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**CHINA: BACKGROUND PAPER ON THE SITUATION OF
NORTH KOREANS IN CHINA**

A Writenet Report by James D. Seymour

**commissioned by United Nations High Commissioner for Refugees,
Protection Information Section (DIP)**

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Caveat: Writenet papers are prepared mainly on the basis of publicly available information, analysis and comment. All sources are cited. The papers are not, and do not purport to be, either exhaustive with regard to conditions in the country surveyed, or conclusive as to the merits of any particular claim to refugee status or asylum. The views expressed in the paper are those of the author and are not necessarily those of Writenet or UNHCR.

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Acronyms Glossary

| | |
|-------|---|
| BCE | Before Common Era |
| CE | Common Era |
| DPRK | Democratic People’s Republic of Korea (in this paper also referred to as “North Korea”) |
| KCNA | Korean Central News Agency |
| NGO | Non-Governmental Organization |
| PRC | People’s Republic of China (in this paper also referred to as “China”) |
| RENK | Rescue North Korean People |
| RMB | Renminbi (the Chinese currency) |
| ROK | Republic of Korea (in this paper also referred to as “South Korea”) |
| UN | United Nations |
| UNHCR | United Nations High Commissioner for Refugees |
| USSR | Union of Soviet Socialist Republics |

Executive Summary

In the wake of the North Korean famine, which began in 1995, hundreds of thousands of people fled to northeast China. Although many returned and a smaller number went to third countries, many tens of thousands remain. They face two main problems. First is the mistreatment they sometimes receive. China does not recognize them as refugees, or even the legality of their being in the country, so they are forced into an underground existence, making them targets for economic and sexual exploitation.

Secondly, Chinese authorities take the position, at least implicitly, that their obligation to return these people to the Democratic People's Republic of Korea supersedes any obligations they would have under the international human rights covenants and refugee conventions. Thus, many people have been forced back to North Korea against their will, where some have been imprisoned and apparently sometimes executed for the "crime" of leaving the country. Although this situation may have improved somewhat, the refugee seekers in China live in constant dread of being returned to North Korea, and are thus in a position to be blackmailed or otherwise subjugated and abused.

China has been reluctant to allow these people to move on to other countries, and absolutely unwilling for them to travel directly to the Republic of Korea. For its part, South Korea has been willing to accept these people, at least at recent levels (1,040 in 2003), but takes the position that the real solution to the problem is improving economic conditions in the North.

The international community has gradually been taking a more proactive stance. The United Nations through UNHCR is speaking out more forcefully than in the past. However, China has generally been unwilling to permit this organ access to the North Koreans in the northeast. It is primarily in the case of those seeking refuge in diplomatic compounds that the UNHCR has been able to be helpful.

Non-governmental organizations have been active in the northeast, but they operate under severe constraints, and are only able to reach about a fifth of the local North Korean population.

The United States Congress has recently taken a forceful position, and opened up the possibility of substantial funding to assist these people. However, the measure is widely perceived as part of a religious or anti-communist agenda, and has been rebuked by Pyongyang.

The paper concludes by outlining some measures that could be taken by China, by the two Koreas, and by the international community to ameliorate the situation of the North Korean refugee seekers.

1. Background¹

1.1 China: Historical “Rulers” and “Minorities”

About half of the territory of the People’s Republic of China (PRC) is inhabited by people who are not ethnic Chinese (i.e., are non-Han). Not all are officially acknowledged by the state, but the 54 ethnic groups that are recognized comprise 8.4 per cent of the population. The presence of so many non-Han did not come about by immigration, but rather by the expansion of territory under Chinese control. Historically, when China was ruled by Han, the territory under their direct administration was, roughly speaking, the territory which was (and still is) inhabited by Han; this did not include Tibet, Xinjiang, greater Mongolia, and the northeast (Manchuria). When China was occupied and governed by non-Han, the territory under their control often included substantial lands populated by non-Han. Examples of non-Han rule are the Mongol and Manchu empires (thirteenth century, and 1644-1911, respectively), which included most of the lands which today comprise the PRC. By contrast, during the Ming dynasty (1368-1644) and the Republican period (1912-1949) the territory administered by the Chinese government was relatively limited. Thus, the PRC is exceptional in Chinese history, a Han-dominated government administering not only the Han areas but also the lands occupied by the many nations now deemed to comprise “ethnic minorities” of China. One of these “minority” areas is the area just north of the Yalu and Tumen Rivers inhabited by ethnic Koreans.

1.2 China and North Korea

As was the case in the rest of the world, before modern times there were no clear geographic demarcations between metropolitan China and other nations. At times China had close relations with its neighbours, sometimes on a superior/subordinate basis, sometimes as legal equals. Current Chinese historiography places much emphasis on occasions in history where neighbours were subordinate, whether or not such phases were typical of the long-term relationship.

