NORTH KOREAN KIDNAPPERS: A RESPONSE TO ILLEGAL ABDUCTIONS BY THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA BEFORE THE WORKING GROUP ON ENFORCED AND INVOLUNTARY DISAPPEARANCES

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INTRODUCTION

On December 11, 1969, forty-six passengers and four crew members aboard a Korean Airline flight were abducted by Chang-hee Cho, a spy from the Democratic People's Republic of Korea (North Korea).1 On February 14, 1970, after sixty-six days of intensive negotiations between the North and the South, the families of the hijacking victims waited anxiously near the DMZ for the safe return of their family members.2 Only thirty-nine abductees walked across the bridge to freedom at Panmunjom to be reunited with their families.3 The remaining eleven abductees from the hijacking continue to be held in captivity. To this day, their families do not know whether they are alive or dead.4

Although the dictatorial regime insisted that the eleven remaining victims chose to stay of their own free will, according to those who

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2 Id.
3 Id.
4 Id.
returned, the remaining abductees were forced to stay in North Korea.\footnote{In-cheol Hwang, \textit{Return My Father Back: Please Join in the Signature-Seeking Campaign}, DAILYNK.COM, Nov. 14, 2011, http://www.dailynk.com/korean/read.php?catId=nk07005&num=92981.} Through brutal physical abuse and intensive interrogation, the abductees were forced to reveal their family names and personal relationship information.\footnote{Id.} The eleven victims kept by the North Korean regime included the flight crew and certain high-profile individuals including Mr. Won Hwang, a television producer.\footnote{Id.}

Since the end of the Korean War, the number of abductees from the Republic of Korea to the North, including the eleven hijacking victims, is estimated by the Republic of Korea’s Ministry of Unification to be 3,835.\footnote{Taek-dong Chang, \textit{Unanimous Decision on Resolution Requesting Repatriation of Abductees}, DONGA, Dec. 2, 2011, http://news.donga.com/3/all/20111201/42301831/1.} Of those, 517 had never been returned.\footnote{Id.} This form of enforced disappearance is a clear violation of international law.\footnote{Id.} The abductions rise to the level of a serious continuing international crime.

At the time of the hijacking, Mr. Won Hwang had a two-year-old son, In-cheol. In what has been a remarkable and long fight for freedom and justice for the abductees, for the past four decades, In-cheol Hwang has made every effort to obtain information on his father and the other detained flight crew members and passengers. Although he cannot remember ever seeing his father or hearing his father’s voice, for years he has been advocating for the release of his father and all who were abducted on that fateful flight. He and his family have endured much in his father’s absence. In a society that values homogeneity and patriotism, In-cheol suffered a great deal of discrimination due to his father’s kidnapping. Rather than resulting in sympathy, officials, acquaintances, and sometimes even those close to him cast suspicion

\footnote{Since 1953, South and North Korea have an armistice agreement as a result of the Korean War. In cases of civilian abduction, numerous portions of the Geneva Convention of 1949 were violated. According to 2007 White Paper on North Korean Human Rights by Korea Institute for National Unification, and as is thoroughly documented in the General Allegation that follows, there were about 94,700 civilians that were kidnapped by North Korean forces during the war, and this would constitute serious War Crimes under International Criminal Law. It should be further noted that North Korea refused to return and withheld nearly 20,000 South Korean Prisoners of War and this also is a major breach of International Humanitarian Law.}
on him and his family for having a father who was living in the enemy North.

Because of the perceived insufficiency and inefficiency of governmental efforts to address the abductions of those on the hijacked Korean Air flight, In-cheol personally undertook the responsibility for advocating for the release of the abductees. Due to the relative silence from the Republic of Korea on the issues relating to the abductees, In-cheol chose to dedicate his full time effort, at the expense of his career and even his family, to convince the Republic of Korea, NGOs, and other international communities to engage in this critical effort to obtain information about these individuals. Primarily, In-cheol has simply asked for the North Korean regime to let the families know whether the abductees still live or, if they have passed, for the location of their remains. For a long time, results were painfully slow or nonexistent and concern about the issue minimal.

