Thank you, Mr. Chairman. Thank you for your

leadership last year in bringing about the passage of the North Korean

Human Rights Act.

Mr. Leach, I am honored to testify here today before this joint

hearing about the plight of North Korean refugees who I so passionately

wish to see helped.

In recent years the plight of North Korean refugees has finally

received international attention. Significantly, the Chinese Government

has come under increasing pressure to stop the impermissibility

of forcing North Korean asylum seekers to return to the

Government from which they fled, where they would face certain

detention, punishment in labor camps, and even execution.

In this testimony, I will address China’s violation of international

law and provide recommendations, but I wish to first address

the effect on refugees of the North Korean Human Rights Act

of 2004, and I intend to abridge my written statement.

Our organization applauded the efforts of the Members of Congress

and so many colleagues who joined together in passing the

act. Unfortunately, North Korean refugees have far to go before

they are truly protected in any land to which they escape, seeking

safe harbor or asylum.

Despite passage of the act, the likelihood of processing North Korean

refugees to be resettled in the United States or granted asylum

within the United States remains remote for the time being.

Since the passage of the act, a number of news reports described

how some North Koreans who had availed themselves of resettlement

benefits and citizenship in South Korea have entered the

United States lawfully or unlawfully, and sought asylum.

Not surprisingly, there has been no reported grant of such an

asylum case.

The concept of firm resettlement is well established in asylum

and refugee jurisprudence and remains prominent in the act. I

raise it because it is important that we dispel the notion that any

firm resettled North Korean in South Korea can avail themselves

of asylum. They cannot. It is the law. It has not been changed by

the act, and it would stop the exploitation of North Koreans if more

were said to dispel that notion.

One of the most promising provisions to help North Korean refugees

is section 304(a)(5), which states:

‘‘The UNHCR should pursue a multilateral agreement to adopt

an effective first-asylum policy that guarantees safe haven and

assistance to North Korean refugees.’’

Such action is the mandate of the UNHCR. I am not sure that

that is taking place. I am not sure that those negotiations are happening.

Focus needs to take place specific to Mongolia, Russia, and

other countries through which North Korean refugees currently migrate,

so that there are first-asylum policy talks that take place.

Guarantees of safe haven—specifically the provision of temporary

protective status in China, Russia, Mongolia—are simply not negotiable.

They are international law. Both China and Russia are

party to the international convention relating to the status of refu-

gees and its protocol. Yet both have violated their obligations to

North Korean refugees under this treaty, and must be held to account.

Although Mongolia is not a signatory to the refugee treaty, it has

complied with international rights standards and affords protection.

Yet Mongolia needs to be further encouraged to actually become

party to the treaty.

Section 304(b) of the act sets forth a sense of Congress that the

UNHCR should initiate binding arbitration proceedings pursuant

to article 16 of the 1995 UNHCR mission agreement with China

and appoint an arbiter.

I am sad to say I rarely hear this raised as a possible solution.

Yet the sense of the NGO community remains that the UNHCR

has abdicated its responsibility and utterly failed to initiate the one

available and accessible mandatory and actionable legal remedy to

China’s utter failure to comply with international law.

Section 301 of the act mandates that the Department of State

issue a report after 120 days from enactment. The report, which

was dated March 11, falls short of providing new and innovative

ideas of how the United States will assist North Korean refugees.

Most disappointing is any elaboration on already existing access

to admissions of refugees to the U.S. independent of the UNHCR.

This question was raised earlier, and the earlier panel did not, in

my view, address what those are or what actions they have taken

to actually initiate processing to the United States for refugees.

For example, no reference is made to the fact that in the fiscal

year 2005 program, the Department of State’s PRM Bureau permits

NGOs to even make Priority One referrals. There is no clear

language on how the Department of State will permit NGOs to

make those kind of referrals as it relates to North Korean refugees.

The Department of State report found that in the past 5 years,

no North Koreans have been resettled by the United States refugee

admission program. Nine North Koreans were granted asylum from

2002 to 2004 by immigration courts during removal proceedings. A

turnaround for refugee admission can take place with implementation

of Priority One processing as well as the establishment of a

process by PRM to accept North Korean refugees for resettlement.

Jubilee Campaign applauds the detailed report and conclusions

reached by the United Nations Special Rapporteur on North Korea,

Professor Vitit Muntarbhorn, who has been appointed in July 2004

as the Special Rapporteur on North Korea. I believe he carries his

mandate very seriously and has done excellent research.

