on the implementation of the Convention on the Rights of the Child (CRC/C/65/Add.24) as a sign of more active engagement in international cooperative efforts in the field of human rights, and encouraging the Democratic People's Republic of Korea to continue to submit its reports in a timely manner,

*Taking note* of the concluding observations of the Committee on Economic, Social and Cultural Rights on the reports submitted by the Democratic People's Republic of Korea,

*Expressing its deep concern* at the precarious humanitarian situation in the country, in particular the prevalence of infant malnutrition which, despite recent progress, still affects a significant percentage of children and their physical and mental development,

*Reaffirming* that it is the responsibility of the Government of the Democratic People's Republic of Korea to ensure the full enjoyment of all human rights and fundamental freedoms of its entire population,

*Underlining* the importance of the effective continuation of the process of rapprochement between the two Koreas and noting progress in this respect,

*Welcoming* the fact that the Democratic People's Republic of Korea has held consultations with some countries on human rights issues,

*Desiring* to promote a constructive approach leading to concrete progress in the field of human rights,

1. *Expresses its deep concern* about continuing reports of systemic, widespread and grave violations of human rights in the Democratic People's Republic of Korea, including:

(a) Torture and other cruel, inhuman or degrading treatment or punishment, public executions, extrajudicial and arbitrary detention, imposition of the death penalty for political reasons, the existence of a large number of prison camps and the extensive use of forced labour, and lack of respect for the rights of persons deprived of their liberty;

(b) Sanctions on citizens of the Democratic People's Republic of Korea who have been repatriated from abroad, such as treating their departure as treason leading to punishments of internment, torture, inhuman or degrading treatment or the death penalty, and infanticide in prison and labour camps;

(c) All-pervasive and severe restrictions on the freedoms of thought, conscience, religion, opinion and expression, peaceful assembly and association and on access of everyone to information, and limitations imposed on every person who wishes to move freely within the country and travel abroad;

(d) Continued violation of the human rights and fundamental freedoms of women, in particular the trafficking of women for prostitution or forced marriage, ethnically motivated forced abortions and infanticide, including by labour-inducing injection, or natural delivery, by repatriated mothers, including in police detention centres and labour-training camps;

2. *Notes with regret* that the authorities of the Democratic People's Republic of Korea have not created the necessary conditions to permit the international community, including the United Nations system, to examine these reports in an independent manner and calls upon the Government to address these reports and concerns in an open and constructive manner, including:

(a) By providing all pertinent information concerning the above-mentioned issues and removing restrictions on access to the country by the international community;

(b) By ratifying human rights instruments to which the Democratic People's Republic of Korea is not yet a party, in particular the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the

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Elimination of All Forms of Racial Discrimination, and by implementing its obligations under the human rights instruments to which the Democratic People's Republic of Korea is a party, namely the International Covenant on Economic, Social and Cultural Rights, in particular concerning the right of everyone to be free from hunger, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, ensuring that all necessary measures are undertaken to this end;

(c) By adhering to internationally recognized labour standards and considering as a matter of priority joining the International Labour Organization and becoming party to the Convention concerning Forced or Compulsory Labour, 1930 (Convention No. 29) and the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (Convention No. 182) of the International Labour Organization;

(d) By implementing the recommendations of the Committee on the Rights of the Child, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights;

(e) By refraining from sanctioning citizens of the Democratic People's Republic of Korea who have moved to other countries and refraining from treating their departure as treason leading to punishments of internment, inhuman or degrading treatment or the death penalty, and put an immediate end to maltreatment and infanticide in prison and labour camps;

(f) By cooperating with the United Nations system in the field of human rights and cooperating without restriction with the thematic procedures of the Commission on Human Rights relevant to the situation of the Democratic People's Republic of Korea, in particular with the Special Rapporteur on the right to food, the Special Rapporteur on the question of torture, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the right to freedom of opinion and expression, the Special Rapporteur on violence against women, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances, as well as with international human rights organizations, including human rights defenders;

(g) By developing a constructive dialogue with the United Nations High Commissioner for Human Rights and her Office;

(h) By resolving, clearly and transparently and urgently, all the unresolved questions relating to the abduction of foreigners;

(i) By cooperating with its neighbouring Governments to bring an end to the trafficking of women;

3. *Urges* the authorities of the Democratic People's Republic of Korea to ensure that humanitarian organizations, including non-governmental organizations and United Nations agencies, in particular the World Food Programme, have full, free, safe and unimpeded access to all parts of the Democratic People's Republic of Korea in order for them to ensure that humanitarian assistance is delivered impartially on the basis of need, in accordance with humanitarian principles;

4. *Requests* the international community to continue to urge the Government of the Democratic People's Republic of Korea to ensure that humanitarian assistance, especially food aid, destined for the people of the Democratic People's Republic of Korea is distributed in accordance with humanitarian principles and that representatives of international humanitarian actors are allowed to travel throughout the country to monitor this distribution, and to ensure the respect for the fundamental principles of asylum;

5. *Requests* the Chairperson of the Commission, after consultations within the Bureau, to appoint an individual of recognized international standing and expertise in human rights as Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea;

6. *Requests* the Special Rapporteur to establish direct contact with the Government and with the people of the Democratic People's Republic of Korea, including through visits to the country, and to investigate and report on the situation of human rights in the Democratic People's Republic of Korea and on the Government's compliance with its obligations under international human rights instruments;

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7. *Also requests* the Special Rapporteur, in carrying out this mandate, to seek and receive credible and reliable information, including through visits to the country, from all relevant actors, including Governments, non-governmental organizations and any other parties who have knowledge of these matters;

8. *Calls upon* the Government of the Democratic People's Republic of Korea to extend its full and unreserved cooperation to, and to assist the Special Rapporteur in the discharge of his/her mandate and, to this end, to take all necessary steps to ensure that the Special Rapporteur has free and unlimited access to any person in the Democratic People's Republic of Korea whom he/she might wish to meet;

9. *Requests* the Secretary-General to give the Special Rapporteur all necessary assistance in the discharge of his/her mandate;

10. *Requests* the Special Rapporteur to report his/her findings and recommendations to the General Assembly at its fifty-ninth session and to the Commission on Human Rights at its sixty-first session;

11. *Requests* all relevant special rapporteurs and special representatives to examine alleged human rights violations in the Democratic People's Republic of Korea and to report thereon to the Commission at its sixty-first session, and requests the Secretary-General to give all necessary assistance to enable the special rapporteurs and special representatives to discharge their mandates fully, including through visits to the country;

12. *Requests* the United Nations High Commissioner for Human Rights to engage in a comprehensive dialogue with the authorities of the Democratic People's Republic of Korea with a view to establishing technical cooperation programmes in the field of human rights and to submit her findings and recommendations to the Commission at its sixty-first session;

13. *Decides* to continue its consideration of this question at its sixty-first session under the same agenda item as a matter of high priority;

14. *Recommends* the following draft decision to the Economic and Social Council for adoption:

“The Economic and Social Council, taking note of Commission on Human Rights resolution 2004/... of ... April 2004, approves the request to the Chairperson of the Commission to appoint, after consultation with the Bureau, an individual of recognized international standing and expertise in human rights as Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea to establish direct contact with the Government and with the people of the Democratic People’s Republic, including through visits to the country, and to investigate and report on the situation of human rights in the Democratic People’s Republic of Korea, including compliance with its obligations under international human rights instruments and to seek and receive credible and reliable information from all relevant actors. The Council further approves the request to the Secretary-General to give the Special Rapporteur all necessary assistance in the discharge of his/her mandate.”

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Mr. LEACH. Mr. Peters?

**STATEMENT OF TIMOTHY A. PETERS, FOUNDER AND  
DIRECTOR, HELPING HANDS/KOREA**

Mr. PETERS. Thank you, Mr. Chairman, for the invitation and opportunity to testify before the Subcommittee today.

I would like to take this opportunity, first of all, to express my admiration and appreciation for the efforts that you and your colleagues have exerted in drafting and introducing the historic North Korean Human Rights Act. This bill has been the source of greatly needed encouragement to the humanitarian aid workers in the field of northeast Asia and the Korean Peninsula. And this legislation will also be a brilliant beacon of hope for the North Korean people.

It was almost 2 years ago to the day that I was first asked by Chairman Hyde to testify on the plight of the North Korean refugees and the humanitarian aid workers that help them.

At that time, I told the story of my friend and co-worker Pastor Chun Ki-won who had been imprisoned in the Chinese province of Inner Mongolia as a result of his heroic efforts to help North Korean refugees to cross the China-Mongolian border to freedom. I would like to note with deep appreciation that you and your colleagues on this Subcommittee as well as the Full Committee of International Relations; indeed the overwhelming majority of the House of Representatives responded quickly with a boldly worded congressional resolution, which was instrumental in persuading the Chinese government to release Pastor Chun only 3 months later. I am happy to say Pastor Chun joined us earlier for the North Korean Freedom Day Rally, and I consider that a significant victory.

I wish I could report that Pastor Chun's release was the watershed event that marked a new and enlightened policy by the Chinese government toward aid workers assisting North Korean refugees in China. However, as we are all too well aware, this has not been the case. With the recent exception of the release of the New York Times photo-journalist Seok Jae-hyun whose detention in China was absurdly inappropriate to begin with, China continues to flout international law and world opinion by continuing to imprison the selfless and sacrificial souls who reach out with a helping hand to the vulnerable North Koreans who wander vulnerable in China.

If ever a group of people fit the description of being between a rock and a hard place, truly it is the North Korean refugees and the aid workers who attempt to help them in China.

Mr. Chairman, I find myself once again in the position of coming to this Subcommittee, in effect with my hat in my hand to ask your help. Within the past 24 months, a growing number of our co-workers in the humanitarian aid community have been detained by Chinese police and continue to languish in Chinese prisons. As I did 2 years ago, I would like to list them by name and when possible, with the aid of the staff, to show their pictures in an effort to put a human face on this tragic set of circumstances. I will begin with those who have been detained the longest.

To your immediate left, Reverend Choi Bong-il was seized on April 12, 2002, in the city of Yanji. He is 54 years old and is currently serving a 9-year sentence for helping North Korean refugees.

Next, Kim Hee-Tae, a South Korean university student, was seized in front of the main railway station of Changchun, China, in August 2002 as he was helping a group of North Korean refugees.

We now believe there is a significant possibility that one of the group of North Koreans was a North Korean agent who turned the group and Kim over to the Chinese police. He is serving a 7-year sentence.

Mr. Oh Young-phil, a South Korean video journalist, has been detained two separate times, released once and now remains in prison a second time. He sought to bring the story of the refugees to the world through his video recordings.

Not pictured are Mr. Choi Yong-hoon, a South Korean Christian, husband and father, seized in January 2003 in the port city of Yantai, China, while attempting to help 60 North Koreans flee China to South Korea by two fishing boats, as a result of the efforts of the coalition of NGOs in South Korea.

Most recently, Takayuki Noguchi, a Japanese national and member of the NGO Life Funds to Help North Korean Refugees, was seized in Guangxi, China, on December 13, 2003, with two Japanese-born North Korean refugees. It is our understanding that Noguchi was offered a release after pressure by the Japanese government on China. However, he refused on principle of not being released without the concurrent release of the two Japanese-born refugees.

I realize that my time is limited. Recently, I was approached by the World Economic Forum to submit a paper regarding what I consider the most serious issues with the North Korean refugee scenario at present, the worst case scenario and how to get, hopefully, to the best case scenario. Among the worst-case scenarios, I indicated that, hopefully it would not be the case, but that China would in fact become worse in its treatment of North Korean refugees.

I regret to report that, on April 2nd, only slightly more than 3 weeks ago, a new threshold was crossed in which a North Korean refugee was shot at the border, at the Mongolia and China border. Our reports are that he was shot in the back and, possibly with other refugees, a group of 24, was attempting to cross over into Mongolia. Quite possibly others were wounded. One was shot dead.

I am sad to say this is a very troubling new threshold. I would simply ask the Committee's concern and further action in accordance with what you have so effectively done in the past. Thank you very much.

[The prepared statement of Mr. Peters follows:]

PREPARED STATEMENT OF TIMOTHY A. PETERS, FOUNDER AND DIRECTOR, HELPING HANDS/KOREA

I thank the Committee for its invitation to share my views on the plight of North Korean refugees in China. Helping Hands Korea has endeavored for the past six years to intervene for the protection of North Koreans in crisis after they have crossed the Tumen River to China. It is my earnest hope that the following observations, analysis and recommendations might constitute a small contribution to the solutions that are needed to bring the North Korean refugees out of their calamitously vulnerable existence in China.



## KOREAN PATHETIQUE: A SYMPHONY OF REFUGEE TEARS UNHEEDED

*An estimated 300,000 North Korean refugees live in fear and hiding throughout China. Driven by famine and an oppressive social system, a growing stream of North Koreans drained from every current of North Korean society risk their lives to furtively cross the watery borders of the Tumen and Yalu Rivers to China. For the fortunate few who evade capture by border patrols on the adjoining riverbanks, the mirage of China as a safe haven quickly fades in the glare of enforcement policies of a security apparatus perpetually on high-alert for any uncontrolled population movements on its borders, particularly from impoverished North Korea. At best, the well-tilled and prosperous Yenbian region of Northeast China, home to over two million ethnic Korean-Chinese citizens, provides only a brief respite from the hunger and repression that haunt everyday life in Kim Jong-il's 'workers' paradise.' With their clothing still wet from the river crossing, refugees are typically dismayed to discover that China is far less a 'light at the end of a dark tunnel' than a 'no-man's land' fraught with sudden new perils in the form of betrayal, capture, and rampant human trafficking. The dangers do not end there. Refugees dread interception by their nation's own secret police who roam China freely, tracking down refugees—either to do away with them on the spot or drag them back to prisons in North Korea. Despite the extraordinary odds stacked against them, North Korean refugees in astonishing numbers continue to accept the risks of their fugitive existence in China in preference to the dismal conditions in North Korea. This paper will first explore conditions under which refugees currently live. It will then focus on the best-case and worst-case scenarios to address the current situation. The concluding section will recommend a specific set of international and regional initiatives for implementation, encompassing government, international institutions, the business community and non-governmental organizations—practical measures that are specifically focused on bringing this heart-rending symphony of tears to a conclusion that is woefully overdue.*

## THREE PAINFUL SNAPSHOTS OF THE PRESENT

*The Untimely Death of Yoo Chul Min*

A 10 year-old North Korean refugee boy hiding in China swiftly assessed the dilemma before him, settling on a sobering course of action that was light years from the preoccupations of a normal elementary school child—a desperate life-and-death gamble to cross the arid Sino-Mongolian border under the cover of darkness. For a North Korean, reaching Mongolia safely means putting to rest the constant fear of being arrested in China and the specter of repatriation to North Korea.

His name was Yoo Chul Min and his fateful decision tailspinned into a heart-rending tragedy. Joining five other North Korean fugitives in China, also desperate for even a fleeting glimpse of freedom, Chul Min and his companions lost their bearings for 26 hours in the desert-like steppe of the Mongolian frontier. Chul Min's chubby pink cheeks, the result of months of an improved diet in China, masked an actual weakened condition of his vital organs brought on by years of malnutrition in North Korea. Chronic food shortages in his home province of North Hamkyoung since 1995 had robbed Chul Min of the normal reserve of endurance and resistance to the elements one would expect of a healthy preteen boy. In the end, Chul Min's heroic young life was pitifully snuffed out by the immediate causes of exhaustion and exposure. Upon greater scrutiny, he was yet another North Korean victim of the UN term "slow-motion famine." His lifeless body was quickly thrown across the shoulder of an adult refugee and carried across the Sino-Mongolian border once the remaining members of the fugitive refugee team finally regained their bearings.