Recently, however, In-cheol, with the help of several key NGOs in the Republic of Korea, has succeeded in returning the hijacking and its unfortunate victims to the public eye. In particular, NKHR: Citizens’ Alliance for North Korean Human Rights11 (hereinafter “Citizens’ Alliance”) took up In-cheol’s case and that of other abductees.

In addition, in July of 2012, several law students from Handong International Law School who are members of the Legal Association for North Korean Human Rights and Development (hereinafter “LANK”) met with In-cheol to hear about his plight and struggles as an advocate for the abductees. LANK is a student group at Handong International Law School that was formed in 2005 to advocate for human rights and development in North Korea.12 After hearing In-cheol’s heartfelt pleas, together with In-cheol, they formed an NGO—Good Friends for the Taken—to act as a new alliance to address the

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11 The Citizens’ Alliance for North Korean Human Rights is a non-profit, non-governmental, non-religious human rights organization founded by South Korean human rights activists, intellectuals and defectors from the Democratic People’s Republic of Korea in May 1996. It is based in Seoul, in the Republic of Korea. For more information, please visit http://www.nkhumanrights.or.kr.

12 Handong International Law School (HILS) is an American-style law school located in the Republic of Korea. HILS is committed to training lawyers to utilize law to establish justice and secure the liberties of peoples throughout the world. As a member school of Handong Global University, HILS is vigorously committed to academic excellence and the integration of Christian faith into each discipline to further its objective of equipping leaders for the global challenges of the next millennium. For more information, please visit http://lawschool.handong.edu/en.
issue of abduction for all citizens of the Republic of Korea that had been abducted by operatives of the North.

Good Friends for the Taken has since conducted many activities related to the hijacking and other abductions. Because the hijacking case had been somewhat forgotten by the public, Good Friends for the Taken held a signature campaign to generate public interest about the case and to demand a solution. Additionally, Good Friends for the Taken held a well attended forum at the Human Rights Commission of the Republic of Korea.

With the support of organizations such as Friend of Abductees Campaign, Good Friends for the Taken, LANK, Citizens' Alliance, and Handong International Law School, In-cheol's story has been heard around the world. During a recent trip overseas, In-cheol testified to this horrific international crime in many European countries as well as the broader international community of North America and Asia in order to place significant pressure on North Korea to release the abductees back to their respective families.

Moreover, within the past few months, with the combined efforts of the supporting organizations, significant progress has been achieved. A team was formed to advocate on behalf of the abductees. This team traveled to Europe where they were given access to address prominent members of the international community, such as the United Nations Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, Mr. Marzuki Darusman; members of the United Nations Working Group on Enforced or Involuntary Disappearances; and Mr. Pierre Goulange, the Director of Eastern Asia and Pacific Region of the French Ministry of Foreign Affairs. In-cheol also had the opportunity to share his story with Lord David Alton of the British Parliament.

Handong International Law School students have traveled to Geneva as part of a campaign to assist In-cheol as he testified before several United Nations treaty bodies on the issue of abduction.

It should also be noted that Mr. Marzuki Darusman, the United Nations Special Rapporteur on the Situation of Human Rights in North Korea, stated in his 2012 report to the General Assembly that since his appointment he has made several request to visit North Korea and North Korea has so far refused to meet or to cooperate with the Special Rapporteur.13

However, in the spring of 2013, there was an extraordinary development at the United Nations. After many years of hard work by dedicated human rights organizations, and we would like to think Incheol’s testimony contributed as well, the Human Rights Council adopted by consensus, without a vote, a resolution on the situation of human rights in the Democratic People’s Republic of Korea. This resolution established a Commission of Inquiry. This is a significant step as the Commission has a mandate to “investigate the systematic, widespread and grave violations of human rights in the Democratic People’s Republic of Korea.” The Commission is expected to produce a detailed analysis of the legal implications of abuses committed by the North Korean government and to make concrete recommendations and bring international legal accountability on the North Korean Human Rights issues.

Leading up to this historic resolution, Handong International Law School in conjunction with Citizens’ Alliance labored to file with the Working Group on Enforced and Involuntary Disappearances a General Allegation concerning the hundreds of abductees who continue to be unlawfully held by the Democratic People’s Republic of Korea.