Professor Muntarbhorn presented his report at the 61st session

of the U.N. Human Rights Commission in Geneva. For the first

time an official United Nations document has clearly defined North

Korean defectors as refugees, not the ‘‘possibility of refugees,’’ as

one of the earlier panelists defined them.

For the past 3 years, Jubilee Campaign has pressed the United

Nations High Commissioner for Refugees to decisively find that

North Koreans fleeing their homeland are refugees, and should be

afforded refugee protection. After all, the mandate of the UNHCR

is to protect refugees and promote durable solutions to their plight.

The first possible step occurred in September 2003 when the

United Nations High Commissioner for Refugees, Rudd Lubbers,

declared that North Korean defectors in China was a group of concern

to the UNHCR, which triggers certain protection obligation.

Yet nothing has been done by the UNHCR despite this proclamation

to actually protect them.

In his report, the Special Rapporteur Muntarbhorn referenced

the legal definition of a refugee and applied it to North Koreans

who flee their homeland. In paragraph 44 of this report,

Muntarbhorn emphatically stated that:

‘‘In general, those leaving the Democratic People’s Republic of

Korea for political reasons fit into the traditional international

law definition of refugees; namely, persons fleeing their country

of origin for a well-founded fear of persecution.’’

Now, China is a signatory to the U.N. Conventions, and international

law experts have repeatedly asserted that a second definition

of a refugee provides protection to anyone found to be a refugee

sur place. Sadly, China continues to fail to recognize those

who have fled North Korea as refugees sur place despite the fact

that they face harsh imprisonment, torture, internment in labor

camps, forced abortion, infanticide of their babies, and even execution

of repatriated defectors. If that is not a refugee, I do not know

what is.

During a parallel meeting at the 61st session of the U.N. Commission

for Human Rights, one of the members, a senior liaison officer

of the High Commission for Refugees, commented that:

‘‘We are grateful for the support and close cooperation of the

Special Rapporteur with our office. We see no difference between

the Special Rapporteur’s report’s definitions of refugees

as referred to North Koreans and our own position. We previously

referred to them as persons of concern. We also ascribe

to his positions regarding root causes.’’

Despite these assurances, in fact, the UNHCR has done little

more than refer to private negotiations with China. That has produced

no actual real cooperation by China to abide by its treaty obligation

of non-refoulment.

The UNHCR’s reported official statistics of North Korean refugees

are a far cry from the number known by NGOs to exist. For

example, in a 10-year span, the 2002 statistical yearbook of the

UNHCR counted only 61 individual applicants for asylum outside

of Indo-Chinese refugees in China. That is a terrible figure when

everyone knows the substantial numbers of refugees in that region.

Now that the U.N. Special Rapporteur has actually defined all

North Koreans who fled China as refugees or refugee sur place, the

UNHCR must start publishing actual real numbers of North Koreans

hiding in China. The UNHCR must make North Korean asylum

seekers in China more than just an abiding preoccupation. It

must make them refugees and afford them protection.

China continues unabashedly to violate its treaty obligations.

This is another issue that we must address. The 2000 World Survey

states that nongovernmental organizations estimate that China

forceably deports between 150 and 200 North Koreans per week,

amounting to an estimated 7,800 forced deportations during 2003.

What is worse, not only has China aggressively apprehended and

repatriated North Koreans, but it has also tacitly given permission

for North Korean refugees to execute kidnapping operations on its

soil. The arrest of a North Korean agent who was involved in the

abduction of Reverend Kim Dong-Shik, a humanitarian worker for

North Korean refugees in China, has revealed that North Korea operates

an extensive kidnapping scheme in China. In fact, between

1999 and 2001, we have found 40 abductions permitted by China

and by North Korean agents.

Moreover, China conducts intense campaigns to disassemble volunteer

aid and support systems that provide help for refugees

along the border providence. It has made assisting this population

a criminal act. In addition to imprisoning and imposing severe

fines on humanitarian aid workers, China provides substantial

bounty money on the heads of displaced North Koreans and on

those who help them. Many Christian aid workers from South

Korea have suffered imprisonment in China, drawing out court

cases, torture in Chinese custody, and have been handed over to

North Korean authorities.

There is no other country that the international community

would so quietly stand by and tolerate such a blatant and systematic

violation of its treaty obligations as that as has been committed

by China.