Chinese officialdom has recently paid much attention to the history of Korea between 37 BCE and 668 CE, when it was known as Koguryo. This kingdom included the south-eastern half of China’s Northeast, the whole of present-day North Korea, and the northern part of present-day South Korea. Much to the consternation of both North and South Korea, around 2002 a Chinese government study group known as the “Northeast Project” began issuing research papers purporting to show that Koguryo had been merely a Chinese vassal state. Early in 2004, the Foreign Ministry appeared to embrace this view when it removed references to Koguryo from the Korean history section of its web site.² Although the history of all this may have to be examined further by independent historians, certainly no Han government controlled the area subsequently until the twentieth century.³ Beijing’s brief thrust appeared aimed

¹ The author wishes to acknowledge input from Joel Charny, Samuel Kim, Karin Lee, Jana Mason, Kangsu Lee and Jeanne Marie Gilbert

² Brooke, J., China Fears Once and Future Kingdom, *New York Times*, 25 August 2004

³ On the later periods, see Franke, H., Sung Embassies: Some General Observations, in Rossabi, M.

primarily at the ethnic Koreans in China's Northeast, delegitimizing any possible effort on their part to ever claim that they rightly belong to a Greater Korea. On 23 September 2004, in the face of pan-Korean outrage, China's People's Education Press (an arm of the Education Ministry) claimed that it had all been a "managerial mistake". Still, the incident gives insight perhaps relevant to Chinese thinking regarding the North Koreans in the country. Though this has not been made explicit, if ethnic Koreans, both those who are PRC citizens and those from North Korea, came from a former vassal state of China, any refugee⁴ issue would, from the Chinese perspective, be a domestic issue.

In 1905, Japan gained formal authority over much of Korea's affairs. At the same time, it was gaining considerable influence over most of Manchuria. The Japanese wanted the boundary between Korea and Manchuria demarcated, though (inasmuch as gradually they would control it all) where the line should be drawn was not a crucial issue to them. In 1909 (almost immediately after the Korean Emperor's abdication), a treaty between Japan and China's Manchu government was concluded with the line placed, probably for convenience, at the Yalu and Tumen rivers. (Koreans were not consulted in any of this.) Thus, the boundary lay, and still lies, along the southwest-flowing Yalu River and the northeast-flowing Tumen River, meeting in the middle at the headwaters in the area of Mount Paektu. Thus delineated, the boundary left many ethnic Koreans, and even the tombs of a number of Korean kings, in what was about to become officially the Republic of China. Thereafter, there continued to be much northward migration, and this only increased after the establishment of the Japanese client state of Manchukuo in 1932. In the wake of Japan's defeat in World War II, the Korean peninsula itself was divided at the thirty-eighth parallel between the Republic of Korea (ROK) and the Democratic People's Republic of Korea (DPRK), and since the Korean War, the dividing line has remained in the same general area.

Thus, accidents of international history and large-nation diplomacy have left the Korean people divided into three parts, with the largest number now living in the South (48.5 million), 22.7 million in the North, and slightly over 2 million in present-day China. The two borders separating the three parts are widely viewed as artificial. Indeed, there are now at least 60,000 Korean Chinese living in South Korea. They are mostly there without proper documentation, but are tacitly accepted. It is the potential in this for the development of pan-Korean sentiment⁵ that worries Beijing. In this context, flows of people from North Korea to China are seen as normal to Koreans, but as a security threat to the Chinese.

(ed.), *China Among Equals: The Middle Kingdom and Its Neighbors, 10th-14th Centuries*, Berkeley: University of California Press, 1983, especially p. 127; and Hae-jong Chung, *Sino-Korean Tributary Relations in the Ch'ing Period*, in Fairbank, J.K. (ed.), *The Chinese World Order: Traditional China's Foreign Relations*, Cambridge: Harvard University Press, 1968, especially p. 111

⁴ Unless otherwise obvious from the context, the use of the term "refugee" in this report does not imply any judgement as to whether the people concerned fit any particular definition of "refugee" under international law. Likewise, the use of a term like "migrant" does not imply that the person is not entitled to refugee status. The term "asylum seeker" does not denote any formal application for asylum.

⁵ For historical background (1950s) on this, see Chae-jun Lee, *The Political Participation of Koreans in China*, in Shultz, e.J., and Dae-sook Suh (eds.), *Koreans in China*, Honolulu: University of Hawaii, c.1990, especially p. 101

Ironically, the issue of cross-border food seekers had first arisen in the context of an exodus in the opposite direction, from the PRC to North Korea, in the wake of China's own early 1960s famine. This has given rise to a sense among ethnic Koreans on both sides of the border rivers that there are mutual obligations, and that people who are relatives (sometimes literally, but at least in terms of ethnicity) have an obligation to those from the other side of the river when they have encountered hard times. Nevertheless, what the people see as honouring a social contract, the two governments concerned see as threatening, lawless behaviour.

