

THE CHINESE GOVERNMENT'S POLICY TOWARD NORTH KOREAN DEFECTORS

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The Chinese government's repatriation policy for North Korean defectors has been a topic of controversy. Due to deteriorating living conditions in North Korea, many flee North Korea to find food or work. Many of them go to China, and yet they are greeted by hostility. While humanitarian activists and organizations urge the government to issue refugee status, Beijing identifies them as illegal economic migrants and forcibly returns them to North Korea where severe punishments await. The current essay assumes that Beijing's repatriation of North Koreans is a breach to international refugee law, and explores political, economic, and social reasons contributing to the decision.

Introduction

While international law experts and humanitarian groups believe North Korean defectors benefit the *refugee* category of the *United Nations Convention relating to the Status of Refugee or the 1951 Refugee Convention*, China denies granting refugee status toward North Korean defectors and conducts forced return or repatriation on them.¹ As China acceded to the Convention in 1982, which is the core international doctrine pertaining to rights of refugees, its disregard for protection of North Korean defectors and asylum-seekers is perceived as non-compliance to its obligations. Moreover, China has been issuing refugee status to many populations, except for North Koreans. Most of the registered refugees in China are Indo-Chinese.² Then the question is, *why doesn't China fully com-*

1 Elim Chan and Andreas Schloenhardt, "North Korean Refugees and International Refugee Law," *International Journal of Refugee Law*, no. 2 (2007): 222.

2 "UNHCR Regional Representation for China and Mongolia: Factsheet," UNHCR, accessed October 2, 2013, <http://www.unhcr.org/5000187d9.html>.

mit itself to international refugee law by not offering minimum refugee rights for North Korean defectors? To answer this question, the current essay aims to explore China's stance regarding the matter in detail and address security issues contributing to the Beijing's reluctance to provide protection for North Korean refugees. In the process, it argues that security and economic factors are prioritized over human rights.

Oona Hathaway proposes that democratic states "may be more likely to adhere to their treaty obligations because the existence of internal monitors makes it more difficult...to conceal a dissonance between their expressive and actual behavior."³ According to her argument, China then, as a state, is likely to have low-commitment to international human rights treaties.⁴ Further, Jan Egeland's asserts that countries "without pluralistic political participation lack... even the most rudimentary domestic corrective of human rights oriented lobbies... therefore give strategic and economic considerations priority over morally founded foreign policy objectives."⁵ Adopting claims of Hathaway and Egeland, this essay further assumes China does not fully respect international human rights norms because as "the benefits of breach outweigh its costs, a country is expected to violate its agreements with other states."⁶

The paper agrees with the neorealist perspective that states are self-interested actors that place importance in utility maximization for survival. States are generally indifferent to or ignorant of human rights matters like refugee protection, unless it assists influence and welfare of state. In another case, a stronger state's enforcement of human rights may increase weaker states' compliance according to Stephen Krasner.⁷ In history, most events show that stronger nations do not always perceive human rights as essential nor does it coerce other states to improve human rights.⁸ For instance, the United States is one of the three nations that not yet ratified the Convention of the Child along with Somalia and South Sudan. In addition, the United States rarely places sanctions on countries for human rights abuses or humanitarian causes while it imposes

3 Oona A. Hathaway, "Do Human Rights Treaties Make a Difference?" *Yale Law Journal*, (June 2002), accessed April 1, 2013, <http://yalelawjournal.org/images/pdfs/134.pdf>.

4 Eric Neumayer, "Do International Human Rights Treaties Improve Respect for Human Rights?" *The Journal of Conflict Resolution*, no. 6 (2005): 950.

5 Jan Egeland, "Human Rights: Ineffective Big States, Potent Small States," *Journal of Peace Research*, no. 3 (September 1984): 209.