This young boy's story is of personal interest to me because our paths had crossed during my NGO work in China to shelter North Korean refugees. Our encounter had been brief, as are most meetings of activists with refugees in China. At the time, he was under the protection of courageous Korean Christian aid workers in the capital of the Yenbian region. Immediately evident was the fact that I was the first Caucasian Chul Min had ever met. From his expression, perhaps he saw in me a close resemblance to pictures and drawings of those hated devils from America that appeared in his hometown schoolbooks and propaganda posters. Therefore, our conversation by necessity had to be an indirect one. I chose a children's book from the bookshelf and motioned for us to read it together. Chul Min warily agreed and was soon engrossed, reading aloud the Korean text in this illustrated children's Bible. Savoring this tiny victory, I sat and listened. I fervently hoped that somehow this tiny episode would be the first plank in a bridge of understanding between us. Perhaps, I mused, Chul Min and my grandson might someday be friends in South Korea. It never dawned on me that I would never see him alive again.

In the days that followed the jarring news of Chul Min's death, the magnitude of the tragedy grew. Government officials in Mongolia refused our entreaties to wait for Chul Min's father, himself a recent arrival to the South from China, to travel to Mongolia to identify his son's body and to be present at his burial. In a heart-rending fate that seems uniquely North Korean, endless weeks passed before Chul Min's father was able to successfully navigate the maze of South Korean and Mongolian bureaucracies and gain permission to travel to Mongolia. At last, he was led to an unremarkable plot in the vast expanse of sand, distinguished only by a small wooden cross. He was left alone to his grief and bewilderment beside his son's wind-swept grave.

#### *Of Human Bondage*

Yoo Chul Min's story is poignant testament that even the tender age of elementary schoolchildren constitutes no barrier to tragedies that befall North Korean refugees. Children, teens, adults and even desperate grandparents in North Korea cast their own personal safety to the wind and plunge into the icy waters of the Tumen and Yalu Rivers. They do so to flee famine and tyranny in a once-beloved homeland that has been transformed into a Dante's inferno of fear. In the bizarre parallel universe that has become reality for North Korean refugees in China, Yoo Chul Min would most likely be perceived as lucky to have traversed the 1,000 miles across China to the Mongolian border without capture. All too many of his countrymen encounter treacherous pitfalls only a few feet into Chinese territory. North Korean women who venture into China know this bitter truth better than anyone else. From 70 to 90% of them fall into the hands of human traffickers of the sex trade.

Although a victim of such depravity, Lee Mi-ja considers herself providentially protected to have survived to tell the following story. Lee Mi-ja's father died when she was still very young, leaving her mother to grapple alone with the hardships of a famine-racked North Korea. Unending work, privation and shrinking government distributions combined to take a fatal toll. Three years ago, Mi-ja's mother, a victim of utter fatigue and despair, surrendered in her daily life-and-death battle for survival in the hardscrabble economy of Hamkyoungpukto, "the Siberia of North Korea." In her 20's, Mi-ja suddenly found herself unshielded from the economic facts of provincial life in the wake of eight years of man-made famine. A middle-aged woman from a nearby town, aware of Mi-ja's condition, approached her with the mien of an aunt-like *ajumma* so pervasive in Korean society. The woman spoke directly to Mi-ja's fear and uncertainty. She confided in whispered tones that her relatives lived in China. Furthermore, she had decided to take pity on Mi-ja's family tragedy expressing a willingness to accompany her personally to China and arrange for Mi-ja to live with relatives described as prosperous. The grieving young woman accepted readily, never suspecting anything but goodwill from her elder.

The harrowing river crossing of the Tumen River went undetected by both North Korean and Chinese border guards. However, Mi-ja's elation was short-lived. In a matter of only a few hours, she watched with disbelief as a coarse Chinese farmer stuffed a wad of Chinese bills into the *ajumma's* fist and glared at the young woman as if he'd struck a bargain for a fattened pig. Mi-ja's heart sank yet again upon discovering she would not even attain the dubious status of a 'mail order bride.' Instead she was relegated to a 'concubine' for a violent married man, who would burst into a rage and rain blows on her face and arms at the slightest sign of protest to his advances, leaving her face bleeding and swollen. To endure such dehumanizing treatment would scar the life of even strong individuals. However, Mi-ja is quick to point out that she counts herself fortunate. She escaped her sexual servitude in less than a year. She explains ruefully that many North Korean girls, as young as 15 and 16, have been bought and sold in China up to four times.

#### *Going Home . . . to Die*

*The Commission to Help North Korean Refugees (CNKR)* reported in December of 2003 that over 850 North Korean refugees were being held after capture by Chinese security forces in five separate Chinese detention centers in the Yenbian region. Well-informed sources also reported that the refugees were being repatriated from the five camps to North Korea at a rate of roughly 100 per week (50-100 more North Koreans are reportedly repatriated from Dandong, China to Sinuiju, North Korea at similar intervals).

Why does the prospect of repatriation incite terror within North Korean refugees, to such a degree that many testify to carrying a small cylinder of poison as a contingency for suicide in the event of capture by Chinese security patrols or North Korean secret police operating in China? For those refugees who convert to the Christian faith during their fugitive life in China, forced repatriation to their own home country constitutes a particularly grim fate. Such was the case of a family of four

refugees whose faith flourished for over a year in the care of an undercover missionary in China. In May of 2002 the family was discovered and detained by Chinese police; shortly thereafter they were sent back to the North Korean border town of Namyang. The repatriated family members' attempt to keep some portions of their religious reading hidden in their clothing was discovered by investigators from the North Korean State Security Agency. Countless refugees have testified that the very first question asked repatriated refugees by interrogators is, "Have you had any contact with Christians in China?" or "Do you believe in Jesus?" Although many newly converted refugees choose discretion as the better part of valor, this family was firm and forthright in their profession of faith. Following their bold declaration to authorities, a number of eyewitnesses testified that the four were led to so-called "Hepatitis Street," a small courtyard adjacent to the liver ward of a hospital in Namyang City. As a five-soldier firing squad was hurriedly assembled, the residents of the neighborhood were summoned to observe the execution. Gunshots rang out and all four fell with mortal wounds to the head. The message to the stunned cluster of neighbors was unmistakably clear: anyone who attempts to exercise a religious belief other than the worship of the Dear Leader, Kim Jong-il, would meet the same fate.

#### BEST CASE SCENARIOS: SEEKING A PINPOINT OF LIGHT AT THE TUNNEL'S END

An assessment of recent refugee testimonies as well as political developments in Northeast Asia provide precious little room for optimism that a large-scale positive resolution of this depressing human tragedy can be reached any time soon. Granted, heroic efforts of human rights activists to rescue individual refugees from their plight in China are beacons of hope on an individual basis. But the occasional refugee who flees to safety inside an embassy compound in Beijing constitutes a rare grace note in an otherwise depressing national dirge. It is all too clear that the Chinese government is unimpressed by the passion for freedom expressed by both North Korean refugees and the aid workers who voluntarily help them. Beijing has taken an increasingly hard line in dealing with such activists in the past two years. At the time of this writing, at least five humanitarian aid workers languish in Chinese prisons for the "crime" of assisting North Korean refugees, serving prison sentences from two to seven years. (The release on March 19, 2004 of South Korean *New York Times* photojournalist, Seok Jae-hyun, following 14 months of strident international protest, only underscores the difficulty.) Less than one week after Seok's release, over 100 North Korean refugees detained in the Tumen and Rongjing Detention Camps of Northeast China launched a desperate and unprecedented hunger strike to protest the Chinese-North Korean treaty of forced repatriation. On April 2nd, 2004 a new and ominous threshold was crossed: a refugee was shot dead by a Chinese border guard in his desperate to cross the Mongolian frontier, a chilling echo of the Chul Min's fate.

Such troubling events notwithstanding, it is imperative to explore conceivable improvements, no matter how remote they may seem. It is necessary to remind ourselves that channels do exist within the governments of both China and North Korea to ease the plight of North Korean refugees, if only such mechanisms would be utilized.

Possible, though not probable, scenarios can be summed up as follows:

1. *China's leaders could come to the realization that continued flouting of its international treaty obligations with the United Nations in general, and the U.N. High Commissioner for Refugees (UNHCR) in particular, stands to seriously jeopardize China's quest for greater prominence on the world stage.*

If the official statements of its senior officials are any indication, one might conclude that China actually takes such obligations seriously. As recently as 2001, during China's 50th anniversary celebration of adding its signature to the *1951 Convention Relating to the Status of Refugees*, China's Vice Minister Wang Guangya waxed eloquent in describing this landmark instrument of international law as the ". . . Magna Carta of International Refugee Law . . . the Convention is a candle-light of hope in the dark to the helpless refugees . . . (and) serves as a guide to action to people who are engaged in humanitarian work of protecting and assisting refugees."

Such eloquence, unfortunately, is impossible to square with actual Chinese domestic policy. Despite ample evidence provided by hundreds of North Korean refugees themselves (as well as exhaustive reporting by such organizations as Human Rights Watch, Amnesty International, and the U.S. Committee for Human Rights in North Korea) of their "well founded fear of persecution" if returned to their home country, tens of thousands of North Korean defectors have been systematically repatriated to North Korea by the government of China. The fates of the repatriated are grim

indeed, ranging from several months of detention, to torture, even to summary execution.

If China were to allow UNHCR staff to visit the Sino-North Korean border area freely for the purpose of interviewing North Korean defectors, a proper determination could be made as to which defectors are *bona fide* refugees. In so doing, China would accomplish two enormously strategic victories:

- a) China's prestige within the international community *vis a vis* human rights would take a quantum leap forward. The stigma of heavy-handedness would be lifted . . . and not a minute too soon, with the 2008 Olympics just on the horizon.
  - b) An objective determination of which North Korean defectors are authentic refugees would be made based on international law (not Chinese national law, as is the case presently). Refugee camps could conceivably be set up in the Northeast China area to accommodate actual North Korean refugees. Once in place, Chinese anxieties concerning the financial burdens from the inflow of North Koreans across the border would prove essentially unfounded. The UN is mandated to underwrite the costs of such a camp or camps, *e.g.*, refugee camps in former Yugoslavia and Thailand (in the case of Cambodian refugees).
2. *In the event the Chinese leadership fails to see the wisdom of embracing international human rights standards by allowing the UNHCR to carry out its mandate, the network of humanitarian aid workers would be well-advised to upgrade their operations, improve their internal security standards, find synergies in their separate activities, avoid duplication of effort, and seek new allies in the diplomatic community to protect as many refugees as possible.*

Serious consideration should be given to independently setting up refugee camps in such places as Far East Russia and/or Mongolia. The governor of Russia's Far East Region raised eyebrows in December of 2003 by openly embracing the idea of resettling North Korean refugees in his province. One should not be rash in imputing such a recommendation to sheer humanitarianism. It is a well-known demographic fact that this province is steadily losing its population. Such resettlement of North Korean refugees would undoubtedly help the district's economy. Even so, any constructive measure of protection and assurance of safety for refugees would be a vast improvement over their current plight in China. Regional historical realities remain, however. It is far from clear that Moscow would jeopardize its leverage with Pyongyang by going along with such an open-door policy in its Far East Region. Moreover, without a clear acceptance by Russian authorities of North Korean refugee status, they would remain in legal limbo.

3. *North Korean leaders themselves could stun the international community by seeing the eminently practical advantages of finally reading the human rights 'handwriting on the wall.' Kim Jong il may be forced, by virtue of a shrinking number of policy choices, to allow longstanding international human rights concerns to be included in future six-party and other multilateral negotiations.*
4. *Indeed, if the current American administration is re-elected in November of 2004, the leadership in North Korea will almost certainly be faced with an unrelenting emphasis on human rights concerns as an integral part of any multilateral negotiations with the U.S., perhaps not unlike the full-court press on similar issues that the former Soviet leaders confronted in the forging of the Helsinki Accords. Any State Department negotiating team should seriously consider the human rights issue as its trump card, instead of the WMD issue. (Lesson review: Iraq)*
5. *In the current leadership vacuum in the South Korean government regarding the North Korean refugee crisis, (for the second year running South Korea, in April of 2004, bewildered the world by remaining deafeningly silent on a U.N. resolution condemning North Korean human rights conditions), a golden opportunity exists for the South Korean as well as international, business communities to step into the gap and use economic means to bring some measure of a solution to the North Korean refugee crisis.*

#### WORST CASE SCENARIOS: SLIDING YET DEEPER INTO DANTE'S INFERNO

One shudders to contemplate a scenario wherein conditions for North Korean refugees in China would take on even harsher dimensions. Some argue that conditions couldn't deteriorate beyond their current deplorable state. Unsettling facts argue otherwise.

1. *China could follow its worst instincts and stiffen its policy and penalties vis a vis the refugees and aid workers who help them.*

Recent refugee reports from China in the first three months of 2004 indicate a troubling trend: food shortages are again approaching, or even surpassing, the extreme hardships widely reported in 1996 and 1997. Severe shortages that were commonly reported in North and South Hamkyoung have now spread to Hwanghae and Kangwan Provinces. China clearly indicated its grave concern in the autumn of 2003 by ordering a significant troop movement of over 150,000 PLA army regulars from a base near Shenyang to areas closer to the North Korean border. Despite a conspicuous absence of public explanation for the troop movement, anyone familiar with the refugee crisis could easily read the message in the marching orders: Beijing would countenance no disorder at its borders, the matter of a massive humanitarian crisis in North Korea appearing to be quite beside the point. By continuing to stubbornly adhere to its longstanding mutual repatriation treaty with North Korea, while systematically barring UNHCR staff from interviewing those who cross the border, China would intensify the suffering of uncounted desperate North Koreans who cross the border, not to mention rendering irreparable damage to its own image in the international community.

2. *By allowing an estimated three million people to starve from 1996 to the present as it simultaneously poured its national treasure into maintaining the fifth largest army in the world, the leadership in Pyongyang has brazenly made its 'army first' priorities crystal-clear to the region and the world.*

As the net tightens on Pyongyang's illicit arms and narcotics sales worldwide, a large share of its operating income will be in jeopardy. There is every reason to believe that the 22 million North Koreans who have somehow managed to survive so far will be the very ones to further tighten their belts if and when missile and heroin sales decline.

3. *Based on its conduct and responses in China to the plight of North Korean refugees, the UNHCR fits the oft-cited caricature of United Nations agencies as impotent and ineffective.*

Cowed by Beijing's prohibitions of its staff to visit the China-North Korean border area to interview North Koreans who cross the border, the single instance in which the UNHCR found itself thrust into the international spotlight was in June 2001, when a family of refugees actually stormed the gates of the UNHCR compound in Beijing in a desperate bid for protection. The South Korean volunteer who translated for the refugee family and the UNHCR staff later declared that the refugee protection agency treated the Jang Gil Su family as "unwanted pests." When given the perfect opportunity on the world stage to reassert its mandate by setting an irreversible precedent by declaring the North Koreans eligible for refugee status, the UNHCR instead did Beijing's bidding, danced the diplomatic two-step and shuffled the family off to the Philippines, then to South Korea, with the limp-wristed explanation that they could get better medical care there.