I. GENERAL ALLEGATION BEFORE THE WORKING GROUP ON ENFORCED AND INVOLUNTARY DISAPPEARANCES

The abduction of citizens from the Republic of Korea by the regime to the North has been a serious issue both domestically and internationally. Since the Korean War Armistice Agreement, dated July 23, 1953, the number of citizens from the Republic of Korea abducted by North Korea during the period covering the war is unknown according to the Republic of Korea’s Institute for National Unification; however, incorporating statistical analysis conducted by the Association of Families of Korean War Abducted Persons, the number of

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missing civilians abducted during the war is reported as 96,013 persons.\textsuperscript{17}

Since the end of the war, as reported by Institute for National Unification, 3,835 citizens from the Republic of Korea have been abducted by the North.\textsuperscript{18} Most of the abductees are fishermen who, out on the ocean, are vulnerable to being commandeered by North Korean gunships.

A total of 517 individual abductees including the eleven from the hijacked Korean Air flight are still being held by North Korea.\textsuperscript{19} Despite requests from the Republic of Korea for release of the abductees, North Korea has systematically and continuously declined to respond. Today, the families of the abductees continue to suffer from the separation of their loved ones. In addition, the feeling that the government is not doing enough to secure the release of the abductees has caused the victims' families and NGOs to look outside the country for assistance in obtaining a just remedy.

The Working Group on Enforced or Involuntary Disappearances\textsuperscript{20} operates under the Human Rights Council of the United Nations based on the 1992 Declaration on the Protection of All Persons from Enforced or Involuntary Disappearances.\textsuperscript{21} The Human Rights Council has thirty-six thematic and twelve country mandates.\textsuperscript{22} The Working Group is one of its thirty-six thematic mandates. An interesting aspect of the Working Group is that it has a universal humanitarian mandate. This universal mandate allows the Working Group to investigate or to communicate with countries that are not otherwise bound by the appli-


cable conventions and treaties—so-called non-participating countries like North Korea. Therefore, it is possible to raise the issue of abductions by North Korea with the Working Group.

The Working Group exists to assist families in ascertaining the fate and whereabouts of their disappeared family members. According to the 1992 Declaration that created the Working Group, an actionable, enforced disappearance occurs when persons are "arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned . . .."23 According to the Working Group, enforced disappearances are a continuous crime as long as the fate or whereabouts of the victims remains unclarified. This means that the Democratic People's Republic of Korea may well be in ongoing violation of international law.

The Working Group has many tools that are designed to assist family members in obtaining information about individual abductees including Urgent Appeals, General Allegations, Prompt Intervention for Reprisals, and Country Visits.24 Due to the massive number of abductions and the timescale involved, we decided to file a General Allegation against the Democratic People's Republic of Korea.

A General Allegation is a procedural mechanism designed to expose obstacles encountered in the implementation of the Declaration. They are filed with the Working Group in Geneva, Switzerland. Once received, the General Allegation requires the Working Group to communicate to the accused country the issues described in the General Allegation. In theory, the offending countries, even non-participatory countries, are then obligated to reply to the Working Group. For example, once a General Allegation is filed with the Working Group, the Working Group then communicates the information contained therein to North Korea. When or if North Korea responds back to the Working Group, the Working Group then forwards the replies back to the petitioner. If the petitioner does not respond within six months or contests

the response on unreasonable grounds, the Working Group will classify the case as "clarified by the government's response." If petitioners contest the response on reasonable grounds, the government must make additional comments on the disputed issues.

Similarly, petitions on behalf of individual abductees may be filed by families or those acting on behalf of the family.\textsuperscript{25} Urgent petitions that are filed within three months from the alleged date of disappearance will receive priority processing.\textsuperscript{26} Petitions may also be filed by governments, NGOs, and other reliable sources. When working with individual abductees taken from the south to North Korea, information on the victim may be obtained from the Republic of Korea's Ministry of Unification. The ministry holds useful information as it relates to fishermen and others that have been abducted into North Korea. The information includes the name of the individuals, the place and date of abduction, the ships name, and the age of the abductee at the time of abduction. Individual petitions also require basic information on the individual abductee such as name; date of disappearance; place of disappearance; parties acting on behalf of or with consent, support or acquiescence's of the government presumed to have carried out the disappearance; and steps taken by the family to determine the fate of the victim.