Until the demise of the Soviet Union, North Korea tried to maintain close relations with both that country and China. As matters turned out, for most of that time aid from the USSR was more important. True, at certain critical times (notably during the second phase of the Korean War) North Korea relied primarily on China. However, the more usual situation was for North Korea to rely more heavily on the Soviet Union, both militarily and economically. That changed abruptly with the demise of the USSR. Since the early 1990s, Russia has been more interested in cultivating relations with South Korea, and has been increasingly nervous about the North's quest for nuclear weapons.⁶

This has left China as North Korea's only ally. Even at that, the PRC-DPRK alliance has generally been stronger on the surface than in reality. The way China interacts with the world has changed markedly since the isolationist days of Mao Zedong. However, the DPRK still has not shaken off its belief in the virtue of being self-sufficient and maintaining Leninist and anti-capitalist purity. While China moved on, North Korea evolved little. For its part, China would be satisfied with a stable North Korea, free of conflict with the outside world. In particular, China would prefer that the whole peninsula were free of nuclear weapons.⁷ In addition, it takes an utterly jaundiced view of all the displaced persons flowing northward. Because China has made hardly any progress on any of its goals vis à vis the DPRK, the bilateral relationship has been strained.⁸ Still, China provides substantial assistance, if only to prevent the collapse of the DPRK. In October 2004, China promised to provide North Korea with an aid package worth 200 million Yuan in petroleum, food, construction materials and supplies.⁹ Today almost all of the petroleum the country enjoys is virtually donated by China. In addition, there is ever increasing debt owed to Chinese companies, which are often forced into bankruptcy.

⁶ Wines, M., Warning to North Korea on Nuclear Arms: Russia Suggests It May Rethink Its Opposition to World Penalties, *New York Times*, 12 April 2003

⁷ Kahn, J., North Korea May Be Angering Its Only Ally, *New York Times*, 26 April 2003

⁸ See Scobell, A., China and North Korea: From Comrades-in-arms to Allies at Arm's Length, Carlisle PA: US Army War College, Strategic Studies Institute, March 2004

⁹ Yoo-Seong Hwang, China Promises 30 Billion Won Worth of Aid to North Korea, *Dong-A Ilbo*, 20 October 2004, <http://english.donga.com/srv/service.php3?biid=2004102088518> [accessed November 2004]

Chinese public opinion (including that of academics) does not hold North Korea in high regard. The Chinese authorities have often tried to limit public discussion of the country, though restriction on news coverage and commentary seemed to ease in 2003.¹⁰ Commentator Shi Yinhong then argued that “the DPRK government is undoubtedly the originator of, and it should be held responsible for, the DPRK nuclear crisis and the potential devastating impact to security in East Asia”. China, Shi said, should “break free from moral constraints and supplement diplomatic negotiation with economic measures”.¹¹ Then, in 2004, the distinguished journal *Strategy and Management* was shut down after it published an article critical of the DPRK.¹² Such is the continuing sensitivity of anything pertaining to North Korea.

1.3 China and International Human Rights Law

To the extent that human rights issues have been addressed by the Chinese authorities, the emphasis since 1949 has been on economic rights (from the Communist perspective), with any moments of political liberalism (1957, 1979, 1988) short-lived.

Beginning around 1980 the PRC began embracing (at least nominally) nine of the relatively uncontroversial human rights instruments, including the conventions respecting the rights of women and children, and against genocide, racial discrimination, and torture.¹³ Also, in 1984 the PRC recognized numerous pre-war international labour conventions. Beginning in 1981 and continuing throughout the 1980s, PRC representatives participated in the work of the UN Human Rights Commission in Geneva, where they were particularly active in efforts concerning the rights of children and migrant workers.

However, the emphasis was generally on developmental rights rather than civil liberties. Of the two major international human rights covenants, China has ratified only the International Covenant on Economic, Social and Cultural Rights (2001). It signed (in 1998) but has not ratified the International Covenant on Civil and Political Rights. In the case of these and other instruments, China acted with officially declared specific reservations, but these are not relevant to refugee issues.