If the UNHCR office in China persists in shunning its only true international mandate, to protect refugees, and prefers to dance through its ceremonial role with the Chinese, we can expect only amplified North Korean refugee suffering in China.

4. *If the UN's World Food Program (WFP) extends its current method of delivering food aid despite North Korea's continued unacceptable restrictions on its monitoring of distribution, the flow of refugees into China is very likely to persist.*

As it has deftly done for 10 years, the Stalinist regime in Pyongyang will once again have seized disproportionate control over enormous amounts of humanitarian aid, thus guaranteeing that distribution to its citizens will not be based on the universally accepted basis of vulnerability, but strictly along lines of loyalty to North Korea's 'Dear Leader.' Refugees who come from the bottom rung of the social ladder often report they've never even seen foreign food aid, except being sold in local markets.

5. *In the event China's trade partners continue to fall over one another to gain an even larger share of China's huge market, an established pattern of prioritizing trade deals at the cost of ignoring, or at the very least minimizing, human rights violations will be perpetuated.*

Ironically, the message from developed nations to North Korean refugees will be eerily similar to Pyongyang's own message to them: "You are an unnecessary eater; your lives and those of your children do not tip the balances away from our more important commercial concerns." In so doing, developed countries shamefully forfeit one of their most potential instruments of persuasion, that is, making clear by their

actions, even occasional sacrifice, that decency and business should go hand in hand in any ethical conduct of international commerce

#### UNTYING THE GORDIAN KNOT: IMPLEMENTING REAL SOLUTIONS TO THE REFUGEE CRISIS

The simple fact that the North Korean refugee crisis is now approaching the 10 year-mark bears witness to the daunting prospect of finding real solutions in this complex region. Despite the intransigent nature of the challenge, strong arguments can be made for incremental, yet significant, breakthroughs in reducing the refugees' suffering.

1. *Regarding the possibility of a voluntary shift toward a more humane approach to the North Korean refugee issue on the part of China's leadership, the next few years may be particularly critical for such an epiphany.*

With Beijing in full stride in its preparations to host the 2008 Olympics, President Hu Jintao will no doubt be eager to present the world not only with a China that is undergoing extraordinary economic growth, but also with a society and leadership that reflect the noble goals of the Olympic Games. Indeed, the official Olympic slogan, "Celebrate Humanity," provides Beijing with a golden opportunity to showcase a tectonic shift in human rights improvements, including a landmark shift in its treatment of North Korean refugees. Such a bold action would surely gain the universal admiration of the billions who will witness the Beijing Olympics.

Conversely, the absence of such a change might augur a public relations nightmare for the host country with human rights and religious groups joining forces in enormous numbers to remind the world that "Celebrate Humanity's" host routinely forcibly repatriates 100 or more North Korean refugees per week to barbaric political and religious persecution in flagrant violation of international law. Undoubtedly, the 2008 Olympic organizers would dread such an image of hypocrisy just as much as it would dread the prospect of a well-synchronized boycott of its sports extravaganza. Perhaps the very awareness that such a boycott is waiting in the wings may provide added impetus for China's leaders to re-think national policies that are seriously out of sync with international norms.

2. If a major Chinese policy shift, motivated by and reflecting a new appreciation of human rights concerns, might be labeled in baseball parlance as a 'grand slam home run,' and a grudging lessening of the crackdown on North Korean refugees in the face of an embarrassing Olympic boycott classified as a 'triple,' what measures would constitute modest but meaningful progress, say, a 'single' or a 'double'? Like most East Asian bureaucrats, the Chinese tend to be thoroughly pragmatic. It's an open secret that ideological considerations increasingly take a back seat to various power plays and simple reward/punishment scenarios. In such an atmosphere, one is compelled to ask: *how difficult would it be for a loose coalition of investors in Northeast China, interested NGO's, and a few conscientious former South Korean officials with good connections in China, to forge an understanding with provincial officials and/or the Chinese security apparatus to open a small, narrow corridor between the China/North Korean border and the China-Mongolian border through which North Korean refugees could pass, escorted by humanitarian aid workers? Alternatively, an annual or semiannual 'amnesty on illegal aliens' could provide another face-saving measure for China to allow the North Korean defectors to board planes with illegal workers of other countries and leave China with impunity.* Significantly, on a small, localized scale, such agreements have already been made by members of the so-called 'underground railroad,' who assist refugees in their passage to safe havens in countries surrounding China, e.g., Mongolia, Vietnam, Myanmar, etc. Once again, such consummately practical arrangements, whether official or unofficial in nature, would avert untold suffering and the Chinese would also 'save face' in its regional alliances.
3. In terms of the UNHCR's dismal track record thus far, one might conclude that, in terms of treaty provisions, the organization stands in great disadvantage to its host country. Surprisingly, this is not at all the case. Two potent provisions have been identified in the UNHCR's own 1995 bilateral agreement with China. *First, this agreement empowers the UNHCR's staff in China to have unimpeded access to refugees within China.* However, the only means available to determine who is a refugee, and who is not, is to interview them. As mentioned above, China has *never* allowed the UNHCR to have free movement near the North Korean border. In addition, China has also "foreclosed even the possibility of individual grants of asylum among them. [China] declares all of them to be conclusively non-refugees, and makes no provision for individual adjudication to the contrary."

Secondly, the treaty stipulates that, in the event a dispute arises between the two parties, such as China's refusal to allow the UNHCR access to North Korean defectors, the UNHCR can invoke binding arbitration of such a dispute. Under the terms of the agreement, an arbitrator who is acceptable to both parties must be named within a 45-day period. If both parties are unable to agree upon an arbitrator, then the UN must appoint one. The arbitrator's determination of the dispute, whether or not the UNHCR should be allowed access to North Korean defectors in China, could be expected within a matter of days or weeks. Inexplicably, in a 10-year period, officials of the UNHCR in China have *never* invoked the principles of *unimpeded access* nor *binding arbitration*, in its dealings with China concerning North Korean defectors. The recommended remedy to this part of the problem is embarrassingly uncomplicated:

- a) The UNHCR simply needs to make use of the instruments already in its toolbox to make its voice heard, and insist with genuine conviction upon carrying out its mandate to protect refugees. In this regard, the newly introduced (3/24/2004) U.S. Congressional Bill, *The North Korean Human Rights Act of 2004*, urges the UNHCR to do the obvious: assert its right to binding arbitration with China.
  - b) A top-to-bottom review of UNHCR staff performance and procedures in Beijing is also in order.
  - c) Finally, it is imperative to educate UN member donors to the UNHCR that they have the power to designate how their contributions are spent. Specifically, it is possible for member countries to stipulate that little or none of their donations should go to support a deficient or nonexistent programme to protect North Korean refugees under the auspices of the Beijing UNHCR office.
4. *NGO's that actively assist North Korean refugees in China, both to shelter and provide logistical support along the 'underground railroad,' should be supported in these humanitarian labors. Tireless advocacy should be undertaken for those sent to Chinese prisons for merely helping refugees. Activists who continue to languish in Chinese prisons for assisting North Korean refugees, some serving sentences up to seven years, already have given rise to a grassroots movement for their release. This should be expanded to a formal, sustained and coordinated campaign to expose this grave injustice. In the past two years, only two have been released (Pastor Chun Ki-won and New York Times photojournalist, Seok Jae-hyun).*
  5. *A new Tripartite Initiative is needed and should take the form of a task force. Participants would include:(a)South Korean business people with strong corporate governance and ethical resumes in partnership with(b) relevant South Korean government officials; and(c)civil and religious NGO's leaders/communities with a demonstrated track record and expertise in North Korean refugees matters. Such teamwork is essential to break the current logjam in dealing with refugees. Its actions could accelerate the inflow of tens of thousands of stranded refugees in China to South Korea and facilitate an orderly large-scale resettlement. A bold and innovative step is long overdue, one that would address a gravely serious bottleneck: the South Korean government's woefully limited capacity to process a mere handful of refugees per year through its Hanawon facility, thereby leaving hundreds of thousands of North Korean refugees in China 'hung out to dry' and pathetically vulnerable to frequent Chinese security dragnets on their urban and mountainside shelters. Their mission could very well include the deliberate phasing out of approximately 100,000 illegal workers in South Korean factories that hail from Southeast Asia, Central Asia and Africa. These workers would be replaced with an equivalent number of resettled North Korean refugees brought in from China, hopefully with the latter's cooperation, on a new 'fast track.' The task force would be well advised to consider the 'company town' concept to quickly construct the necessary facilities (dormitories, training facilities, etc.) to absorb the inflow. This would obviously play to the strong suit of the Korean business community that has an enviable reputation of getting things done *ppali ppali*(quickly)—in sharp contrast to the government, which has dragged its feet in building but a single resettlement facility in an entire decade. Such a proposal should also be of intrinsic interest to South Korean business leaders, who are currently rushing, lemming-like, into China to take advantage of low labor costs, leaving in their wake an alarming swath of disillusioned and unemployed (854,000 in January) South Korean citizens, especially the young. Far-sighted South Korean businessmen are likely to see the distinct and enduring*

*advantages of embracing workers of their same language and culture instead of the myopic practice of hiring illegal foreign short-term workers* and the inevitable social problems (e.g., company owners' exploitation of illegal workers; higher crime rates among transient workers, etc.) that result. Employing newly resettled refugees principally in manufacturing jobs would have a beneficial secondary effect of generating executive and technical jobs that would be commensurate with the training of many newly unemployed university graduates in South Korea, thereby reducing unemployment.

In reality, a number of potential political roadblocks to such a sweeping programme do exist; particularly in light of the Uri Party's landmark parliamentary victory on April 15th, 2004. Therefore, a corollary to the above plan merits consideration. Korean business leaders with factories in Southeast Asia and Central Asia (especially Kazakhstan and Uzbekistan) may be better positioned to employ North Korean refugees and do so without the visibility and political fallout that might occur in the South. Remarkably, perhaps providentially, refugees are already fleeing from China to some of these very nations with Korean business interests, e.g. Thailand, Philippines, Vietnam, etc.

The South Korean government would also appear to have much to gain from either of these initiatives. *South Korean bureaucrats are well aware that the current resettlement allowance given to each newly resettled North Korean refugee in South Korea (\$25,000) is unrealistic once the floodgates have been opened*, which would more than likely follow either a convulsive event in the North or any normalization of relations between South and North Korea. In addition, bitter experience has already demonstrated that many a resettled refugee has precious little experience in handling amounts of money of this magnitude. All too frequent is the sad tale of newcomers bilked by unscrupulous brokers in Northeast China, promising to help bring remaining family members stranded in North Korea to safety, only to disappear with their ill-gotten gain.

*By acting now, the South Korean government could begin an inevitable transformation of the current lump-sum handout concept into a far more practical one of partial direct allowance, added to indirect subsidies that would provide funding, largely through tax credits, for the construction of a large number of dormitories, training centers, social welfare institutions, that, in fact, were needed years ago.* An historical note is relevant here. All preparations for a substantial inflow of refugees were essentially paralyzed at the beginning of the Kim Dae Jung administration in 1998, predicated on a questionable tenet of the "Sunshine Policy," viz., that such preparations would signal to the North Korean regime that the South sought its overthrow.

The scope of this paper prevents a detailed examination of every facet of such a sweeping programme. However, a brief summary of advantages includes:

- a) A far greater number of North Korean refugees realizing their dream: escape from life-threatening dangers in North Korea *and* China.
- b) South Korean companies would gain roughly the same significant labor cost savings that prompted them to consider moving to China in the first place. The crucial difference would be that the savings would be incurred by employing Korean labor, not Chinese. Such a programme also has a very real chance of reversing the current worrying tide of unemployment in South Korea once a growing number of companies reconsider their flight to China and decide to remain in South Korea, taking advantage of tax credits to lower their labor costs. Korean businessmen with facilities in Southeast and Central Asia could also play a key part in this plan.
- c) The South Korean government would have a surprisingly good start toward solving the dilemma of a prudent distribution of resettlement allowances to refugees once the inevitable current of North Korean refugees begins to swell to major proportions. Put simply: instead of a direct transfer of the lion's share of the settlement money to the refugees, these funds would be used for an X period of time as a type of cost of living allowance, or add-on to their salaries provided to employers. To prevent undue temptation to corrupt practices by the business community, these subsidies perhaps would be best administered as tax credits collected at the end of the fiscal year, not as front-loaded subsidies.
- d) NGO and religious leaders should act in the role of an important 'check and balance' to both business and government through their proven concern for the welfare of the resettled North Koreans and valuable experience gained through years interacting and assisting North Korean refugees.



Let us hope, and indeed pray, that practical efforts, such as those described above, will become reality; that they will generate a genuine light at the tunnel's end for hundreds of thousands of North Korean refugees like Yoo Chul Min and his father—an ever-swelling human tide that remains stranded between the oppressive 'rock' of North Korea and its famine and the very 'hard place' of sudden fear and countless hidden dangers lurking in China. A self-respecting world community can only "Celebrate Humanity" in truth and with a clear conscience when we have brought these refugees under the protection of a permanent safe haven and provided them the opportunity of a life without fear.

*Helping Hands Korea (HHK), is an NGO that has endeavored since 1996 to provide famine relief inside North Korea, particularly to schools and orphanages. From 1998, HHK has concentrated on sheltering refugees in China and coordinating logistical support for their escape to third countries.*

Mr. LEACH. Ms. Scholte?

**STATEMENT OF SUZANNE SCHOLTE, PRESIDENT, DEFENSE FORUM FOUNDATION**

Ms. SCHOLTE. Thank you, Congressman Leach, Congressman Tancredo, Congressman Flake and Congresswoman Watson.

Thank you for giving me this honor of testifying. And thank you, Congressman Leach, for coming to the rally this morning.

My involvement with this issue came as a result of hosting North Korean defectors in the United States since 1997. Since that time, we have hosted defectors from every walk of life, from the highest ranking in the regime, like Hwang Jang Yop, to young people who spent their youth in political prison camps, like Kang Chul Hwan. We have hosted former military and security officials and, more recently because of the plight of North Korean refugees in China, former refugees, including women who have been victimized by trafficking.

These defectors have confirmed that this regime is unlike any in modern times for the sheer brutality of the system. It is hard to believe that a regime that daily murders at least 42 people in prisoner camps and 391 through starvation can continue.

But we know that Kim uses at least 3 methods to maintain power: The political prison camp system; controlling access to information; and controlling access to food. Kim Jong-il uses food as a weapon against his own people. Working with these defectors has made me believe that Kim Jong-il is the worst violator of human rights in the world today by the sheer number of people he has killed directly through his policies, his involvement in international drug trafficking, counterfeiting, the abducting of Japanese and South Korean citizens and proliferation of weapons of mass destruction.

The famine triggered a refugee crisis, and despite the horrible treatment of North Korean refugees by the Chinese government—which puts a price on their heads, repatriates them when they are caught and jails people who try to help them—they keep fleeing to China. Many North Koreans are faced with a terrible choice: Stay in North Korea and starve to death slowly, or flee to China and take your chances of becoming a slave laborer on a Chinese farm or being sold into a brothel.

China has a policy of terrorizing these helpless refugees and jailing the humanitarian workers who go to China to help them. I am going to submit a full list of the humanitarian workers as well as the refugees who have tried to seek asylum.

How is the United States responding to this tragedy? Our country has shut the door on these refugees again and again. On May 8, 2002, Song Yong-Bum and Choi Kwang-cheol entered the American consulate in Shenyang, China, and requested to seek political asylum in the United States. The two men had been hiding in China for some time and had an opportunity to surf the Internet to learn more about other countries. They decided America was the place for them.