The act sets forth the unanimous opinion of this House and Senate

that, in fact, China has been abrogating its refugee treaty obligations.

China must be held accountable for this.

Finally, I would just draw attention to five recommendations.

The United States should redouble our efforts to ensure that the

UNHCR continues to make public and published affirmations of

refugee status for North Koreans. Now that the UNHCR is coming

around to accepting the correct legal definition of North Koreans as

refugees, it must do so publicly. At its next executive committee

meeting in September, it should emphatically declare them as refugees

as has the Special Rapporteur.

In its next annual report it should fully report the real number

of them in China and elsewhere. The UNHCR must regain

unimpeded access to North Korean refugees found in China, in particular,

in the border areas.

In this process it would be contrary to international refugee law

for the UNHCR to deny refugee status to any North Korean citizen

who would face arrest, torture, labor camp detention, or execution

upon their return. Such punishment violates international standards

of human rights and constitutes the worst imaginable cruelty.

No one should be deliberately expelled to such cruelty.

Thirdly, the UNHRC must commence binding arbitration proceedings

against China in order to obtain unimpeded access to

these refugees.

An earlier panelist noted that the U.S. is the one who is providing

funds to the UNHCR on this issue. Certainly we have some

influence there, and the act was clear.

The role of the UNHCR is to protect refugees and it has the authority

to enforce the existing treaty with China.

Fourthly, crimes against humanity are committed systematically

by the DPRK against its own citizens. We must uphold the inno-

cent, hungry and distressed North Korean brothers and sisters. We

must prevent any more from perishing. Those responsible for the

gross and systematic human rights abuses perpetrated by the

DPRK should be brought to justice.

It is time for member states of the United Nations to consider

bringing genocide charges against Kin Jong-il and officials within

the DPRK.

Finally, the Department of State must make further efforts at

multilateral negotiations to secure a first-asylum strategy and temporary

protective status for North Korean refugees.

Thank you, Mr. Chairman.

Thank you for those questions.

On the first issue, we have had Korean-speaking activists scour

South Korean papers as well as anything they can find in North

Korean press, and we have had Chinese speakers scouring China

press to try to find evidences of abductions, and that is in part

where we have come to conclude, and also reported by Chosunilbo,

that there have been at least 40 abductions that have been—that

can be documented.

That is a significant number if one considers in that area how

many aid workers might even be there. The numbers are not really

that large, and so that is a substantial number that were abducted.

As far as the case of Reverend Kim Dong-Shik, when we approached

the U.N. Working Group, their response was to—they essentially

note that North Korea is unlikely to respond. They have

made numerous attempts in recent years to obtain responses from

North Korea of others who have disappeared, and not surprisingly,

North Korea has made no answers whatsoever.

Since the abduction itself took place in China, our objective is to

have the working group make a request to China as well and hold

China accountable for even permitting the abduction to take place.

We are very pleased with the South Korean Government’s efforts

in prosecuting those who have been involved in the abduction itself.

That is the first breakthrough of this kind, and I think it is monumental

that a prosecution has taken place in the South for an

international kidnapping.

The first step that needs to be taken, and I believe

it has now taken place, and that is where there has been recognition

by the U.N. itself that these are refugees. That issue had

been skirted for too many years, avoided, basically hidden away.

And so the fact that that is now actually being published by the

Special Rapporteur is a significant step forward, and we need to

put pressure on the UNHCR to publicly adopt that definition. Our

Government should publicly be adopting that definition. It is a

legal lawful definition under the treaty.

As far as treaty enforcement, there is an agreement between

China and the UNHCR which the UNHCR can enforce through

binding arbitration. It is our understanding from the UNHCR, our

dialogue with them, that they do not feel they could win a case;

that somehow by bringing a case to binding arbitration they would

lose. That is not possible when one considers the definition of what

a refugee is, refugee sur place, and the tribunal that would come

out of enforcing binding arbitration. We are convinced it would win,

especially when in the international court, if you will, of public

opinion. China would be too embarrassed not to immediately permit

unimpeded access.

So we continue to raise that, and we were excited that the act

even codifies the fact that we should be raising it, that the UNHCR

should be considering binding arbitration. But just last month in

Geneva, speaking to their legal office, they still do not have the resolve

to do that, and I believe if we are holding the purse strings

we can give them that resolve.