Long before the exodus of North Koreans to China, the international community created a human rights regime with far-reaching provisions designed to protect those seeking refuge and asylum. With regard to the source state, leaving one’s country is a

¹⁰ See Wang Jisi, *China’s Changing Role in Asia*, Washington: Atlantic Council of the United States, January 2004

¹¹ Shi Yinhong, *How to Understand and Deal with the DPRK Nuclear Crisis*, *Foreign Broadcast Information Service*, FBIS-CHI-2003-0115, citing *Hong Kong Ta Kung Pao*, 15 January 2003; Wang Te-chun, *Special Dispatch: The DPRK Nuclear Crisis Puts China’s Security to the Test*, *Foreign Broadcast Information Service*, FBIS-CHI-2003-0114, citing *Hong Kong Ta Kung Pao*, 14 January 2003

¹² *China Shuts Journal over N. Korea Article*, *International Herald Tribune*, 22 September 2004, <http://www.iht.com/articles/539994.html> [accessed November 2004]

¹³ For details of the status of China’s ratification of human rights instruments, see information on the website of United Nations High Commissioner for Human Rights, <http://www.ohchr.org/english/countries/cn/index.htm> [accessed November 2004]

right enshrined in Article 12 of the Covenant on Civil and Political Rights. Receiving countries have various obligations spelled out in the Convention Relating to the Status of Refugees, and the Protocol Relating to the Status of Refugees. China became a party to the 1951 Refugee Convention and the 1967 Protocol in 1982.¹⁴

Article 33 of the Convention is explicit that refugees may not be returned to their country if they face danger there.

1. No Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

Notwithstanding its obligations under the convention, China claims that its overriding obligation, under a still secret Sino-Korean treaty of 1961 and later protocols, is to return North Koreans who have entered China “illegally”.¹⁵ As one official explained in 2000, “lately, the North has been stepping up demands that we repatriate the North Koreans, especially those who are party members or political criminals”.¹⁶ However, North Korea has been more insistent at some times than at others, and at any rate, international law would override any such bilateral commitments.

The refugee convention defines a refugee as a 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 ... , owing to such fear, is unwilling to return to it”. The above-quoted Article 33 is now generally accepted to be customary international law, binding even on countries that have not acceded to the convention. China, of course, has actually signed the convention. It is also a member of the UNHCR’s governing body (the Executive Committee), and has been a party not only to the application of the convention, but to its strengthening, such as the consensus “conclusion” regarding the proper registration of refugees.

Article 2 of the Protocol Relating to the Status of Refugees obligates “the national authorities to co-operate with the Office of the United Nations High Commissioner for Refugees and ... in particular [to] facilitate its [carrying out its] duty of supervising the application of the provisions of the present Protocol”. Governments must also provide UNHCR with information concerning the condition of refugees.

¹⁴ United Nations, Convention Relating to the Status of Refugees, 28 July 1951 (189 UNTS 150); *UNHCR RefWorld*, Issue 13, 2004, Vol. 2; United Nations, Protocol Relating to the Status of Refugees, 31 January 1967 (606 UNTS 267), *UNHCR RefWorld*, Issue 13, 2004, Vol. 2

¹⁵ See further below, section **3.2 Relations between China and North Korea**

¹⁶ N. Korea Gets China’s Cooperation on Refugee Returns, *Christian Science Monitor*, 9 June 2000

Finally, there are human rights treaties, declarations and instruments that, although primarily dealing with other subjects, do bear on the issue of refugees. Very important is the Convention Against Torture, which China ratified in 1988. Article 3 of that convention provides that no government shall forcibly return “a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”.¹⁷

2 North Korea in the Wake of the 1990s Crisis

2.1 Human Rights Situation

North Korea went through the motions, at least, of joining the international human rights regime. In 1981, the two international covenants were acceded to. Only in 2000 was the required report submitted to United Nations pursuant to the International Covenant on Civil and Political Rights. It was a formalistic recitation of the rights people have under DPRK law, and an idealized description of current realities. The government has been involved in modest human rights dialogues with ambassadors from Germany, Sweden and the United Kingdom,¹⁸ and with the European Union.¹⁹ This, combined with willingness to give ground on the subject of people who were abducted to North Korea, may provide some basis for optimism that progress is possible on human rights issues. Still, the principles of the covenants continue to be routinely violated. To begin with, freedom of movement is restricted. When the official food distribution system was functioning, individuals could not even leave their home areas, because only there could food be obtained via the official distribution system. With the breakdown of that system, that means of population control has greatly weakened, though roamers were (at least until recently) arrested and placed in rooming houses or “9-27” camps (“9-27” referring to the date in 1997 when the law on the subject was promulgated). Many who escaped to China had served weeks or months in a 9-27 facility. However, we have no recent information on the 9-27 camps, and it is possible that they no longer exist.