Once inside the American consulate office, they asked for political asylum in the United States. Our response was to tell them to go to South Korea. They refused and went on a hunger strike.

Our Embassy officials then threatened to hand them over to Chinese police. They held fast. Our Embassy then dispatched a Korean American Embassy staffer to Shenyang who badgered them, "Why do you want to go to the United States? You should go to South Korea."

Finally, the stand-off was broken when the defectors were led to believe they were going to another city to meet the UNHCR to apply for political asylum in the USA. When they arrived in Singapore, they were turned over to South Korean officials, and they realized the United States officials had tricked them.

It is no coincidence that on July 4 of last year, four North Korean teenagers entered the British consulate office in Shanghai to defect to the USA. These four teenagers were being helped by Edward Kim, editor of the Chosun Journal. Edward had arranged for people, including his own parents, to adopt these teenagers. And three churches agreed to help sponsor them in America. They just had to get here.

On the birthday of our nation, Kim Guang-il, a 17-year-old boy, and Kim Eun-Ok, a 19-year-old girl, Choe Il, a 16-year-old boy, and Im Eun-Hong, a 17-year-old girl, entered the British consulate office carrying in their hands letters to President Bush.

Kim wrote:

"Dear President of America: I want to live in a country where I know I am safe, even in my dreams."

Lim wrote:

"Even though I know that someone like me could not mean much to someone like you, I am hesitatingly writing you this letter because I believe I am also a creation of God. I desperately want to go to America and watch my dreams blossom like a flower. I am currently in the British consulate. I will be awaiting your reply."

Our reply? The British informed them there was no option to go to the United States. The four teenagers were turned away and turned over to South Korean authorities. Fortunately, Congressman Ed Royce has launched an inquiry into this incident.

Out of frustration for the failure of the United States to respond to the tragic circumstances facing North Korean refugees, Senators Sam Brownback and Ted Kennedy and congressman Henry Hyde proposed legislation that simply stated that, for purposes of political asylum, North Koreans should be assessed as North Koreans, not South Koreans. What is even more frustrating about the situa-

tion is the failure of the U.S. to get out of the pattern of nuclear blackmail so well documented by Chuck Downs in his book, *Over the Line: North Korea's Negotiating Strategy*.

We continue to fall into the trap set up by the Kim Jong-il regime, which despite its cruelty is very cunning in getting commitments for humanitarian aid if the regime promises not to nuke us. The fear was prevalent in the Clinton Administration, and it exists today. Kim Jong-il has instilled such fear that we are quick to abandon our own sense of humanity by failing to call him for what he is.

Remember the resounding criticism that President George Bush received for lumping him in as part of the Axis of Evil and complaining how he starves his own people while he builds nuclear weapons. The BBC recently aired a documentary entitled "Access to Evil," and it confirmed that this regime was properly labeled.

But the nuclear threat and the lack of human rights are totally related. The same regimes that abuse human rights, the regimes that are the greatest threats who proliferate weapons of mass destruction, who violate biological and chemical weapons treaties, are also the regimes that terrorize their own people.

I have never been more encouraged by the introduction of the North Korean and Human Rights Act. The provisions of these acts mirror the kinds of ideas and suggestions that activists and defectors have promoted on behalf of the North Korean people. Raising the human rights profile is not only demanded of us by our own sense of humanity, but is also critical as a means to reach out to the North Korean people.

The North Korean citizens are raised to hate and fear us. Baroness Cox and Lord Alton confirmed this fear after their recent trip to North Korea. They kept hearing the same line over and over again from the North Koreans, "The United States wants to nuke North Korea." How can we ever fight that horrible lie when we do not raise the human rights issue and give it as equal importance as the nuclear issue?

We know the horror stories about the food aid, the diversion to the party elite, the selling of international aid in other markets. The diversion is so pervasive that groups like Action Against Hunger and Doctors Without Borders have left in protest.

It is critical we do not allow this regime to use food aid as a weapon against the North Korean people. Food aid must be monitored to the point of consumption, which is another aspect of the North Korean Freedom and Human Rights Acts.

Also getting information into North Korea is vital, and the North Korean Human Rights Act specifically calls for increased radio broadcasting and getting radios into North Korea.

One of the single most important efforts that can be made to save lives today is to establish refugee camps. Two years ago, we got letters of commitment from 12 humanitarian organizations willing to help support refugee camps. There are many organizations that have left North Korea in protest that are willing to help refugees wherever they are.

I am also encouraged by the fact that more and more people are raising their voices on this issue, and today, the North Korean Freedom Coalition sponsored a major rally on Capitol Hill with

many defectors, NGO leaders, human rights organizations, Korean American pastors, and Members of Congress to call for freedom and human rights for the North Korean people.

In conclusion, I thank the Members of this Subcommittee for holding this hearing and also thank Congressman Leach for sponsoring the North Korean Human Rights Act and request its quick passage.

[The prepared statement of Ms. Scholte follows:]

PREPARED STATEMENT OF SUZANNE SCHOLTE, PRESIDENT, DEFENSE FORUM  
FOUNDATION

Congressman James Leach, Members of the Subcommittee on Asia and the Pacific, thank you for giving me the honor of testifying before you today, especially among so many distinguished panelists.

HUMAN RIGHTS SITUATION IN NORTH KOREA

My involvement with this issue came as a result of hosting North Korean defectors in the United States since 1997. Since that time we have hosted defectors from every walk of life—from the highest ranking in the regime like Hwang Jang-yop to young people who spent their youth in political prison/slave labor camps like Kang Chul Hwan. We have hosted former military and security officials and more recently because of the plight of North Korean refugees in China, former refugees including women who have been victimized by trafficking.

These defectors confirmed what we had long suspected: North Korea is a land of horrible repression and evil with no human rights or freedom for its citizens. It is a regime unlike any other in modern times for the sheer brutality of its system and for the complete control by Kim Jong-il and his party elite.

It's hard to believe that a regime that daily murders at least 42 people in the political prison camps and 391 through starvation can continue. But, we know that Kim uses at least three methods to maintain power: the political prison camp system which instills a terrible fear among the people; controlling access to any information, isolating the North Korean people from the rest of the world, and by controlling access to food, Kim Jong-il has triggered the refugee crisis by using food as a weapon against his own people.

Working with these defectors has made me believe that Kim Jong-il is the worst violator of human rights in the world today by the sheer number of people he has killed directly through his policies, his involvement in international drug trafficking, counterfeiting, abducting of South Korean and Japanese citizens, and proliferating weapons of mass destruction.

The famine triggered a refugee crisis which ironically opened the door for information to get into North Korea. North Koreans had been warned in the 1990's not to go to China—the regime tried to convince the people that the situation was even worse in China, that China was undergoing a civil war and famine conditions existed there. But hunger drove many North Koreans over the border in search of food and what they found instead was what they described as a “paradise” in China compared to what they were enduring in their homeland.

Despite the horrible treatment of these refugees by the Chinese government which puts a price on their heads, repatriates them when they are caught, and jails people who try to help them, they keep fleeing to China. Many North Koreans are faced with a terrible choice: stay in North Korea and starve to death slowly or flee to China and take your chances becoming a slave laborer on a Chinese farm, hiding in a mountain hut from Chinese police and North Korean agents or being sold into a brothel or as a wife to a Chinese farmer.

China has a policy of terrorizing these helpless refugees and jailing the humanitarian workers who go to China to help them. It is estimated that there are 50,000 to 350,000 of these refugees—difficult to get a more accurate figure because China blocks access to them, even blocks the UNHCR from them. Currently, there are at least 10 humanitarian workers in jail for trying to help these refugees.

US POLICY TOWARDS REFUGEES

And how is the United States responding to this tragedy? Our country has shut the door on these refugees again and again. On May 8, 2002, Song, Yong-Bum and Choi, Kwang-cheol, entered the American Consulate in Shenyang, China, and requested to seek political asylum in the United States. The two men had been hiding

in China for some time and had the opportunity to “surf the internet” to learn more about other countries. They decided that America was the place for them with its great freedom and opportunity.

Once inside the American consulate, they asked for political asylum in the USA. Our response was to tell them to go to South Korea instead. They refused and went on a hunger strike demanding to be allowed to defect to the USA. Our embassy officials threatened to hand them over to the Chinese police. They held fast. Our embassy in Beijing dispatched a Korean American embassy staffer to Shenyang who badgered them: “Why do you want to go to the United States? They don’t even speak your language. You should go to South Korea where you get automatic citizenship.” They held fast. Finally, the stand-off was broken when the defectors were led to believe they were going to another city to meet UNHCR officials to apply for political asylum in the USA. When they arrived in Singapore, they were turned over to South Korean officials. They realized the U.S. officials had tricked them.

It is no coincidence that on July 4 of last year, four teenagers from North Korea entered the British consulate in Shanghai to defect to the USA. These four teenagers were being helped by Edward Kim of Orange County, editor of the *Chosun Journal*. Edward had arranged for people, including his own parents, to adopt these teenagers and three churches agreed to help sponsor them in America. They just had to get here.

On the birth day of our nation, Kim Guang-il, a 17 year old boy, Kim Eun-Ok a 19 year old girl, Choe Il, a 16 year old boy, and Im Eun-Hong, a 17 year old girl entered the British consulate, carrying in their hands letters to President Bush. Kim wrote, “Dear President of America: I want to live in a country where I know I am safe even in my dreams.” Lim wrote: “Even though I know that someone like me couldn’t mean much to you, I’m hesitantly writing you this letter because I believe I am also a creation of God. I desperately want to go to America . . . and watch my dreams blossom like a flower. I am currently in the British consulate. I will be awaiting your reply.”

Our reply? The British informed them that there was no option to go to the U.S. The four teenagers were turned over to South Korean authorities. Fortunately, Congressman Ed Royce has launched an inquiry into this incident.

Out of frustration for the failure of the U.S. to respond to the tragic circumstances facing North Korean refugees, Senators Sam Brownback and Ted Kennedy, and Congressmen Henry Hyde proposed legislation that simply stated that for purposes of political asylum North Koreans should be assessed as North Koreans, not South Koreans.

#### U.S. POLICY TOWARDS NORTH KOREA

What is even more frustrating about this situation is the failure of the U.S. to get out of the pattern of nuclear blackmail so well documented by Chuck Downs in his book *Over the Line: North Korea’s Negotiating Strategy*. We continue to fall into the trap set up by the Kim Jong-il regime, which despite its cruelty is also quite cunning, in getting commitments for humanitarian aid if the regime promises not to nuke us.

This fear was prevalent in the Clinton administration which had decided not even to raise the human rights issues with North Korea, because they feared it would cause the North Korean regime not to meet for talks. Their concern, and only concern, at the time, was the nuclear threat posed by North Korea.

Unfortunately, we see that same view exist today—that Kim Jong-il has instilled such fear that we are quick to abandon our own sense of humanity by failing to call him what he is. Remember the resounding criticism President George Bush received for lumping him in as part of the Axis of Evil and complaining how he starves his own people while he builds nuclear weapons. Bush was condemned for being undiplomatic. Ironically, the BBC aired a documentary recently on North Korea entitled “Access to Evil” and it certainly confirmed that this regime was properly labeled.

There is a pervasive view that exists among governments and scholars that we should ignore the human rights of everyone who has the misfortune of living north of the DMZ because we want to protect ourselves from the nuclear threat.

But the nuclear threat and the lack of human rights are the two sides to the same coin: they are totally related. The same regimes that abuse human rights—the regimes that are the greatest threats, who proliferate weapons of mass destruction, who violate biological and chemical weapons treaties are also the regimes that terrorize their own people.

## AN ALTERNATIVE WAY

Despite the frustration of being involved in this issue for so many years, I have never been more encouraged than by the introduction of the North Korea Freedom and Human Rights Acts. The provisions of these Acts mirror the kinds of ideas and suggestions that activists and defectors have been promoting on behalf of the North Korean people and the North Korean refugees in China.

Raising the human rights profile is not only demanded of us for our own sense of humanity but it also is critical as a means to reach out to the North Korean people. The North Korean citizens believe that all we want to do is nuke them. They are raised to hate and fear us. Baroness Cox and Lord Alton confirmed this fear after their recent trip to North Korea: they kept hearing the same line over and over again from the North Koreans: the United States wanted to nuke North Korea. How can we ever fight that horrible lie when we do not raise the human rights issue and give it equal importance as the nuclear issue. How do we find and reach out to those dissidents within this regime—that know in their hearts that Kim Jong-il has got to go—when we focus on the nuclear threat and do not express how deeply concerned we are about the suffering of their countrymen.

I know of at least two defectors whose chief reason for defecting was over-hearing radio broadcasts. Getting information into North Korea is vital and the North Korea Human Rights Act specifically calls for both increased radio broadcasts and getting radios into North Korea.

We know the horror stories about the food aid: the diversion to the party elite, the selling of international aid in other markets. The diversion is so pervasive that groups like Action Against Hunger and Doctors Without Borders have left in protest.

It's absolutely critical that we do not allow this regime to use food aid as a weapon against the North Korean people. Food aid must be monitored to the point of consumption. How horrible a thought that an American taxpayer believes his money is feeding a starving North Korean child when in fact it's keeping in power the very man that is starving that child.

One of the single most important efforts that can be made to save lives today is to establish refugee camps. Two years ago we got letters of commitment from 12 humanitarian organizations willing to help support refugee camps. There are many organizations that have left North Korea in protest that are willing to help these refugees wherever they are. This legislation could provide a huge boost to getting these camps established.

Making it easier for a North Korean to apply for asylum in the United States and establishing a First Asylum policy with our allies is also a critical way to address this issue that is encompassed in the North Korean Human Rights Act.

I am also encouraged by the fact that more and more people and organizations are raising their voices on this issue and today the North Korea Freedom Coalition sponsored a major rally on Capitol Hill with many North Korean defectors, NGO leaders, human rights organizations, Korean American pastors, and Members of the Congress to call for freedom and human rights for the North Korean people.

In conclusion, I thank the members of Congress who have joined Congressmen Leach and Faleomavaega in sponsoring the North Korea Human Rights Act and request its quick passage in this Congress to help end the suffering of the North Korean people.

*Suzanne Scholte is President of the Defense Forum Foundation and Chairman of North Korea Freedom Day being sponsored by the North Korea Freedom Coalition. She is also a Founding Board Member of the U.S. Committee for Human Rights in North Korea and a Founding Member and Advisor of the North Korea Freedom Coalition. DFF is the U.S. partner of the Citizens Alliance for North Korean Human Rights and the Society to Help Returnees to North Korea. In addition to raising awareness of the human rights issues in North Korea, DFF has also established the Sin U Nam Fund in which 100% of the donations are used to rescue refugees and provide support to NGOs sheltering refugees.*

Mr. LEACH. Thank you all for your thoughtful testimony. Mr. Flake?

Mr. FLAKE OF ARIZONA. Thank you, Mr. Chairman.

Mr. Flake, or can I call you Gordie like I used to when we were kids?

Gordon and I grew up in Arizona together. He is actually a first cousin. He has testified before at many hearings. This is the first one that I have got to participate in. I appreciate this opportunity.

You mentioned that we need to engage on our own terms or specifically not on North Korea's terms in terms of humanitarian assistance, and you suggest a period of benign neglect to let them calibrate their response. How long would that take?

And the second part of the question, you suggest we engage along with the Chinese and the South Koreans, and is that possible? Are they likely partners? Are they likely to engage with us and help us out in that regard?