6 Andrew T Guzman, "A Compliance-Based Theory of International Law," *California Law Review*, no. 6 (2002): 1860.

7 Stephen D. Krasner, "Sovereignty, Regimes, and Human Rights," *Regime Theory and International Relations* (1993)

8 Eric Neumayer, "Do International Human Rights Treaties Improve Respect for Human Rights?" 950.

sanctions on countries that are perceived as threats to security. Disinterested in human rights, stronger powers are more consumed to resolve security and economic issues in the international political arena, thus not actively reacting to China's non-compliance in human rights regimes. Agreeing with Krasner on the presence of power politics in international human rights regimes, the paper analyzes an individual country's "domestic concerns and not of international incentives," or in other words, its domestic and foreign policy considerations in its non-compliance to international law.⁹ With this in mind, in the upcoming section, the North Korean refugee crisis will be overviewed, followed by China's "strategic and economic considerations" in its current decision to breach international refugee law.

Background

According to Andrei Lankov, until the early 1990s China-North Korea border was relatively stable, and thus security control of the border between China and North Korea did not rigorously take place.¹⁰ After 1990s, with the collapse of the Soviet Union, the security of the border region began to deteriorate with new developments. First, economic crisis led the North Korean government to minimize restrictions on movement of people. Second, increased corruption among North Korean officials including border guards made the border easier to be penetrated. Thirdly, the normalizing relations between China and South Korea in August 1992 contributed to the rapid increase of economic activities of ethnic Koreans inhabiting in near border areas in China, also attracting many North Koreans seeking business opportunities or improved living standard to these border regions. Thus these independent events together created insecurity in border areas, eventually alarming the government to tighten border controls.

The U.S. Department of State reports that there are about 75,000 to 125,000 refugees residing in China by 2000.¹¹ In 2005, it estimates a number of refugees between 30,000 and 50,000. According to the International Crisis Group's report in 2006, there are approximately 100,000 North Korean defectors in China.¹² These escapees residing in China are in constant fear of deportation and

9 Federico Merke and Gino Pauselli, "Foreign Policy and Human Rights Advocacy: An Exercise in Measurement and Explanation," no. 2 (April 2013): 134.

10 Andrei Lankov, "North Korean Refugees in Northeast China," *Asian Survey*, no. 6 (November / December 2004): 857.

11 "The Status of North Korean Asylum Seekers and the U.S. Government Policy Towards Them," U.S. Department of State, accessed March 15, 2013, <http://www.state.gov/j/prm/rls/rpt/43269.htm>.

12 "Perilous Journeys: The Plight of North Koreans in China and Beyond," International Crisis Group, accessed May 20, 2013, [http://www.crisisgroup.org/~media/Files/asia/north-east-asia/north-korea/erilous_journeys__the_plight_of_north_koreans_in_china_and_beyond.pdf](http://www.crisisgroup.org/~/media/Files/asia/north-east-asia/north-korea/erilous_journeys__the_plight_of_north_koreans_in_china_and_beyond.pdf).

repatriation by the Chinese authorities. Beijing's recognition of North Korean defectors as illegal migrants creates a dilemma. Many North Korean defectors have fled their homeland in search for necessities to sustain basic survival like food. However, since North Korean law bans travels outside the country without permission from the state, they receive severe punishments when enforced to return by the Chinese government.

Many South Korea based NGOs, activists, and conservative politicians apply international refugee law to categorize North Korean defectors as refugees. The 1951 Convention and 1967 Protocol depicts a refugee as:¹³

... a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him or herself of the protection of that country, or to return there, for fear of persecution (see Article IA(2)).

However, China reasons that North Korean defectors are not persons of concern to the Convention because they left the country for economic reasons. True, North Korean defectors may not have been refugees when leaving the country; however, they do face valid fear of persecution when returned, which makes them *refugees sur place*.¹⁴ As a party to the Convention, China is thus liable to provide protection to the escaped individuals.

Non-refoulement is another crucial principle of the Convention; "it provides that no one shall expel or return ("*refouler*") a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom."¹⁵ Human rights agencies have criticized the Chinese government for the violation of the principle. When forced to returned, these North Koreans either face unlawful border-crossing (Article 233 of the Constitution) or treason against the state (Article 62 of the Constitution). The former is sentenced to two or three year imprisonment while the latter is punished accordingly by the severity of crime, varying from five years of detention to execution or confisca-

13 UNHCR, *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol* (Geneva: 1951 and 1967), <http://www.unhcr.org/3b66c2aa10.html>.

14 Roberta Cohen, "Legal Grounds for Protection of North Korean Refugees," The Brookings Institution, accessed April 29, 2013, <http://www.brookings.edu/research/opinions/2010/09/north-korea-human-rights-cohen>.