Of course there is a significant difference between an individual petition and a General Allegation such as the one we filed. Our General Allegation is a summary of information received from relatives of disappeared persons, from NGOs, and from extensive legal research. Our General Allegation was intended to demonstrate in detail how, by abducting and continuing to hold foreign citizens against their will, North Korea has failed to comply with basic international legal and moral norms.

\textsuperscript{25} However, one does wonder how it would be possible to obtain consent of a family member where no family can be located or where the family does not want to petition on their relative's behalf. Surely an abductee should be able to receive assistance otherwise. It may be that the form requiring an NGO who files on behalf of an abductee to swear that they have permission from the family members is a procedural rule developed by the Working Group and not a substantive rule derived from its enabling Declaration. In time critical cases or in the unusual circumstances described above, one should not hesitate to go ahead and file a petition on behalf of the abductee.

\textsuperscript{26} \textit{WGEID in a Nutshell, supra} note 24.
II. HISTORIC SIGNIFICANCE

The General Allegation that follows is a historic document. It rises to the historic level, because to our knowledge, no such document of this magnitude, as it relates to citizens of the Republic of Korea abducted by agents of the North Korea, has ever been drafted and filed with the Working Group.

Attached as an appendix to the General Allegations, although not printed in this Journal for privacy reasons, is a comprehensive list of 517 individual abductees including their names, ages, dates of abduction, and the locations or vessels from which they were abducted. As of this date, North Korea continues to deny that these individuals exist. North Korea, for decades, has been nonresponsive on this issue. The victims and families of the victims have systematically and continuously been denied their absolute right to the truth and to the protection entitled to them by society and the state as set forth in the International Covenant on Civil and Political Rights\textsuperscript{27} and the Universal Declaration of Human Rights.

This historic document is the work of several special organizations. From the beginning of the research to the finished document, the process required over six months to complete the work. The project’s roots started when Handong International Law School and Citizens’ Alliance joined together to research the issues surrounding the abduction of citizens of the Republic of Korea by North Korea.

What followed was an externship project involving nine Handong International Law School students. These law students, working as a group, conducted extensive research into all the issues relating to the abductees. During the research, the decision was made to gather all the names of the individuals that had been abducted by operatives of North Korea since the signing of the Armistice. The results were shocking.

For over forty years, the world had ignored this issue. These individuals, these families deserve some answers. Since the abductions occurred, these families have no idea about the life-status of their loved ones. It was then decided to draft a General Allegation covering

\textsuperscript{27} North Korea has an international legal obligation to comply with said treaty in good faith as North Korea is party to four key human rights treaties- the International Covenant on Civil and Political Rights, 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 as well as the Geneva Conventions.
the entire 517 individual abductees. That work was fruitful and ended in the initial draft of the General Allegation. The students also compiled a practitioner’s guide to filing petitions with the Working Group (a copy of which may be received from the authors by request).

The other organization that has been active in the process is Citizens’ Alliance. From the beginning, their expertise assisted the students as they conducted research. Citizens’ Alliance communicated with the Ministry of Unification to obtain crucial information relevant to the individual abductees. And because of time limitation issues, Citizens’ Alliance took the initial draft and revised and edited the document to facilitate filing within the February 2013 timeline required by the Working Group.

We are continuing to work on individual petitions for each of the 517 abductees mentioned above as well as the thousands who were abducted during the war. This is a time and labor intensive project that we will continue to work on as resources and funding allows. If your heart is touched by this situation and you would like to contribute to the ongoing work of representing these forgotten souls, please contact the authors.

CONCLUSION

The legal Prayer for Relief revealed in the General Allegations is the appropriate starting place for a judicial and societal remedy. From a theoretical standpoint, the remedy is simple. We are asking North Korea to simply give the families information about their loved ones. The families deserve to know the fate and whereabouts of their loved ones who have been abducted. From the standpoint of the individual abductees and their families, it is a remedy that is crucial. Of the 517 people whose names are attached, 322 abductees are 70 years or older in 2013. Many of the spouses, parents, and children of the abductees have already passed away not knowing the fate of their family members. Time is not on the side of all these affected individuals. The time is right for North Korea to act.