Mr. FLAKE. Thank you.

Those are both very important questions, and they illustrate how this humanitarian issue and the human rights issue, as moving as it is, really cannot be separated or divorced from the broader security issues on the Korean Peninsula.

The broader question of how long you should wait in terms of a period of benign neglect, it is going to be different depending on the type of engagement you are talking about.

Obviously, if the aid is strictly humanitarian, if you are responding to a tragic accident, such as the train crisis, that is one thing. If you are providing food aid on an annual basis to the public distribution system, which is being distributed basically in the name of the North Korean government, to North Koreans, that becomes a very different question in terms of what standards you set up for something like that.

More broadly, I would tend to think any type of development or economic aid is the type you want to hold forth. I am encouraged by the act listing specific aid and assistance on the rule of law, on developing market economy, and those types of things. That type of assistance should be given to private sector organizations, help North Koreans with specific standards for under which circumstances these types of training missions would be put into place. That is what I think the period of benign neglect would come to pass, holding something forth and saying, "These are the standards under which you will get them."

The broader question of conditionality is one that still concerns me with this particular act, as well as with the overall question, because as moved as I am by the human rights issue and as concerned as I am by the difficulties in monitoring and getting access to those involved in giving humanitarian aid, I am still very reluctant to try to tie our security questions, the addressing of the North Korean nuclear issue, the ongoing negotiations on that issue, to human rights because the question there is not unique to North Korea. It really goes to the root of what we are able to do in terms of our diplomacy.

Ultimately, the human rights issue is one that I think can only be solved in one way, and that is by the change of the North Korean regime. The question then becomes, what do you mean by the change in the North Korean regime?

The quickest and easiest way is through the collapse of the North Korean regime, but that is something that myself and an awful lot of people have hoped for for an awful long time. The longer-term process is, through engagement and incremental

change, you can hope to affect the nature of the North Korean regime to the point you can raise human rights issues on a normal basis.

However, again, pointing out how intertwined everything is, my concern is given the severity of the nuclear crisis and given how far gone it is, it is unreasonable to expect now in the current context, absent the resolution of that issue first and foremost, that we can resume that long-term incremental approach to North Korea.

Mr. FLAKE OF ARIZONA. Ms. Scholte, that was the most testimony I have ever heard in 5 minutes.

Ms. SCHOLTE. I thought I had 10.

Mr. FLAKE OF ARIZONA. The train accident was brought up, and I believe I heard reports that the North Koreans would not let Chinese medical personnel in to assess the wounded. Is that common practice?

Ms. SCHOLTE. Absolutely. Even when they opened the mountain resort, there was a big deal with the Sunshine Policy that they were going to open that resort so South Koreans could visit it. The South Koreans signed an agreement with the thought that this would be great because they would be interacting with North Koreans. But the North Koreans shipped in workers from China.

They want to isolate their people so much. They would rather let their people suffer than have people learn about what is really going on inside that regime.

Mr. FLAKE OF ARIZONA. Even in the case of the train accident?

Ms. SCHOLTE. That is correct.

Mr. FLAKE OF ARIZONA. I thank the Chairman.

Mr. LEACH. Ms. Watson?

Ms. WATSON. I am interested in, and maybe some of you can help give me an understanding, what impact has been made with North Korea resuming its nuclear weapons program and what impact has it had on the human rights conditions and the humanitarian needs of North Korea? Has the United States policy with respect to humanitarian relief been at all altered due to North Korea's decision to build nuclear weapons?

Mr. FLAKE. Going back to the maxim that we referred to earlier, the U.S. policy on a political level always has been that a hungry child knows no politics. We have tried to keep up an ongoing level of humanitarian food aid to this chronic food shortage problem.

On the other level, however, the resumption of the North Korean nuclear program and the North Korean confession of that resumption has really undermined the foundation for our diplomatic approach to North Korea for the last 10 years. As a result, it is impossible for the United States to go about business as usual.

Really, where it has hit is on the question of building light water nuclear reactors, any question of moving toward normalized relations, moving toward diplomatic relations and also economic relations with North Korea because those were all moves predicated on the presumption that North Korea had agreed to freeze its nuclear weapons program.

On the aid front, we have been limiting our food aid to North Korea, not actually cutting it back, but limiting increased aid not based on the nuclear issue but based on ongoing concerns about monitoring and access to the population we are trying to help.



Ms. WATSON. That is worrisome, too, because reading our analysis, it says that the government is starving its own people. Is there a way that we can get around so we can get food aid to the people in North Korea?

Mr. FLAKE. What I was trying to allude to in my statements about trying to use market mechanisms—and I will not pretend that it is easy. But in 1995, when the international community, particularly when the U.N. World Food Programme went in, they were surprised that there was a government that remained firmly in control, that had a distribution system, trucks, that had storehouses. And it made a very difficult job an awful lot easier.

So getting the food to the people, that has been helpful. But the effect of that has essentially been to strengthen the North Korean regime. At a time when your first priority was heading off a very serious famine, that was not the issue.

But this situation has gone on for 10 years. This is a chronic failing of the North Korean system, not a natural disaster, and it is time for the United States and the U.N. World Food Programme to reassess its processes. In other words, look for other opportunities to encourage private markets, to encourage NGOs, perhaps putting the food aid through NGOs and other means to get to the North Koreans without necessarily strengthening the hands of the North Korean government and in effect propping up the North Korean government.

Ms. WATSON. What do you see China's role to be? I have noticed here we have had, speaking of the Axis of Evil, we have had a "hands off, let China take care of it." Could China be the major NGO that could get the humanitarian needs and materials and resources to North Korea?

Ms. SCHOLTE. China is absolutely critical. Why we are not using more pressure on China about the human rights situation, I do not understand.

The fact that they are repatriating these people, violating international agreements in the treatment of these refugees in repatriating them, is absolutely key. I know they say we are putting subtle pressure on China, but China is key.

That is where the refugees are. Some went to Russia, but they cannot blend in in Russia. They can blend in in China because there is a Korean-Chinese community there.

I want to comment about the food situation, just to give you an example of how intent the regime is to divert aid. They actually will not allow people that speak Korean to be part of the food distribution, which tells you everything you need to know about their intent to divert it. In most countries, you would be dying to have somebody who spoke your language to be involved with the food distribution.

Also, private groups are able to get in aid. There are a number of NGOs that are able to get in aid, and I think it is absolutely critical that we look for those organizations, those humanitarian groups that are successful in delivering aid. Many of them get a lot of advice from defectors. They can tell you how to do that successfully.

One of the things that has been pointed out when huge amounts of humanitarian aid comes in, there is a lot of monitoring by the

regime, but when you are talking about smaller shipments, they do not pay as close attention.

Maybe Tim will add to that, too.

Mr. PETERS. I am in complete agreement. My testimony 2 years ago recommended this very thing. Instead of the enormous state-to-state transfers of food aid from the U.S. and other countries and occasionally international organizations to the DPRK, shifting it essentially to the Kim Jong-il regime to distribute along the 52 levels of loyalty that their society is divided into; instead, to in a sense, "shotgun" the food aid through the NGOs.

I realize that is probably going to have some bureaucratic headaches involved, but there are any number of creative ways, if I can give one example. Small bakeries are situated along the border of China and North Korea, but on the Chinese side; with NGOs providing wheat, all of the necessary ingredients to make bread. Bake it on the Chinese side and simply deliver it across the border. This is already a procedure that is going on and underway. This is not theory I am talking about. The built-in transparency or insurance that that guarantees is that that bread is not going to be taken overland to a military camp simply because the roads in North Korea are so bad that it would take too long and that bread would go stale.

So there are some built-in safeguards in doing these kinds of creative, almost mom-and-pop, NGO-type methods, even including things as simple as sending ethnic Korean and Chinese folks on bicycles across to little villages with 5–10 kilos of corn on their bike, those types of things.

Again, there are bureaucratic difficulties with all of this, but I must say that the reports that we are getting from the refugees as recently as 2–3 weeks ago is that the very great stress of famine that used to be more or less reserved to a province in the northeastern part of North Korea, Hamgyong-do; we are now getting very troubling reports that the conditions are back-pedaling to the worst period of 1995, 1996 and 1997, not only in Hamgyong-do but also in Kangwon-do and Hwanghae-do.

In other words, the refugees are saying it is going backwards to the worst time, and it is spreading. I think this is extraordinarily serious and should be a source of grave concern in the coming months.

Ms. WATSON. Mr. Chairman, one last question.

Just recently our Vice President Cheney visited China. Would you know, have you heard, if any of these issues came up, the humanitarian challenges, the Korean refugees, North Korean refugees and so on?

Ms. SCHOLTE. I have been so focused on North Korean Freedom Day, I don't know.

Mr. FLAKE. Absolutely. One of the primary objectives the Vice President had in going to, not only China, but to China, Japan and Korea was to bolster support in the region for our efforts in the Six Party Talks process. A large part of that is building large multilateral pressure on the North Korean regime.

Obviously, the primary target is North Korea's nuclear program. This is very much related to your early question, whether or not

China could be an NGO to relay that, and I would say the exact opposite.

As bad as you may think the World Food Programme is in working through the PDS, I would prefer to have Chinese aid rather than South Korean aid, for that matter. At least with the World Food Programme, you have some modicum of monitoring and some idea where it is going. Our efforts to monitor food aid are just about making ourselves feel better.

These are fungible resources. And more importantly, because the amount we are giving is far outweighed by the amount that China and South Korea are giving, which is going straight to the regime for use of the regime as they would like it, I am sure the Vice President put a lot of pressure on that area and where I think the Committee should voice its opinion.

Ultimately, this problem will not be solved until China and South Korea are on board and understand the pressure we can bring to bear on the North Korean regime.

Ms. WATSON. I want to say, in closing, it was my understanding that China, and this goes to the Chair, China would be our conduit in trying to negotiate with North Korea. And as a conduit, they can also handle the humanitarian programs as well.

Maybe, Mr. Chairman, we should write a letter to inquire where we are, what the strategy is in terms of working with China and having China deal with these programs in North Korea.

Mr. ROYCE. Chair Pro Tem Congresswoman Watson, one interesting question on that very theme would be whether, as part of the talks which China, North and South Korea, Russia and Japan are involved in jointly with North Korea, we might be able to gauge the emphasis being put on that very subject by the Chinese by asking whether that had come up as an agenda item or a discussion point. The principle mission of the talks, of course is addressing WMD. But has that come up at all? Maybe our panelists could shed light on that very question.

I think you raise a good point, and maybe afterwards, we could explore that jointly with some of the policymakers that are engaged in enticing China and trying to involve China in these discussions.

But at this point, why don't we ask that question and see, Professor, do you have any observations on that?

Mr. RADWAN. Mr. Chairman, I am not privy to anything like that.

But one thing, in order to rely on China as an honest broker, one has to look for indicia of honesty, of law-abidingness, of a certain respect for the rule of law. When there are very flagrant violations to the rule of law as evidenced by the treatment of asylum seekers and refugees and complicity in sort of snuffing out information about it and allowing to fester all of the subsequent ills that come out of that, including the exploitation of women, teenage girls through 60-year-old women, and just horrific things, it does not suggest a certain honest brokering.

It suggests, rather, that they have picked the side that they want to support. I am not sure if we are not being played in all of this. It is not my place to say. I don't get paid to figure that sort of thing out, but I would put the question again, sort of know a tree by its fruit, we know a country by its conduct.

In this context, one of the things that comes to mind is that I am teaching a class on the history of American law and trying to explain to Korean students that there was a time when there was a big debate in this country between those who said, "Every man is a man," and those who said, "No, we think some are simply property, we are not sure if they are real estate or personal property, but we think they are property."

On the question of coming together on a compromise in our Constitution, I have to explain what this three-fifths compromise was all about. It was a compromise on principle. We all knew that people were people, but at that moment, instead of standing on principle and saying, "No, this is not something we are going to compromise on, we will not go there," instead we did compromise. The result of that was simply to forestall and make it a bigger ultimate blood bath.

I cannot help but look at that and the subsequent history, our own history with the underground railroad and the heroic efforts of some to secretly help some to escape and what is going on now among typically Christian, although Buddhist as well, typically faith-inspired persons who are attempting to help individuals escape because the governments are too scared to act. Those in power show no courage.

So courage comes from ordinary people, and people who have really become my role models, of just remarkable heroism and courage and gain nothing by their conduct except, as was shown here, imprisonment and loss of family. We see that.

I am thinking to myself this has an eerie similarity to what we have experienced in our own country.

I hope that what does not happen is what we did in our own country, which is to kowtow to "states rights." In this context, North Korea's states rights to oppress and enslave its own people, to keep them from hearing any news but its own, and worshipping any God but the dear leader. If we kowtow at this moment because we are ambivalent as to principle, then I suggest that China really has read us right, we will sell our souls for a buck. If we do that, we do deserve what we get.

Ms. WATSON. Coming from another angle, wouldn't it be in the best interest of one nuclear-possessing nation and on its border another nuclear-possessing nation to want to be a mitigator, maybe a go-between, or are you looking at other motives? I would think that it is in their best interest, China's best interest, to be sure that the weapons of mass destruction are under some kind of control. If it is a trade-off for food and other resources, that might be the better way to go. I was listening very intently to your response because what I heard you say was: Do not trust them.

Mr. RADWAN. Let me just suggest this. I have cast my lot with the people of South Korea. I think extremely highly of them. I recognize, and I hope my mom is not watching, I recognize this is a very perilous time to be there. I think we are closer to war now than we have been in a long, long time.

Everything that President Bush said about why we went to war in Iraq resonates in the country where I happen to be living now. People there are somewhat ambivalent because they are thinking that the United States is just trigger-primed to look for any excuse

to go to war because, after all, we did that in Iraq. So they are ambivalent about raising the issue of human rights.

My take on it is exactly the opposite, which is chances are very good that we are heading to a cataclysmic clash because what we are faced with is the worst-fear scenario that President Bush had about loose nukes getting into the wrong hands. The seriousness of this moment tells me that is the sort of thing that nations will go to war over.

The only possible antidote to something like that is to change the conduct of the parties. And the only way that is going to happen is to fundamentally instill a value for human life and human rights.

What I am saying is that the permanent state of slavery that exists now cannot be tolerated because, as long as it is tolerated, we are all going to be living perilously. If, instead, we do what you suggest we do in your act, which is to sponsor and to promote human rights work and work among the refugees and so on, then we are looking at a different model. We are looking at the East European model of communist collapse. We did not win that war with nukes; we won that war, if you will, with these kinds of tools. I suggest that the Committee is absolutely spot on.

Mr. ROYCE. You were suggesting that the Committee can learn a little bit of history. The history of Eastern Europe is, we found a way to engage with both information and other methodologies that did impose a collapse.

Let me ask a couple of questions, and then we will go to Mr. Tancredo.

One of the riveting experiences for me was talking to Hwang Jang Yop who had been minister of information inside the Politburo, and learning from him the way that the resources are distributed. Part of creating change from within the regime goes to how we make certain that we are actually empowering people and not the regime.

We had a French NGO, and I remember the testimony of a young woman here in this Committee, who said she found out that the food was ending up on the Pyongyang Food Exchange, which meant it was not getting to the people it was intended for.

Instead, it was being sold for hard currency which could be used by the regime. I asked Hwang Jang Yop about the intention of the regime. He said, when he was in the Politburo, basically the way resources were divided, the first third went to Kim Jong-il and the power structure, the second third to the military, and the third, to the extent there were leftover reserves, that would then end up in the hands of the people. But there was this prioritization.