15 UNHCR, *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol*.

tion of personal assets.¹⁶ Intense labor, starvation, illness, poor hygiene, sexual violence, forced abortions, torture, and inhuman treatments are common in detention or penal facilities.

Despite criticisms made by human rights agencies and the international community, Beijing is unlikely to change its current policies toward North Korean refugees. Restricting access of the United Nations High Commission for Refugees (UNHCR) to North Korean asylum seekers in China and preventing humanitarian agencies to monitor the border areas, China conducts repatriation when refugees are arrested by law enforcement officers.

Unable to seek protection in China, most North Korean defectors wish to move to South Korea as it is the nearest nation that offers legal citizenship and holds well-structured resettlement program. Nevertheless, it is not a simple matter to travel to South Korea. In order to seek protection from the South Korean government, North Koreans are recommended to go to Korean embassies or consulates first. However, South Korean embassies do not always hold welcoming attitude toward North Korean defectors. Andrei Lankov asserts, "the Seoul government is remarkably unwilling to accept them and this position is reflected by South Korean agencies in China."¹⁷ Lankov further implies that the South Korean government does not want to weaken relations with China, particularly in terms of economic ties.

The South Korean government today accepts North Korean defectors arriving on South Korean soil; however, it is increasingly concerned about North Koreans seeking protection outside the South Korean sovereignty. Recently, the Lao government returned nine North Korean teens which provoked strong criticisms from activists and NGOs toward the Lao and South Korean government. The South Korean government's discreet attitude was especially censured; the protection proposal of the orphans was denied several times by the South Korean consulates in Laos. There are two reasons for this passive response of the South Korean government. Firstly, the increased sensitivity of South Korea's diplomatic and economic relations with host countries risks North Korean defectors. Secondly, the inducement of population outflow can destabilize Pyongyang and instigate turmoil, when South Korea (and the United States) may confront the sole option of reunification, but a costly one. Many scholars believe German-type unification in the Korean Peninsula will burden the South Korean economy.

16 Keum-Soon Lee, "The Border-crossing North Koreans: Current Situations and Future Prospects," *Korea Institute for National Unification* (May 2006): 58.

17 Keum-Soon Lee, "The Border-crossing North Koreans: Current Situations and Future Prospects," *Korea Institute for National Unification* (May 2006): 58.

Main Argument

China is normally the first stopping-over destination for many North Korean refugees. However, its unwillingness to acknowledge North Korean defectors as *refugees* according international law can be explained by three security or economic considerations. First, China's military partnership with North Korea hinders the progress of protecting North Korean defectors. Between China and North Korea, *the Sino-North Korean Mutual Aid and Cooperation Friendship Treaty* was signed in 1961 and China continues to support terms of the treaty. Beijing's apathetic attitude toward human rights of North Korean defectors demonstrates its willingness to maintain alliance with North Korea even when the international criticisms persist. As China conducts repatriation and respects the treaty, the Chinese government is able to maintain amicable relations with North Korea. Stephan Walt explains "alliances are more likely to persist if they have become symbols of credibility." To avoid provoking its ally, China compromises its international reputation in return for maintaining alliance with North Korea.

Secondly, China is wary of political instability of North Korea caused by a sudden outflow of North Koreans. Through practicing repatriation of North Korean escapees and constructing physical boundary, barbed wire fence, along the border in 2006, China hopes to avoid the collapse of the regime resulted from a massive exodus of the North Korean population.¹⁸ Further, a sudden collapse may raise the possibility of unification of two Koreas, heightening conflict of interests between China and the United States (or South Korea). The Council on Foreign Relations has released "Preparing for Sudden Change in North Korea" in 2009 which mentions challenges faced by China in the case of the unified Korea. First, China hopes to prevent the United States in moving its military in the North, near the Sino-North Korean border; China's second objective is to dispose the North's WMDs.¹⁹ With these challenges that may have high strategic and economic costs, an expert suggests "for the Chinese, stability and the avoidance of war are the top priorities."²⁰

18 Rhoda Margesson, Emma Chanlett-Avery, and Andorra Bruno, "North Korean Refugees in China and Human Rights Issues: International Response and U.S. Policy Options," Congressional Research Service, accessed June 1, 2013, <http://www.fas.org/sgp/crs/row/RL34189.pdf>.