¹⁷ United Nations, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/39/51 (1984), 10 December 1984, *UNHCR RefWorld*, Issue 13, 2004, Vol. 2

¹⁸ Penketh, A., North Korea Set to Allow Return for British Civil Rights Scrutineer, *The Independent* [London], 14 September 2004

¹⁹ Cohen, R., Talking Human Rights with North Korea, *Washington Post*, 29 August 2004

2.2 The Famine

In the early 1990s, the North Korean economy was hit by a “perfect storm”: the aforementioned withdrawal, in 1991, of Russian support,²⁰ the perpetuation of Stalinist economic policies after they had ceased to be viable, the breakdown in the food storage and rationing/distribution systems, and natural calamities such as flooding and drought. Year after year, foreign trade shrank, especially exports. Although China continued to supply petroleum and food, this was no match for all the help that had once been received from the Soviet Union.

The most serious fallout from the economic crisis was the famine.²¹ By 1995, the food situation was desperate. At least to some extent, distribution was skewed to favour people in the city of Pyongyang, workers in critical industries, officials (and perhaps party cadres), and soldiers. However, the extent to which favouritism has distorted the distribution system is a controversial issue. It would appear that some claims of favouritism have been overstated. For example, even party members and other cadres appear to have been hit hard by the famine.²²

At any rate, the remainder of the population largely ceased to be served by the national food distribution system. Except for the favoured sectors of the population, probably less than ten per cent of the population were able to rely on the official distribution system. Others have had to buy or barter for food on the market. Markets are officially deemed “unsocialist”, and the authorities at one point tried to shut them down. However, in the end the markets were tolerated as the only way to prevent further depopulation of urban areas, where the situation was otherwise worse than in the countryside.

Even with the markets, the situation has been dire enough. It is difficult to ascertain how many have died, in part because so little data is available, but also because deaths, especially of the young and the elderly, tend to have multiple causes. A study by a team from the Johns Hopkins University concluded that during the famine the death rate was eight times normal. At the peak, in 1997, deaths by starvation ran at about 50 per 100,000.²³ Depending on the methodology used and assumptions made, the number of famine-related deaths in the mid to late 1990s have been estimated at between 2 and 3.5 million. This includes people who died of communicable diseases after their immune systems had been compromised as a result of malnutrition. Moreover, this does not measure the suffering of those who did not die; acute malnutrition and wasting of body mass affected a large portion of the population.

²⁰ Wishnick, E., Russian-North Koreans Relations: A New Era?, in Kim, S.S. and Tai Hwan Lee (eds.), *North Korea and Northeast Asia*, New York: Rowman & Littlefield, 2002, pp. 139-62

²¹ See e.g., Natsios, A. S., *The Great North Korean Famine*, Washington DC: United States Institute of Peace, 2001

²² A DPRK official has been quoted as saying that out of 500,000 people who starved to death in 1996, 50,000 were cadres. Natsios, A. S., *The Politics of Famine in North Korea*, Washington, United States Institute of Peace, 2 August 1999, <http://www.usip.org/pubs/specialreports/sr990802.html> [accessed November 2004]

²³ Cited in Natsios, *The Politics of Famine...*

The famine peaked in early 1997. The death rate declined thereafter due in part to the natural cycle of famines (the weaker die first; after that there is more food available for the stronger) and in part to the arrival of millions of tons of grain from China, Japan, South Korea, and the United States. Some people received the food directly, but much of it entered the country's fledgling market economy (by fair means or foul), thus benefiting at least those who were able to adjust to the new economic regime. The effect on those who were still functioning under the old, now thoroughly corrupted, non-monetary economy is more problematic. However, even grain that was diverted by corrupt officials was often sold, which still had the effect of lowering the market price of food, enabling people to buy about a third more for the same amount of money. Still people continued to die and suffer, due in part to the government's practice of funnelling food to favoured sectors of the population.²⁴

2.3 Exodus to China

It is normal for famines to be accompanied by migrations to areas perceived as being better supplied. Despite the efforts of the authorities in both China and Korea to prevent cross-border movements, the inevitable happened across the porous 1,400 km long common frontier. Actually, the exodus from North Korea began even before the famine. Around 1995 most migrants were reasonably well-nourished males. At that time, China did not seem to have viewed them as a significant problem, and did little to stem the tide. Then came the famine and the general collapse of the national economy, which greatly increased the numbers leaving North Korea. Most came from what we might call the DPRK's "rust belt". In particular, this included North Hamgyong province, the once-industrialized province bordering on Russia and Yanbian (China's ethnic Korean prefecture, in Jilin province), but now an impoverished area especially hard hit by the economic collapse that occurred in the wake of the demise of the Soviet Union.