This presented a problem because if you did not have sufficient resources there, the people basically starved because the first priority was to make sure that the regime was in power.

As you go through the 52 levels of loyalty, we begin to understand how these resources were meted out and why it is that there are vast areas of the country, perhaps 50 percent of the country, where people are so malnourished. We have seen the evidence.

Ms. Scholte, you have interviewed, as I have in Korea, people who have escaped through China. The malnutrition is so bad that now the estimate is 50 percent of the children are at risk in terms

of their future mental capabilities and development because of that level of malnutrition. You see the stunted growth as you interview people.

So what tools should we be using to bring about change in North Korea, Ms. Scholte?

Ms. SCHOLTE. I am going to shill for the North Korean Human Rights Act.

One of the things that I think China fears is a reunified Korea because South Korea is such an economic power. I think they are not going to respond to moral issues, so I think we have to get them on the economic issues. As one wise House International Relations Committee staffer told me—we have been having protests at the Chinese Embassy—the staffer said, “You ought to start doing those at Wal-Mart because of the Chinese products being sold there.”

We ought to try to focus more and more attention to exposing this problem, like you are doing with this hearing, on how China is treating these refugees because it is horrible what is going on in China.

We should be considering pressure on the Olympic Committee to change their venue for the Olympic Games—I think it is appalling that it would be held in Beijing—calling for an economic boycott of China and trying to use the economic levers that we have.

Overall, on the question, I think that simultaneously we have to do the things that all of us are strong advocates of. That is, we have to do what we can to help these refugees. We have to reach out to the North Korean people by getting more information in there. We have to make sure that food aid is being channeled through groups that are actually able to see it consumed because we have to stop feeding Kim Jong-il and maintaining this regime through the diversion of food aid.

As far as getting information in there, the idea of more broadcasting of Radio Free Asia and Voice of America and getting radios in there. There used to be a program that the South Korean government had of intentionally airlifting and dropping radios into North Korea, but it was suspended under the Sunshine Policy. Those are just some ideas.

Mr. LEACH. Mr. Peters?

Mr. PETERS. Mr. Chairman, I would take one small exception with what Suzanne mentioned in terms of changing the venue. I think, in fact, the next few years is a remarkable window of opportunity that we have, failing some humanitarian epiphany that the Chinese leadership might have. In fact, it would seem like the opportunity would be to pressure them. In fact, the logo of the Olympics at present is “Celebrate Humanity.”

You can imagine the public relations nightmare that the Chinese would face in having images of the North Korean refugees put up against their Olympic stadium. In fact, very ironically, the 1988 Olympics in Seoul, Korea, experienced a very similar phenomenon. The South Korean Government at that time was largely viewed as a military-leaning dictatorship. That is a bit extreme. But in any case, there was leverage by the international community in 1988, 1987, in order to bring about some significant human rights changes in the South Korean society.

I think that we do have a very unique window of opportunity to use similar pressure on the Chinese, i.e., "that if you are going to meet this standard for the Olympics, then such and such needs to be done."

But I quite agree, in fact, that very possibly that the only language that the Chinese will understand will be that of economics. And I think we should, as Mr. Sherman suggested, perhaps be ready to use even at some sacrifice that particular lever to bring about standards that the international community could respect.

Mr. ROYCE. I think that is an excellent point, Mr. Peters.

We are going to go to Mr. Tancredo from Colorado.

Mr. TANCREDO. Thank you, Mr. Chairman.

Just really one or two things. Throughout this discussion I have been intrigued by the way in which we have characterized the situation, especially in South Korea, and the attitudes of not just the South Koreans toward North Korea and this particular issue of human rights, but also of North Koreans used to be South Koreans and their description of why the opportunity given to North Koreans who were trying to escape, refugees, to go to South Korea and their refusal to do so, their desire to come to the United States. Help me understand.

Well, first of all, do all of you agree with Mr. Radwan that essentially the reason why South Korea has been reluctant to help us or pursue this issue is because they don't trust George Bush, and that they think this is all some sort of hoax, he concocted that? That was the impression I got from Mr. Radwan's testimony, that—and that, for instance, recently you may recall in the United Nations, South Korea chose to abstain when there was a vote on the Human Rights Commission regarding North Korea. Were they doing that because they just think we prompted it? Do they really not believe that this is happening? Do you all agree that that is the reason why we have been unable?

I can understand entirely why we can't get China to do what we expect or want them to do, and I doubt that we ever will, frankly, but I am perplexed about how and/or why it is so difficult for us to interact with South Korea and get them to help us in this endeavor to a much greater extent than they are, even just in terms of acceptance of refugees if nothing else.

Mr. FLAKE. I will take the first stab at that. There is actually plenty of room to be quite critical of our South Korean allies on this issue in particular, because the South Koreans, as you may know, very closely watched the experience of German unification and were cowed by the German unification because they quickly realized that in the best-case scenario, they could not approach anything nearly as smooth, despite as costly as it was in the German scenario. So South Korean enthusiasm for unification and for the cost of that has been cooling over the better course of a decade. And with this new rising generation, there is a general concern that they don't want to upset their own apple cart. And so while, particularly among the older and more conservative generations, there is ongoing concern about human right issues, you find that particularly in the political level right now, these types of complaints and pleas are falling on deaf ears.

In fact, one of the reasons you have the defectors here today testifying in the United States is because they are unable to get an audience in South Korea. And, in fact, my guess is that hearings like this will be far better reported back in Seoul than their own indigenous efforts within the city of Seoul itself.

And, again, from a standard of lifestyle perspective, it is very understandable that South Koreans don't want to risk conflict, they don't want to risk war. It is not a personal fear of George W. Bush, but it is really a primary—a fear of the cost of a war, the cost of a conflict, and, more importantly, the cost of picking up the bill for whatever mess happens on the Korean Peninsula.

At the same time, I will mention that my last trip to Seoul, I was just amazed that I did get a sense from the South Korean populace that Seoul—or that North Korea was a poor, starving country with bad human rights situations that should be helped; it was their cousins, their relatives, but that it was a country that was located somewhere in sub-Saharan Africa. And so, you know, I am afraid that for years South Korea was democratized and its economy is progressing and is becoming more and more like us, if you will. And this is a very important area where they are becoming too much like us in that they are increasingly domestic focused, and they don't want to think about foreign policy.

Mr. TANCREDO. Mr. Peters, or both.

Mr. PETERS. I think I would quite agree that the South Korean reaction in general is not so much a function of their reaction to President Bush, but if we could characterize it much like the approach that Prime Minister Neville Chamberlain took with Hitler, the belief that he could be appeased. And there is an ongoing policy of appeasement that somehow has a certain Confucian aspect to it that we don't—the South Korean Government will not raise the refugee issue because that will infuriate Kim Jong Il, and the same thing with the human rights vote in Geneva.

It is the legacy of the Sunshine Policy of Kim Dae Jong, a corollary of which is being continued with the current administration of President Roh Moo Hyun, and it strikes many as extraordinarily flawed and seems to smack of a Neville Chamberlain attitude, in my opinion.

Mr. TANCREDO. Thank you. I think we may be out of time. If you want to answer, and if the Chairman allows.

Mr. LEACH [presiding]. Do you have anything more with this panel?

Let me thank you all very much, and appreciate your testimony. It is very thoughtful, very much appreciated. And we thank you. You are free to go.

The next panel, if I could ask it to come to the table. If I could ask Mr. An Hyuk, Mr. Kim Tae Jin, Mr. Choi Dong Chul, and Ms. Oh Young Hui to come to the table.

Let me briefly introduce the panel and then describe the legislative setting.

Mr. Park, who is with us, is with the Democracy Network.

Mr. Kim Tae Jin was arrested and tortured by North Korean authorities for 8 months after visiting relatives in China in 1987.

Mr. Choi Dong Chul served as a guard at a political prison camp for a year and a half in the mid-1980s during his compulsory mili-



tary service. In 1994, he fled with his mother, a gulag survivor who testified at the Subcommittee 2 years ago.

Ms. Oh is the most recent escapee on our panel. She arrived in South Korea just last year. Before defection, she was an internationally competitive gymnast and the coach of North Korea's Olympic rhythmic dance team.

Let me just note, as you can see on the board, we have a vote on the House Floor. It is a vote that will be followed by an intermission on the Floor of about 10 minutes and then two more votes. And what that means is that we will have to recess the Committee for 30 minutes or so. And I think it best, given that there are 6 minutes—Mr. Park, how long is your testimony?

Mr. PARK [through interpreter]. Approximately 5 minutes, sir.

Mr. LEACH. Okay. What I think it better to do then, because it takes 4 or 5 minutes to get to the Floor, is to simply say we will have to recess at this moment in time, and we will reconvene in about 30 minutes. You are free to leave the room during that time, but if I could ask you to be around not too far from the Committee room, or you can stay at the table. But because of votes on the House Floor, we will have to recess. And so let me say, the Committee is in recess for approximately 30 minutes.

[Recess.]

Mr. LEACH. Mr. Park, you may begin. And before you start, let me say by unanimous consent all of your full statements will be placed in the record; and if you care to summarize, you are welcome. Mr. Park.

#### **STATEMENT OF SANG HAK PARK, DEMOCRACY NETWORK AGAINST THE NORTH KOREAN GULAG**

[The following testimony is provided through an interpreter.]

Mr. PARK. I am here to be the voice for the hundreds of thousands of Koreans who have fled North Korea and for the 23 million people of North Korea who are now suffering under the absolute regime of dictatorship in North Korea.

I have many things I wish to speak of. However, for today and for now I wish to speak of human rights only.

As you well know, North Korea is in a human rights blind spot, a situation that cannot even be fathomed by people of average rationality; a country where not even a single demonstration has occurred during the half century of ruling by a father and his son, even though people have been dying of starvation.

The Great Leader rides in a posh train as he goes on sightseeing for days on end while his people are dying from starvation. The Great Leader builds missiles and nuclear warheads to build the so-called great and strong nation. For whom is he building the warheads? For whom is he building the great and strong nation?

A product of absolute feudalism and fascism; a land filled with terror, kidnapping, narcotics, and counterfeits; a land where people are forced to chant, long live the Great Leader, as the chanter falls before the bayonets and rifles of the dictator. In this strange land, human rights is about a song of a bird on a day in autumn.

In North Korea, due to guilt by association, children die of starvation in gulags as they blame their parents because their grandfather was anti-Party. People are sent to gulags for attempting to

cross the river. People are executed in public because they ask the question: Why is the Great Leader not giving us rations?

If we were to leave the dictatorship as is in North Korea, that would be like hoping for a rose to bloom in a trash dumpster. As such, hundreds of thousands of people who have fled North Korea and now who are becoming orphans of international states, and also who are being sold into other countries, for all these people who have suffered at the hand of the dictatorship, I believe and we all believe that the passage of the Freedom Act is vital to these people's rights. And also we pray and struggle for that day to come.

Thank you for your time.

Mr. LEACH. Thank you for that testimony.

Mr. Kim.

**STATEMENT OF KIM TAE JIN, NORTH KOREAN PRISON CAMP  
SURVIVOR AND FORMER REFUGEE IN CHINA**

[The following testimony is provided through an interpreter.]

Mr. KIM. Mr. Chairman and the Committee, I would like to extend my thanks for allowing us to present our views at this Committee.

I became remorseful of the regime of North Korea in 1996, so I escaped the regime and went to China. And in China, I lived there for 16 months, and during that time I had received God and decided that I should return to North Korea. I returned to North Korea with the Bible. And soon after, I was apprehended by the authorities, and from 1988 to 1992, I was in a gulag. And after that, I have escaped to South Korea where now I am a member of the Democratic Network.

In North Korea, a lot of inhumane events are taking place. In particular, today I would like to focus on the evolution of religion in North Korea.

In the gulags there are many persecutions that carries on because you believe in God, because you have the faith. And I am sure you have heard many witnesses and testimony about how they were persecuted. And I would like to speak about what I have witnessed personally.

I have witnessed people losing their eyes because their eyes popped out of their sockets when they were hit with wood clubs. And also, I have seen people lose their arms and legs because they were beaten so hard. And these were the actual examples that I had witnessed.

And also, while I was in China, there had been certain South Korean missionaries that had been in China with me, and I have seen missionaries who had been arrested by the authorities while in China and sent back to North Korea I have heard that at least three of these people have died since being returned.

I would like to conclude my remarks by stating that now that the Gospel has reached the people of North Korea, I hope and I have faith that one day the good news will be spread to all people in North Korea, and God's word would arrive in North Korea. Thank you.

Mr. LEACH. Thank you, Mr. Kim.

Mr. Choi.

**STATEMENT OF CHOI DONG CHUL, FORMER NORTH KOREAN  
PRISON GUARD AND REFUGEE IN CHINA**

Mr. CHOI. To the honorable Congressman, I would like to thank you for allowing me the opportunity to testify on North Korea's political prison camps and the inhumane treatment of the prisoners. My name is Dong Chul Choi. I escaped North Korea with my mother in February 1994. I arrived in Seoul, South Korea, in December 1995.

From 1985 to 1986, I served as a prison guard at North Korea's Bureau of National Security, such as Number 11 political prison camp. Based on my experience during that time, I would like to report to this Committee what were the horrible conditions of the camp and the inhumane treatment of the prisoners that I have witnessed.

In the Bureau of the National Security, there is a preliminary hearing board. The accused are severely beaten, tortured, and threatened to obtain their confessions. Upon successfully obtaining their confessions, the prisoners are taken to the camps without any trace of any sort. The prisoners do not even know where they are being sent. Their family members are transported very early in the morning while the neighborhoods are still asleep. Fearing any unfavorable reactions, normal people could not endure the torture and have forcibly resisted or simply complained. Like with coal miners, coal miners will not get treated like pilots. It is considered to be against the teaching of Kim Il Sung. Accidentally cutting the picture of Kim Il Sung while clipping a newspaper article of him is enough to be arrested. If a drunk throws a wine bottle and thus interrupting a picture frame of Kim Il Sung receives no mercy.

The prisoners of the dictator will additionally serve for life. Even after their deaths, the corpses are not allowed to leave the camp. From the first day of the term, any marriage or childbirth is not allowed. Husband and wives are separated and do not know the whereabouts of each other.

The main reason for not allowing any marriage or childbirth is to keep, to degrade, to exterminate three generations. The strong men are sent to work on buildings and the underground military bases, military bases and underground tunnels. The remaining family members are kept in concentration camps.

Even with close watching and heavy guards, unable to cope with horrible, inhumane treatment, there have been many instances of planned escapes.

In 1983, 10 prisoners from several families managed to escape from Hamgyong-bukto camp, such as number 13 unit, to China but—only to be captured again.

In 1985, Hamgyong-bukto, the other camp, such as number 15 unit, two political prisoners escaped but were again captured within just 3 months.

In December 1985, from the Hamgyong-bukto camp, such as 11 unit, a family of five escaped but were captured again just 3 days later.

In 1989, political prisoners staged an uprising at the Hamgyong-bukto camp, such as number 12 unit. The riot was suppressed by the guards, resulting in the death of thousands of prisoners.

Any escapees are to be captured by any means or resources available. Recaptured escapees are executed in public to cause fear among the prisoners that any attempts to escape will result in death.

I pray and urge you pass the North Korea Freedom Act as soon as possible that can provide freedom and democracy to the North Korea people, please.