19 Paul B. Stares and Joel S. Wit, "Preparing for Sudden Change in North Korea," Council on Foreign Relations, accessed June 10, 2013, <http://www.cfr.org/world/preparing-sudden-change-north-korea/p18019>.

20 Jayshree Bajoria and Beina Xu, "The China-North Korea Relationship," Council on Foreign Relations, accessed June 10, 2013, <http://www.cfr.org/china/china-north-korea-relationship/p11097>.

China is concerned of the US influence in Northeast Asia (i.e. the presence of the US military presence in Japan and South Korea) as the United States may seek an opportunity to restrict the rising power of China via the unification of Korea. Consequently, China currently intends to keep the status quo in Northeast Asia as its military or economy cannot surmount the United States' power. As long as the United States prolongs its influence in the Pacific-Asia and China remains to be unprepared for armed conflicts with the US military, China seeks to avoid a direct confrontation with the United States.

Thirdly, the outflow of North Korean refugees poses threat for Chinese socio-economic stability. Some North Korean refugees are former soldiers and some may be from elite Special Forces units who are capable to apply their training to cause violence and internal instability in China. Andrei Lankov states, "the Chinese government, mindful to keep its own monopoly over violence, is bound to worry about those people."²¹ In addition, a surge of entry of North Korean refugees intensifies low-skilled job rivalry in Chinese society. While some local Chinese are sympathetic to North Korean refugees, increasing competition for jobs may deepen hostility toward refugees by the public, creating internal schism and even violence. The Chinese authorities are also concerned that granting access to international agencies to North Koreans in China triggers other ethnic groups in China, like Tibetans, to demand protection from international human rights organizations.²²

Lastly, China's economic cooperation with North Korea holds back protection advocacy for North Korean refugees. Since 2003, economic interaction between China and North Korea has been booming. From 2004 to 2006, North Korean trade with China is 39% and in 2009, the percentage has increased to 53%.²³ Particularly in 2009, North Korea and China enters into a new phase of economic relations as they sign various economic cooperation agreements. For instance, in 2009 China announces the joint development of Rajin Port. From 2010, the two countries signs memoranda of understanding in developing the Rason Special Development Zone. North Korea's underground resources and shipping ports seem to motivate China to maintain economic ties with North Korea to enhance China's industrialization and economic growth.

21 Jinwook Choi, "Preparing for Korean Unification: A 'New Paradigm' for Discourse on Unification," *Korean Unification and the Neighboring Powers*, ed. Jinwook Choi (Seoul: Korea Institute for National Unification, 2011), 48.

22 Rhoda Margesson, Emma Chanlett-Avery, and Andorra Bruno, "North Korean Refugees in China and Human Rights Issues: International Response and U.S. Policy Options."

23 Hyeong Jung Park, "Expanding DPRK-China Economic Cooperation and the Future of the DPRK Regime: A "Rentier-State" Analysis," Korea Institute for National Unification, accessed May 13, 2013, [https://www.kinu.or.kr/upload/neoboard/DATA01/co11-19\(e\).pdf](https://www.kinu.or.kr/upload/neoboard/DATA01/co11-19(e).pdf).

Conclusion

While the North Korean defector issue is complexly intertwined with political and economic interests of individual states, defectors chronically lack legal and physical protection while hiding in China (or other countries). With psychological and physical threat of deportation and repatriation, most defectors face extreme poverty and poor health condition, and many women become susceptible to traffickers. On the exterior, Beijing denies to categorize North Korean defectors as *refugees*, identifying them as economic migrants. Yet it is essentially inspired by security and economic factors. The paper has explored these factors that give explanations to the Chinese government's non-compliance pertaining international norms of refugee protection. First, China hopes to maintain the Sino-DPRK alliance; second, it seeks to establish status quo in the region. Lastly, China is motivated to bolster its internal security and economic ties with North Korea. In short, China's hostile policy towards the refugees reflects the prioritization on security and economic concerns over human rights. Subsequently, it is quite unfortunate that the affected individuals will need to cope with the bleak reality where security and economic interests dominate. **Y**