The famine affected the exodus in two ways. First, of course, was the quest for food. Additionally, the famine saw the breakdown in the North Korean administrative system, with work units often suspending their involvement in the distribution of food, and being replaced by the black market. Where the latter did not meet people's needs, some fled to China during this period of a widespread breakdown in social controls, including border surveillance. Thus, the famine made the exodus both necessary and possible. Around 1998, the nature of the migrant population began to shift, with the majority now comprised of under-nourished women and children.

Over the years, the exodus has become more and more organized. Most migrants originate in the North Korean provinces bordering China and travel to China overland, by transport until they get as close as they can to the Yalu or Tumen rivers, then going the rest of the way on foot. Upstream, the rivers are easy to cross especially when the water is frozen, though winter carries its own hazards. Downstream where the rivers widen, the shores are now better guarded, with Chinese

²⁴ *Idem.*; see also Good Friends Center for Peace, Human Rights and Refugees, *The Food Crisis of North Korea: 1694 Witnessed [sic] by Food Refugees*, Seoul, December 1998, <http://www.goodfriends.or.kr/eng/report/1694e.htm> [accessed November 2004]

military outposts on the north side, and North Korean soldiers hidden on the south side. Recently, border security has been further tightened, with Chinese forces reportedly reinforced in the autumn of 2004 in order to prevent North Korean troops from escaping into China.²⁵ A few North Koreans arrive via the high seas, which would require expensive arrangements with those with access to boats, adding to the already considerable cost of attempting to flee North Korea. However, even overland departures can be expensive, as most people have to pay bribes to Korean soldiers. The going rate is 500 won, typically three months' salary.

Whatever route they take, the refuge seekers' en-route experiences are generally harrowing. Though there are about seven different routes north,²⁶ they all finally involve crossing one of the two boundary rivers, usually the Tumen. As Human Rights Watch relates:

...[T]heir description of the act of crossing the Tumen River was often the most emotionally fraught point of our interviews. Many found it a terrifying, near death experience, and to all it represented a decisive moment of separation when they crossed not only a national border, but the border between being a citizen and a criminal, or even a traitor. A man whose family transited to South Korea in a matter of months via a well-worn route prepared by heavy bribes was one of the few to describe the experience calmly. 'The river was frozen, so it was easy. Everyone knows you can cross if you pay.' Those who crossed without assistance, however, found it traumatic. 'It was very dangerous...because the water was running high. I thought I was going to die on my way to China.' 'The river was not frozen, even in winter, because of wastewater from a Chinese factory. The water was chest-high. If I crossed the river, I would reach China, so I endured the coldness, even though it was as painful as cutting my flesh with a knife.'²⁷

Despite all the obstacles, many have succeeded in leaving the country, and China now appears to see the numbers of immigrants as more than can be absorbed. These events coincided with a period of growing Chinese unemployment caused by the downsizing of the state-owned sector, and China's northeast was particularly hard hit by this trend.

Most of those arriving left North Korea primarily for the aforementioned economic reasons, though there is a minority with more political motives for their leaving. It can be argued, though, that there is a political element to the matter of food rationing and distribution. At any rate, those who arrive in China primarily in search of food have a

²⁵ Won-Jae Park, Strange Atmosphere along Border between North Korea and China, *Dong-A Ilbo*, 10 October 2004, <http://english.donga.com/srv/service.php3?bicode=060000&biid=2004101179748> [accessed November 2004]

²⁶ North Korean Defectors' Escape Route and Their Fate upon Repatriation, *Keys*, Vol 9, Summer 2002, pp 13-36, <http://www.dailynorthkorea.com/en/keys/lastkeys/2002/9/03.php> [accessed November 2004]

²⁷ Human Rights Watch, *The Invisible Exodus: North Koreans in the People's Republic of China*, New York, 2002, p. 11

claim to status as refugees *sur place*, on the grounds that they would be at considerable risk of being politically persecuted upon their overt return to North Korea.

In reality, it would in many cases be misleading to ascribe a person's decision to exit North Korea to purely economic or political motivations. The UN, and in particular UNHCR, has recognized that there is often no clear line between economic and political motivations behind human displacements anywhere in the world:

The distinction between an economic migrant and a refugee is ... sometimes blurred in the same way as the distinction between economic and political measures in an applicant's country of origin is not always clear. Behind economic measures affecting a person's livelihood there may be racial, religious or political aims or intentions directed against a particular group. Where economic measures destroy the economic existence of a particular section of the population (e.g., withdrawal of trading rights from, or discriminatory or excessive taxation of, a specific ethnic or religious group), the victims may according to the circumstances become refugees on leaving the country.²⁸

In the case of North Koreans, sometimes escapees are primarily fleeing political persecution, and at other times they are in search of food. Often, people are prompted by mixed motives. Human Rights Watch reports that in recent years the decision as to whether or not to leave North Korea is "grounded in a complex mix of personal, economic, and political factors". Various interview subjects explained their situations.