I also pray and urge you to convince the United States Government to press North Korea to release all the prisoners in political prison camp and release those oppressed and inhumanely treated. Use sanctions against North Korea, if necessary, to abolish those concentration camps and release the political prisoners, please.

Thank you very much.

Mr. LEACH. Thank you, Mr. Choi.

[The prepared statement of Mr. Choi follows:]

PREPARED STATEMENT OF CHOI DONG CHUL, FORMER NORTH KOREAN PRISON GUARD  
AND REFUGEE IN CHINA

Dear Honorable Congressmen & Congresswomen,

I would like to thank you for allowing me the opportunity to testify on North Korea Political Prison Camp and the inhumane treatment of the prisoners.

My name is Dong-Chul(Daniel) Choi. I escaped North Korea with my mother in February of 1994. I arrived in Seoul, South Korea in December 1995. From 1985 to 1986, I served as a prison guard at North Korea's Bureau of National Security, the 11th Political Prisoners Concentration Camp. Based on my experience during that time, I would like to report to this Committee and the world, the horrible conditions of the camp and the inhumane treatment of the prisoners that I have witnessed.

The Bureau of National Security was formed in the early 1970s, derived from the "Ten Principles of Systematic Establishment of the Communist Party as the Sole Ideology." With execution of the constituent study, it was extended to the entire country. The bureau broadened its operation by including the administration departments to oversee the Political Prisoners' Concentration Camps. The camp guards were uniformed and armed as the regular soldiers. The camps were built at various regions throughout the country: in Hamkyongbookdo, two were built in Onsong County, Hoiryung County, City of Chung Jin, Kyoungsung County, Hwasung County; in Hamkyongnamdo, Yoduck County; in Pyongahnamdo, Gaechun County, in the city of Pyongyang, in Hwachundong, in Jakangdo Dongshin County, in Pyongahnbookdo Chunma County.

When the international community made an issue with the Bureau of National Security of North Korea in 1990s, The North Korea wanted to preserve the secrecy by merging the two concentration camps in Onsong County that are located near the Chinese border with other camps. The camps in the city of Pyongyang and in Kyoungsung County were also combined with other camps.

The Political Prisoners Concentration Camps followed Kim Il-Sung's decree, "all prisoners are the enemies of our revolution, and therefore three generations of the prisoners must be exterminated." The camps served the purpose of thoroughly purging anyone standing against Kim Il-Sung and his son Kim Jong-Il's regime.

The prisoners are consisted of the pro-Japanese, wealthy landlords, capitalists, soldiers who fought against the Communist Party during the Korean War, anticommunists, and family members of the defectors to South Korea. Those oppose the "Ten Principles of Systematic Establishment of the Communist Party as the Sole Ideology," along with the ones who stood against Kim's regime since Korea won her independence from Japan. Someone who did not take a good care of the picture of Kim Il-Sung; a younger brother of a defected soldier during the Korean war; those who did not worship Kim Il Sung and Kim Jung Il as their "god", and the Christians are considered as the political prisoners. For expressing their "wish to go back to Japan", some Korean-Japanese were considered as enemies also.

In the Bureau of National Security, there is a preliminary hearing board. The accused are severely beaten, tortured, and threatened to obtain their confessions. Upon successfully obtaining their confessions, the prisoners are taken to the camps without any trials of any sort. The prisoners do not even know where they are being sent. Their family members are transported very early in the morning while the

neighbors are still asleep, fearing any undesirable reactions. Numerous people could not endure the torture and have falsely confessed. A simple complaint like “we coalminers will not get treated like pilots,” is considered to be against the teachings of Kim Il Sung. Accidentally cutting the picture of Kim Il-Sung while clipping a newspaper article of him is enough to be arrested. A drunk throws a wine bottle, thus dropping a picture frame of Kim Il Sung, receives no mercy.

The Political Prisoners Concentration Camps are fenced with 6 to 10 feet tall barbed wires. Around the perimeter are deep and wide trap holes, landmines, grenades, and watch towers. The camps are equipped with three-folds or five-folds security measures to deny the access to the camp. The signs posted everywhere read, “Absolutely No Access”. The guards constantly patrol the area and are ordered to shoot without a warning in the event of detecting intruders or escapees.

The camps are divided into two classes, the revolutionary and the dictatorial division. The prisoners of the revolutionary division are not aware of their jail sentences. Upon satisfactory completion of their sentences or with good behavior, they are released from the prison and allowed to return to the society. One such camp, the 15th Unit, is located in Yoduk County of Hamkyungnamdo.

The prisoners of the dictatorial division serve for life. Even after their deaths, the corpses are not allowed to leave the camp. From the first day of the term, any marriage or childbirth is not allowed. Husbands and wives are separated and do not know whereabouts of each other, or whether they are even alive. The main reason for not allowing any marriage or childbirth is due to Kim Il-Sung’s decree to “exterminate three generations.” The healthy and strong men are sent to work on building the underground military bases, nuclear bases, or underground tunnels. The remaining family members are kept in the concentration camp.

Approximately one hundred to three hundred families of political prisoners are admitted to a village. They are situated in the multi-unit-housings, known as the “pigeon-house”, built using the clay blocks, or the “half-cave” dugouts. On clay floors, they are forced to sleep on hay or straw like animals. During the Spring and Fall, these clay floor slabs are raised to collect the ashes to use as fertilizer.

The prisoners are given the dyed clothes the guards have worn previously. However, there is not enough supply of clothes. Clothes are sewn with patches everywhere; instead of shoes, they wrap old cloth on their feet. Their meals consist of potatoes and popped-rice (much like popcorns). Due to malnutrition, their faces are discolored. Children are disfigured with lower abdomen bulging out disproportionately. They are to walk in a line with their heads lowered. The prisoners are to address the guards and the National Security Officers as “Sirs” and bow their heads. The prisoners are to show their respect by bending 90 degrees forward upon meeting the guards or the officers, regardless of their ages.

The children learn to barely read or write under the whips of the National Security Officers who serve as teachers. Along with arithmetic, children learn the so called “farming administration.” When they reach eleventh birthday, they are forced to work as an adult. Due to all the hard labor, especially carrying heavy materials, many children do not grow any taller than five-feet in height even when they reach adulthood. The political prisoners are denied of any breaks throughout the day. They are to repay their debts to the Communist Party and the People, and rehabilitate through hard labor.

Among the political prisoners, women tend to get harsher treatments. Women are divided into two groups. The “pretty-faced” women get lighter duties by “serving” the officers, and the other women work the physically demanding jobs such as the coal mines, bee farms, pig stocks, or farm fields. Nevertheless, both groups of women work and are treated equally as slaves. The “pretty” group gets to dress in cleaner clothes, be able to wash up, but only to serve the officers for their sexual desires. The latter group wears worn out, dirty clothes. Even during their menstrual cycles, they have no way to clean themselves. Their clothes, stained in blood, do not bear any shame.

In order to control the prisoners, the guards reward anyone for turning in the other prisoners for any acts against the officers, any negativity, or any escape plans. Everyone is watched very carefully, and gone under scrutiny. Frequently, the guards recruit the informants. Almost every night, the guards will make random patrols to prevent the prisoners from conceiving any escape plans or forming any resistance group. Early morning roll-calls alert any escapee during the night. Anyone caught planning an escape or getting even with certain officers, or “misbehaving”, is taken into the detention room to be tortured. A majority of these tortured prisoners die within three months.

Even under such close surveillance and heavy guards, unable to cope with horribly inhumane treatments, there have been many instances of planned escapes. In 1983, ten prisoners from several families managed to escape from

Hamkyoungbookdo Onsong County facility, the 13th Unit, to China but only to be captured again. In 1985, Ham Kyounghnamdo Yoduck County facility, the 15th Unit, two political prisoners escaped but was again captured within just three months. In summer of 1985, from the Hamkyungbookdo facility, the 11th Unit, a family of five escaped but captured again in just three days later. In 1989, political prisoners staged an uprising at the Hamkyungbookdo Onsong County camp, the 12th Unit. The riot was suppressed by the guards but resulting in deaths of thousands of prisoners. Any escapees are to be recaptured by any means or resources available. Recaptured escapees are executed in public to cause fear among the prisoners that any attempts to escape will result in death.

The officers and the guards are instructed to treat all the prisoners as enemies. When they are caught showing a pity or empathy toward the prisoners or having any relationship with political prisoners, they will immediately lose their position. They will be discharged from the military and sent to work in a coal mine. If a prisoner becomes pregnant by an officer or a guard, she will be forced to have an abortion. The abortion is not medically performed. The pregnant women is tied to a tree, and then kicked in her abdomen or beaten with a bat. Such a cruelty is based on the decree to "exterminate three generations." From this atrocity, most women faint and die. Even if she survives the ordeal, she becomes insane.

A place where a human is not treated as human and yet worse than animals is the North Korea's Political Prison Camp. "Living Hell" would be a right description for those prisoners. These camps must be abolished!! The prisoners must be released and set free.

Dear Honorable Congressmen and Congresswomen!

I plead and urge you to convince the United States Government to pressure North Korea to eliminate all the Political Prisoners Concentration Camps and release those are oppressed and inhumanely treated. Use sanctions against the North Korea if necessary to abolish those concentration camps and release the political prisoners, PLEASE!

Thank you very much.

Mr. LEACH. Ms. Oh.

**STATEMENT OF OH YOUNG HUI, FORMER NORTH KOREAN GYMNAST, OLYMPIC COACH AND REFUGEE IN CHINA**

[The following testimony was provided through an interpreter.]

Ms. OH. Thank you very much for allowing this opportunity to happen.

While I was in North Korea, I thought it was an average thing to happen that while you were in gulag that you would be tortured; and I thought this torture was the only kind of human rights abuse that the international society looked at. But now I come to realize that being abused by Kim Jong-Il and also being played by the regime is also a human rights violation.

Between the years 1981 to 1989 I was a gymnast in North Korea. After that, beginning in April 1989 to June 1991, I was a member of the so-called Joy Team; and after that I became an instructor for synchronized gymnastics. And in year 2002, February, I had escaped to South Korea.

Prior to my escape from North Korea I came to realize that there had been serious violations of human rights in many provinces of North Korea, and also I have heard about human rights abuses in China and also in Vietnam.

So these people, after having escaped from North Korea, once they arrive in these other countries they are—they have their human rights violated. But not only outside of North Korea are the human rights of women violated. Women who are in North Korea, especially those who join the Joy Team, they think they are actually going to be the center of the stage, and that it is some sort of an elevation of status, when in fact they and their human rights are actually being violated.

Human rights abuse against women occurs everywhere now. Not only does it occur in North Korea, but also it occurs outside of North Korea for those who have fled the regime.

In China, my understanding is that people are apprehended after having fled North Korea, even if it is a female with a pregnancy. The fetus would be terminated once they are sent back to North Korea, and also if the female is with a child, the child would be separated from the mother.

Also, for those who are left in North Korea, Kim Jong-Il holds this party every week he is joined by the Joy Team, and these people, their human rights are abused. Also within the central party itself there would be certain females having relationships with members of the party. If that female has a pregnancy, then there would come a time when the member would want to destroy or have both the female and the child disappear; and that, of course, is a human rights abuse.

These human rights abuses that are taking place within and outside of North Korea, these are the things that you cannot listen to or hear about or watch without shedding tears.

When I escaped North Korea, I had two children with me. One was 3 years old, the other one was 6 years old, and we had escaped to China along with my husband. In China, I had to work to feed the family. So when I go to work I had my children locked up inside a room, and I would lock it from outside, and on this one particular day, I heard that my husband and the children had been captured by the authorities.

So I had gone to a nearby police station because I decided that it is not worth it for me to live on my own and by myself without my children and my husband. When I had gone back that day, they asked me for papers and documents which I did not have, of course; and they decided that they would send me back to North Korea.

While I was locked up, we were able to escape, not all of us, but just me, actually. But I escaped through the wires, and the authorities of China had taken pity on my children and let my children also escape.

However, my story is not as bad as others who have been repatriated back to North Korea. And because I worry about and I am also concerned about these people and also the events that I have seen in China and in other countries such as Vietnam, I believe it is essential for you to pass the North Korea Freedom Act now so that people who are in my situation and in similar situations would find hope and possibly a tomorrow. Thank you.

Mr. LEACH. Well, thank you for that moving testimony, Ms. Oh. Ed.

Mr. ROYCE. Thank you, Mr. Chairman.

I also want to thank all of the witnesses here, because I think it is so important that the world have access to information about what is going on in North Korea. We have such a difficult time getting that information out.

Mr. Chairman, we had a hearing about—a little earlier this week, we had a hearing about what happened in Rwanda; and one of the comments at the hearing was, well, that was during the O.J.

Trials, so there wasn't as much attention in the media as there should have been.

One of the things that I worry about is the enormity of the suffering that is going on in North Korea and whether we have found a way to get that information to people, not only here in the United States but also in South Korea and around the world, so that there will be some concerted action; and passage of this legislation is certainly part of that. I commend the Chairman for his work on this bill.

I wanted to ask our witnesses here about food aid. That was one of—as you listened during our last panel, we talked about the enormous amount of food aid that was sent. I wanted to ask, did you ever see any evidence of that food aid being received by prisoners, for example, in the gulags or in local villages where you lived?

Was that food aid getting to the people most in need? That would be one question.

Mr. PARK [through interpreter]. Up until about 1995, of the food aids and pharmaceuticals that were delivered to North Korea from the U.N. and South Korea, the average people were not aware of these events taking place. The reason people were not aware of these facts were because, for example, when rice was delivered from South Korea, the bags would be switched so that the labels which indicated that they were from South Korea would not be seen by the people receiving rations.

Also, I know there has been events where baby foods and sugar had been delivered to North Korea by U.N. agencies, and on certain occasions there would be monitors with these U.N. agencies who would be coming out to make sure that these are delivered properly. For these monitors they would put on a show. They would take these baby foods and sugar to kindergartens and give these products to the kindergarten babies and children. Once the monitors had returned, they would take back these baby foods and sugar, and the babies would end up crying.

Mr. ROYCE. Thank you.

Mr. PARK [through interpreter]. However, in 1996, and perhaps 1997, there has been certain changes because there has been a lot of rations—a lot of food aid began arriving in North Korea from outside; and I guess the regime decided that it was not necessary to hide the fact that this food aid was coming in from outside. So there had been rice sacks that would bear the label of U.N., and so people came to realize that there was outside support for this food aid.

However, you must remember that when the food aid was given as a ration to people, the pretext would be that this was the show of love and affection by the great leader; and also, as far as the actual rations are concerned, the food delivered would be first used by the military. So the very first priority was always the military, and of course that was for the maintenance of the regime. And for average people, for us, we would be rationed rice on the birthdays of Kim Jong-Il and Kim Il-Sung.

Mr. ROYCE. Thank you.

Mr. LEACH. Well, thank you.

Mr. TANCREDO.

Mr. TANCREDO. Thank you, Mr. Chairman.



Could you tell me to what extent you think you believe, each one of you, that the situation presently in North Korea is a result of a cult of personality that will change when that person is dead, when Kim Jong-Il is dead, or whether or not there is, you know, someone that is going to be taking over that will continue the policies and what we have to look forward to under those circumstances.

Mr. KIM [through interpreter]. I can't tell you with 100 percent sure guarantee. However, I can tell you that there will certainly be a lot of changes to take place in North Korea once the dictator, Kim Jong-Il, is removed.

