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Committee on International Relations  
Subcommittee on Asia and the Pacific**

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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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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 or 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>

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<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".

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**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]

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<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

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<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].



# UNHCR'S GLOBAL CONSULTATIONS ON INTERNATIONAL PROTECTION

## Regional Meetings Governments, NGOs, Experts, Refugees

- The civilian character of asylum  
February 2001  
Pretoria, South Africa
- The practice of interception  
May 2001  
Ottawa, Canada
- Asylum and protecting refugees  
May 2001  
Macao, People's Republic of China
- Asylum practices  
June 2001  
Budapest, Hungary
- UNHCR's supervisory role  
June 2001  
San José, Costa Rica
- Asylum capacities in the region  
July 2001  
Cairo, Egypt
- Resettlement  
November 2001  
Oslo, Norway
- Respect Our Rights: Partnership for Equality  
▫ Dialogue between refugee women and UNHCR  
June 2001  
Geneva, Switzerland
- Refugee Perspective  
▫ Refugees discuss asylum procedures, local integration and voluntary repatriation  
September 2001  
Rouen, France



## Government/UNHCR Discussions (all in Geneva, Switzerland)

- Protection in mass influx situations (including the civilian character of asylum, registration, burden-sharing)  
March 2001
- Refugee protection in individual asylum systems (including reception of asylum-seekers and additional forms of legal protection)  
September 2001
- Refugee protection in individual asylum systems (including migration control, interception practices, return of rejected cases and asylum processes)  
June 2001
- Protection-based solutions and protecting refugee women and children  
May 2002

## Expert Roundtables (Governments, NGOs, Academics, Experts in Refugee Law)

- The Convention provisions for exclusion and cessation  
May 2001  
Lisbon, Portugal
- Non-refoulement and UNHCR's supervisory responsibility  
July 2001  
Cambridge, UK
- Definition of a refugee, gender-related persecution and protection alternatives within the country of origin  
September 2001  
San Remo, Italy
- Illegal entry and family unity  
November 2001  
Geneva, Switzerland

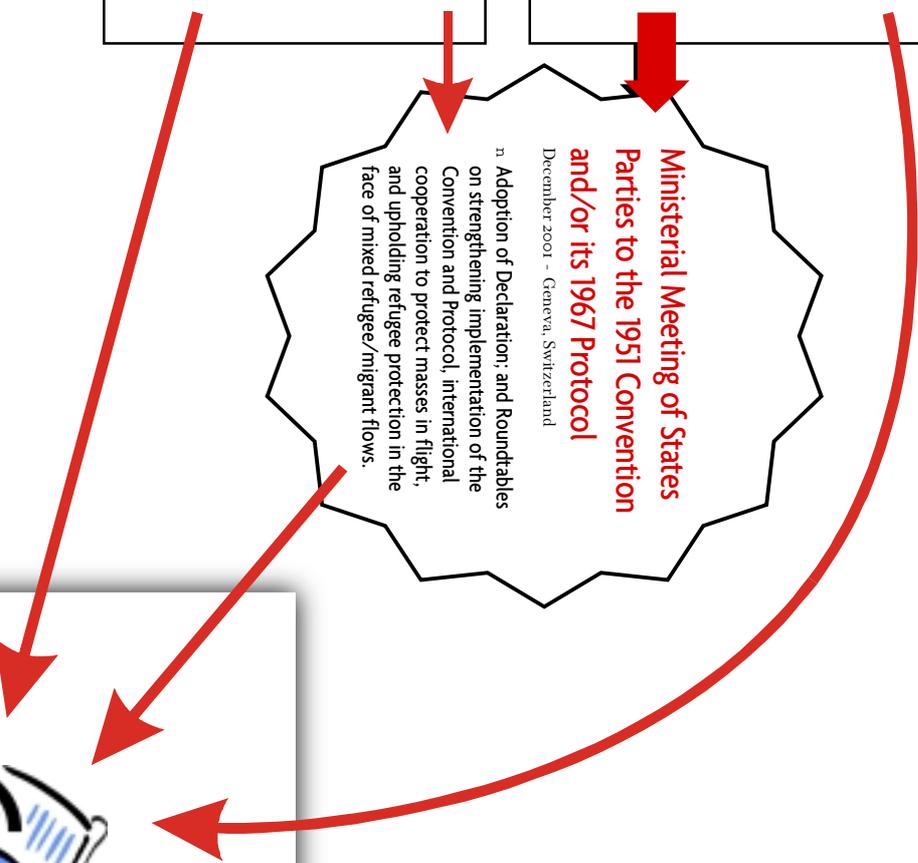


## Ministerial Meeting of States Parties to the 1951 Convention and/or its 1967 Protocol

December 2001 - Geneva, Switzerland

- Adoption of Declaration, and Roundtables on strengthening implementation of the Convention and Protocol, international cooperation to protect masses in flight, and upholding refugee protection in the face of mixed refugee/migrant flows.

## Agenda for Protection



Ministerial Meeting of States Parties  
to the 1951 Convention  
and/or its 1967 Protocol  
relating to the status of refugees  
  
12-13 December 2001

Distr.  
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16 January 2002  
  
Original: ENGLISH

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

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;

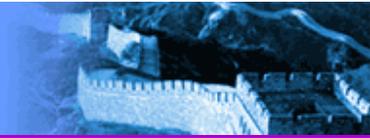
10. Urge all States to respond promptly, predictably and adequately to funding appeals issued by UNHCR so as to ensure that the needs of persons under the mandate of the Office of the High Commissioner are fully met;

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.



## 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)



# 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;

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

5. *Encourages* States that have not already done so to consider acceding to the 1951 Convention<sup>3</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

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<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.

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

**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

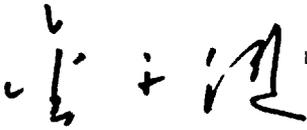
1. This Agreement shall enter into force on the date of its signature by both Parties and shall continue to be effective until the date of termination under paragraph 4 of this Article.
2. Any other matters not covered by this Agreement shall be settled by the Parties in keeping with the relevant resolutions 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.

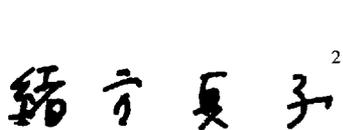
IN WITNESS THEREOF the undersigned, being duly appointed representatives of the Government and the Office of the United Nations High Commissioner for Refugees, respectively, have on behalf of the Parties signed this Agreement in the English and Chinese languages, in two copies. Both the English and Chinese texts shall be equally authentic.

Done at Geneva this 1<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 modelled on those 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.



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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.

*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

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;

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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