One young man and his family left in 1999 because he could not enter medical school or a teaching college because of family background. This young man's family had relatives abroad, whom they expected to help and who did help expedite their transit to South Korea. An older man, who left in 1998, sought economic help from his relatives in China. His troubles began in 1977, when his family was exiled from Pyongyang and sent to live in an administrative camp for five years because of his father's perceived disloyalty.²⁹

In short, economic and political motivations have often been intertwined.

²⁸ United Nations High Commissioner for Refugees, 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), new ed., January 1992, para. 63, *UNHCR RefWorld*, Issue 13, 2004, Vol. 2

²⁹ Human Rights Watch, *Invisible Exodus...*, p. 10

3 Current Situation

3.1 China, Refugees and International Law

To place the issue of North Korean refugee seekers in the broader context, they are one of three major groups of foreigners who may have a claim to refugee status in China. The other two are Vietnamese, and Kachin Burmese.³⁰

Vietnamese. There are probably something under 300,000 people from Vietnam in China. Estimates generally range from 295,000 to 296,000. They are mostly ethnic Chinese. The bulk of them arrived in China during the 1979 Sino-Vietnam war, when many ethnic Chinese residents of Vietnam were made to feel unwelcome. Most of them now live in provinces near Vietnam, with some residing in Fujian and Jiangxi. Almost all of them (i.e. those who arrived before the cut-off year of 1989) are deemed by UNHCR to be *prima facie* refugees. Notwithstanding occasional talk of repatriation, these people have been treated reasonably well by the Chinese (such as in terms of social benefits), and the very poorest among them have received additional financial help from the UNHCR. The latter assistance, however, is now being phased out, given that in general these people have integrated into the local society rather well, even though they still do not have the degree of permanent status in China that Chinese citizenship would give them.

Burmese. The other large group is comprised of ethnic Kachin people from Burma, almost all of whom are in the multi-ethnic Yunnan province. There is no way of knowing how large this group is, estimates as high as hundreds of thousands cannot be confirmed.³¹ (In the early 1990s, the total number of Burmese refugees who had fled to various neighbouring countries was about half a million.³²)

Others. In addition, there is a small number of UNHCR-certified refugees from various other countries, including Somalia, Burundi and Iran. Some others, (such as a few Iraqis) have been repatriated without being allowed access to UNHCR services.

North Koreans: There can be little doubt that the various human rights and refugee instruments discussed above are applicable to many, and perhaps most, of the North Koreans in China. These people are subject to DPRK government reprisals if they return home. This is not only true of those who hold unacceptable political or religious views, but also to those who have simply spent a long time in China, or who had contact with foreigners (such as South Koreans) there.

³⁰ For this section see generally, United States Committee for Refugees, *World Refugee Survey: Country Report 2003: China*, Washington, 2003

³¹ These estimates occurred, e.g., in the US Committee for Refugees annual surveys, coupled with a statement that UNHCR was not involved with them.

³² Human Rights Watch, *World Report 1992*, New York, 1992, <http://www.hrw.org/reports/1992/WR92/ASW-03.htm> [accessed November 2004]

China's position is that none of the arriving North Koreans qualifies as refugees, and that at any rate its first obligation is to uphold its bilateral agreements with North Korea regarding the expulsion of migrants.

China's regime of negative and positive incentives has also been criticized, particularly the practice of offering incentives to Chinese who report such people, and fines for people who harbour them. Human Rights Watch reports anecdotally that although some people arrested by the Chinese acknowledge reasonable treatment, others reported having been abused. One subject (who had been accused of murder, which he denied) claimed to have been tied with rope all around his body from the chest down. Another reported being kept with 12 others in a cell smaller than 30 square metres; some were given electric shocks, others were beaten. Such treatment, illegal under international law, has been reported in Chinese detention facilities near both the North Korean and Mongolian borders.³³

3.2 Relations between China and North Korea

As far as PRC-DPRK relations are concerned, the issue of the northward flow of refugee seekers is best viewed as one of many problems in a generally uneasy alliance. Other strategic issues, such as nuclear weapons on the peninsula, are much more salient, and tend to push humanitarian issues into the background. China is nervous about the DPRK's apparent intention of developing an arsenal of nuclear weapons; North Korea worries about the warming of relations between China and the ROK. On the other hand, there are an array of irritants in the relationship that are often interrelated. This is certainly the case when it comes to North Koreans fleeing to China, and also to North Korea's being so slow in adopting Chinese-style economic reforms. Although there have been inklings of change, Pyongyang still has not completely abandoned a strategy of development reminiscent of the Mao era in China, based on collectivism and self-reliance.