I have grown up in North Korea, and from a very little age to the point where I had become a grown-up, I came to see a lot of things in North Korea. And my one conclusion would be that there would certainly be a lot of changes to take place, including democratization in North Korea once Kim Jong-Il is removed.

Mr. TANCREDO. Anyone else have an observation?

Ms. OH [through interpreter]. Now, you talk about a cult of personality. When it comes to North Korea, you have to separate how you look at it in Pyongyang and also its different provinces.

Now in the provinces I believe there are many people who do not care so much for Kim Jong-Il. There have been some reforms that have been carried out. So they feel that it doesn't matter whether Kim Jong-Il is there or not. However, in Pyongyang, although they may say amongst their own that Kim Jong-Il is not such a great person, I think they need to hold on to this cult of personality because they have a vested interest themselves in maintaining the status quo. So in order to maintain the status quo, they have to believe in and worship the person of Kim Jong-Il.

So, in conclusion, I think it is hard for me to say whether people would be happy or not happy to see Kim Jong-Il dead or removed. However, one thing for certain is that there will certainly be changes to take place once Kim Jong-Il is dead.

Mr. TANCREDO. Thank you, Mr. Chairman.

Mr. PARK [through interpreter]. If there was God in North Korea, there would be one God, and that would be Kim Jong-Il. Kim Il-Sung had been God, and now Kim Jong-Il is God in North Korea. So once Kim Jong-Il is removed, or if he disappeared, the cult of personality would also be gone, because there is no other religion that could replace the cult of personality.

Mr. LEACH. One of the things that we in the West hear about Korea is that there is a total control of news and what we would describe with a long word called indoctrination. That is a kind of brainwashing of ideas. Can you tell the Committee what caused you to doubt this regime, and is it a series of events, a series of ideas, a series of circumstances. What caused you to object? And do you think there are millions more like you, or is this a few hundred thousand?

Mr. KIM [through interpreter]. As to the exact number, I could not testify. However, we have in North Korea some radios, and also we have had many people who had traveled overseas. In particular, as China opened up, there have been many people studying in China. Also, we had diplomats and others who have traveled

abroad; and of those people, when they come back, they would tell us about what happens outside of North Korea.

And also we hear from these radios. And from what we hear from the radios and what we hear as to what they have seen outside, we come to understand what changes are taking place outside of North Korea.

Perhaps it is only a small flame now, but I believe one day this flame will grow into the full flame of a volcano. And there are people in North Korea, including the cities of Pyongyang City, who are willing to go up against these statues of Kim Il-Sung and Kim Jong-Il and bring these statues down if they had to. I believe there is a growing number of antiregime, antisystem people in North Korea.

Mr. CHOI. When I was in North Korea, I had the experience to listen to foreign broadcasting through radio. At that time, I listened to South Korea education radio broadcasting to North Korea. But it is really dangerous for me, because if the government knew I listened to South Korea radio broadcasting, it is enough to have me arrested in North Korea, to go to prison camp. But I really, really want to know about outside world and outside North Korea, so—and I believe many—I believe hundreds of thousands of people of North Korean people are trying to listen to the radio programs, but they can't get radios and they can't access radio programs because the government tries to isolate them from listening to radio programs from the outside world.

So I think the United States or even the South Korean Government should try to provide radios to the North Korean people, to try to do radio programs for the North Korean people to provide information about the outside world and freedom and democracy. So it really, really helpful for North Korean people.

Thank you.

Mr. LEACH. Thank you.

Ms. OH.

Ms. OH [through interpreter]. About control of the news in North Korea, there has been news received from South Korea. That began as early as perhaps 1981 or 1984. So the radio frequencies were available back then. And also we have heard quite a bit of news from America and also quite a bit of news from Western Europe, and this was possible because there had been a lot of people in gymnastics and also sports circles. And also there has been students who had studied abroad, and they would come back with news.

Let me give you an example of how the news is available in North Korea. In the year 2000, there was the opening of Titanic in America; and the Titanic was introduced in North Korea as well in the year 2000, one of the reasons being was that the Titanic occurred on the 15th day of April, 1911. That coincided with the birthday of Kim Il-Sung, the great leader, and was one of the pretexts that was given for allowing this Titanic to be shown in North Korea.

As far as electricity is concerned, unless you are within the greater city of Pyongyang, you actually do not have electricity. So that in the provinces you are not able to access electricity and thus there is no news to be had. However, there is a lot of news counter-

feit activities that are taking place and are also illegal in North Korea. But all of this news is moving around that you can hear from people. That is how people come to realize what changes are taking place outside.

Mr. LEACH. Thank you very much.

Ed.

Mr. ROYCE. Mr. Chairman, I will just close with two questions. The first would be for Ms. Oh.

In North Korea, you were an international gymnast and coach of the Olympic team. We have seen all of the pictures of the ceremonies where athletes are used in North Korea for propaganda purposes. What can you tell us about these situations?

My last question, which I will give the interpreter—the translator right now is, in early February the BBC reported evidence of the testing of chemical weapons on prisoners in the state's gulag system, which in that BBC program included detailed descriptions of entire families being executed in these gas chambers.

We had a year ago or 2 years ago in this hearing Ms. Lee testified, who gave her eyewitness account—she had been a guard at one of the camps—at what she witnessed. I wondered if any of you had heard any reports on this type of activity.

And thank you again, Mr. Chairman, for this hearing.

Mr. PARK [through interpreter]. Let me jump in and respond to your second question first, if I may.

In regard to biochemical weapons, I have personally witnessed some of these events, not in a prison camp situation or gulag situation but in a military situation. There is a secret military division in an area called Yang Kang Do—Y-a-n-g K-a-n-g D-o—and in Yang Kang Do, there is a smaller city that is called Bo Chung Kun—B-o C-h-u-n-g K-u-n—and in this place there is a secret division of the military that practices and tests biochemicals.

The reason I know it is that there is this particular stream that is called Dae Oh Chon—D-a-e O-h C-h-o-n. In this Dae Oh Chon, after the military division had moved to the stream area, they had to divert the stream so that it would flow to a different location; and since then I know the people that are living downstream have complained that the water flow has been reduced by half. This is one particular place that I know of, in person, that actually practices and tests these biochemical weapons.

Of course, when I had defected to South Korea, I had discussed this situation with the South Korean government. The South Korean Government made it actually a nonissue. They said that they knew of it already and that they did not want to get into the details of it.

However, I was teaching at Kim Chaek University, that is the Kim Il-Sung University, and there I had many students who were learning chemistry. These students who were learning chemistry and also learning biology, many of these people would go to the military; and it is not hard to guess where they actually may have gone to. So from these students I learned that there had been biochemical weapons and got biochemical tests that were carried out.

Also, I have friends who had gone to the military and who would confide in me as to the situation regarding the biochemical weapons and biochemical testing.

Mr. KIM [through interpreter]. In regard to the biotesting, there is one particular person that comes to mind that would have been able to be a better witness. However, he is not with us here today.

However, according to him, in this particular location, at the Pyong Ahn Man Do, P-y-o-n-g A-h-n M-a-n D-o, in that area there was a particular prison camp, and in this prison camp they had a particular way of killing people. The expression is they hammer the person to death. So, apparently, they used hammers to kill the incarcerated; and once these people are dead, they would take the carcass to a hospital where they would do testing, a biotesting.

So I can only imagine what may actually have taken place once they get shipped out to the hospital. But it is true that I have heard from this particular person that these biotestings do take place.

Mr. ROYCE. Ms. Oh.

Ms. OH [through interpreter]. You asked us how the athletes in North Korea are used for propaganda purposes by the party. The athletes in North Korea are used in the following ways: The athletes, they would be promised certain things if they win from certain events, be it a world event or an Asian event. So if you were to become number one, a gold medalist in an Olympic event, you would be given a house, a vehicle, things like that. And also if you become number one in an Asian event, such as in events such as soccer or boxing, you would be guaranteed certain other benefits.

And also, if they are sent to an enemy country such as United States and Japan and become a winner in that country, they would be awarded the honorable term of hero. So they would be called a hero once they come back to North Korea.

I would like to give two examples of what actually had taken place. In 1989, perhaps 1990, there was an event, an Olympic type of event in the U.S.; and at the time there was a gymnast, a 17-year-old gymnast. Her name was Kim Pong Suk. She had won a gold medal in that event, and then she was awarded the house, vehicle, things like that.

In 1997, there was a marathon that had taken place in Japan. At the time, Chung Sung Ho became the winner of that marathon, and this marathon was not worthy of an Olympic type of award. However, she was accorded the Olympic type of award as to the house and a vehicle. Because, at the time, there was an interview carried out by Japanese and Korean press, and they had asked her what made you run this marathon, such a long journey and win this marathon. And she responded that when I was running I was only thinking of the glory of General Kim Jong-Il. And with that comment, she was awarded the house and a vehicle. The vehicle was a nice one, a 380 Benz. And that is how they used these athletes for propaganda purposes.

Mr. LEACH. Thank you, Mr. Royce.

Let me just pursue one final thing with Mr. Kim. You raised the subject of biochemical weapons. As you know, there is a distinction between biology and chemistry, chemistry being a dead agent, biology being a living agent, such as a disease. Biology is much more dangerous than chemistry.

The question I have is, do you have any knowledge or does any one on the panel have knowledge of biological testing of a military kind being undertaken?

Mr. PARK [through interpreter]. There was a feeling in Bok Chun Chur who had lived next door to me in North Korea and he had attended Kim-Il Sung University. At the time, he studied organic biology. After having studied organic biology, he had gone to the National Science Institute of North Korea; and at the National Science Institute my understanding from conversations with him was that he was studying and testing usage of organic biology to produce weapons of mass destruction.

Of course, I personally have not witnessed these things taking place.

Mr. LEACH. Does any one else want to respond to this question?

Ms. SCHOLTE. I would like to just request—Soon Ok-Lee is here. I think she is at the prayer vigil. But she witnessed chemical and biological experiments. I was going to ask, with your permission, if we could submit her testimony as an addendum.

She is not here, but she would be delighted to speak with you.

Mr. LEACH. If you could submit testimony, that would be very good. I appreciate that.

Ms. SCHOLTE. I would be happy to do that.

[The information referred to follows:]

PREPARED STATEMENT OF SOON OK LEE, NORTH KOREAN DEFECTOR AND POLITICAL PRISON CAMP SURVIVOR

*In response to the question from the Committee Chairman for information about chemical and biological experimentation at the North Korean political prison camps, North Korean defector and political prison camp survivor, Soon Ok Lee, submitted the following statement:*

I will speak both about two people I knew and what I saw as an eyewitness regarding chemical and biological weapons experimentation in North Korea's political prison camps.

First, I met a woman named Kim Ok Sun who was given a 20 year sentence in the political prison camps because she refused to do research to make weapons. She and her husband were scientists and she was a lab assistant for Gui Soon Yee. Yee was approached in the 1960's to develop weapons that could kill people. Kim told me that she was in the camps because she refused to continue to work on developing weapons that could kill large numbers of people.

My own personal eyewitness accounts are as follows:

Because of my skills, I served as an accountant in the head office of a political prison camp that had 6000 prisoners. I worked in the office of the head of the camp and was given administrative jobs including keeping inventory.

In May 1998, three officials came to our camp for a test. These officials were not part of the State Security Bureau that is assigned to oversee the camps. They were dressed in light brown protective garb. The prison guards brought 50 women into an auditorium and then the guards left. The officials instructed me to give out to 50 women a liquid saturated cabbage that was in white buckets. When I handed this to the woman the officials told them to eat it. After the woman ate it, blood came out from their mouths and their rectums. It looked like something had exploded inside them. In just a few minutes, they were all kneeling and falling forward. The blood that came out of them went for 5 to 6 feet. There was pandemonium and screaming. I was taken out of the auditorium and told to wash my hands.

The next day the Camp Security Director and the three individuals were meeting and congratulating each other and saying that the results were greater than expected, the efficacy even greater than expected.

About ten days to two weeks later, I became very ill with fever, high blood pressure, and I lost consciousness. The doctor at the prison camp told me that it was miraculous that I was alive, the effects will last a lifetime.

These experiments happened about three times a year. It was the same group of three men that came each time to do the experiments.

In June, 1992, a similar experiment was done on over 100 men and women. This time, ten officials came out to witness this experiment. They all put on protective suits. They were told that they were going to be given some special food for their great work. The prisoners were given what looked like fresh spinach. In this case, some people died after a few days, some after a few months, and some did not die at all. It seemed the process of death was expedited by drinking water. So, they would cut off the water and track how many days later they would die. Kim Ok Sun was responsible for overseeing the water distribution. She asked me, "Why do I have to do this when I was part of developing it."

At least once to two times a year usually in the Fall and the Spring, there was another experiment with poison gas. A research team of three different officials came out. The research team had protective suits. They would throw what looked like small paint balls against the ground. What looked like whitish gas would come out when they exploded. As prisoners walked through the gas, they fell over, and cramped up. I saw these experiments from a distance. They would test it on between 30 to 200 people. The first time after the experiments, the officials said, "The yield of this experiment was better than expected."

Because the camp always had to have 6000 prisoners to meet their work quota, the head of the camp complained to the State Security Bureau that because of the deaths by these experiments, they could not meet quota because they would not have enough workers. The SSB responded: "It is a Kim Jong-il directive: the chemical and biological weapons are needed for the battlefield. It is meaningless to conduct these experiments on animals." The head of the camp was left speechless.

Mr. LEACH. If there are no further questions, let me thank you all for much. We are very appreciative of your time and your great courage, leaving your country; and we wish you well in your new careers.

The Committee is adjourned.

[Whereupon, at 6:16 p.m., the Subcommittee was adjourned.]

## A P P E N D I X

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### MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE ELTON GALLEGLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRMAN, SUBCOMMITTEE ON INTERNATIONAL TERRORISM, NONPROLIFERATION AND HUMAN RIGHTS

I am pleased that Chairman Leach has taken the lead in holding this hearing and highlighting the atrocious North Korean human rights record.

Today, there is a horrific human rights and humanitarian crisis in North Korea. Disappearances, torture, arbitrary arrest, a complete lack of freedom of speech or freedom of the press are common practices employed by the rulers of this country.

In addition, many human rights groups have provided credible and overwhelming evidence that the North Korean regime is operating death camps throughout that nation. In these camps, many thousands of prisoners die as a result of executions, disease, starvation, beatings or exposure to freezing temperatures. There is absolutely no due process for these prisoners or, for that matter, anyone who is accused of wrongdoing.

Some of the individual stories coming out of North Korea are almost beyond belief. During a subcommittee hearing that I chaired last year, we heard first-hand from a woman who had suffered in a North Korea prison camp. She recounted in graphic detail the conditions in the North Korean gulag. Let me briefly quote a part of her testimony:

“Pregnant women were unconditionally forced to abort because the unborn baby was also considered a criminal by law. Women in their 8th or 9th month of pregnancy had salt solutions injected into their wombs to induce abortion. In spite of these brutal efforts, some babies were born alive, in which case the prison guards mercilessly killed the infants by squeezing their necks in front of their mothers.”

This afternoon, I look forward to exploring U.S. government policy with respect to the human rights situation in North Korea. I also hope we explore how we can more effectively alleviate the humanitarian crisis. I am especially eager to hear what more our government can do to convince the international community to join us in placing greater pressure on the North Korean regime to respect basic human rights.

I would also like to take this opportunity to commend Mr. Leach for his introduction of the North Korea Human Rights Act. I am a cosponsor of this legislation and I urge its quick passage in the House of Representatives.