The bilateral economic relationship has been costly for China, both in economic and political terms. China does have influence over Pyongyang (more than the Soviets used to have³⁴), but prior to 2003 it used its influence sparingly. This was perhaps in part due to the adeptness with which North Korea utilized what has been called "the power of the weak".³⁵ That year there were two incidents which demonstrated China's potential impact: a three-day cut-off in the flow of oil (which may or may not have been for the officially stated "technical" reasons), and the deployment of about 150,000 Chinese troops north of the border. The latter step was for the purpose of dealing with the deteriorating law and order situation attributed to "illegal" immigrants and rogue North Korean soldiers. Thus, the issue of undocumented North Koreans in China has unfolded in a complex context. It may not be a pivotal issue between the two countries, but it has nonetheless been a real irritant.

³³ *Idem*, p. 16

³⁴ Ilpyong Kim, China in North Korean Foreign Policy, in Kim, S. S. (ed.), *North Korean Foreign Relations in the Post-Cold War Era*, Hong Kong: Oxford University Press, 1998, p. 110

³⁵ Kim, S.S. and Tai Hwan Lee, Chinese-North Korean Relations: Managing Asymmetrical Interdependence, in Kim, S.S. and Tai Hwan Lee (eds.), pp. 109-137

There is agreement, however, between Beijing and Pyongyang that the issue of people transiting the border is to be dealt with on a bilateral basis, grounded in pre-existing agreements between the two countries. In the context of China's famine of the early 1960s, the two countries in 1961 drew up a still-secret treaty to deal with the problem of border crossers. Although we do not have the text of it, we can perhaps see how it is supposed to be operationalized by examining the text of an alleged 1986 protocol between the two countries' security ministries,³⁶ according to which both sides are to "co-operate on the work of preventing the illegal border crossing of residents".³⁷ Any "criminal" shall "necessarily be handed over to the other side".³⁸

This, and Article 33(2) of the refugee convention, raise a question as to who fits the definition of a "criminal". Article 4(2) of the alleged PRC-DPRK protocol says that if a crime is committed after the border crossing, "the laws of the country" shall apply. It is not clear which country is intended, though translators have interpreted this as meaning "the laws of [the individual's] country". This seems doubtful, though neither the Korean nor English texts are available for checking. In the case of crimes committed in one's own country before the border crossing, an arrest is to be "based on the laws of the side that made the arrest".³⁹ It is unlikely that a different standard would apply when the act was committed in the second country.

In the DPRK, seeking asylum in another country may be deemed to constitute the crime of treason. The alleged protocol specifies that "counter-revolutionary elements (spies, terrorists, destructive elements, and assassins...)" are subject to repatriation.⁴⁰ It appears, therefore, that Chinese authorities are obligated to return to North Korea anyone deemed by North Korea to be a "criminal" even though in almost all cases the individuals acts would not fall within the international common-law meaning of "crime". Accordingly, exiting the country could itself be grounds for forcible repatriation, international law on the subject notwithstanding. However, these draconian measures must be understood in the context of constant border crossing that usually does not lead to intervention. Only the most unlucky, and perhaps flagrant, end up feeling the heavy hand of the authorities.

Although there are periods of relaxation, there are also periods of strict enforcement. Recent steps have included handing the job of guarding the border (which had been the responsibility of the People's Armed Police, or *wujing*) largely over to People's

³⁶ Democratic People's Republic of Korea, Ministry of State Security, and People's Republic of China, Ministry of Public Security, Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas, 12 August 1986. Document obtained in December 2002 by Rescue the North Korean People Urgent Action Network (RENK); English translation published at <http://www.bekkoame.ne.jp/ro/renk/Protocol.htm> [accessed November 2004]. This document cannot be authenticated, but it does not seem implausible.

³⁷ *Idem*, Article 4

³⁸ *Idem*, Article 5, Clause 1

³⁹ *Ibid.*

⁴⁰ *Ibid.*

Liberation Army.⁴¹ In June 2004, bilateral border security arrangements were updated, in the light of the increasing role of the People's Liberation Army.⁴² Vigilance is also obvious in other parts of China. The authorities have moved vigorously to prevent North Koreans from travelling directly from China to the ROK. In 2003, 48 North Korean asylum seekers were arrested as they were about to leave Yantai, Shandong, for South Korea in fishing boats. Until Beijing alters its stance on the issue of direct transit to the ROK, these people's main hope is to travel via third countries. That is not an option for many, and the majority who do not return home simply remain in China.

3.3 Situation of North Koreans in China

3.3.1 Overview

The immediate situation of the displaced persons (hardly any of whom speak Chinese) is considerably eased by the fact that the region of China north of Korea is populated by ethnic Koreans. Most of the area adjacent to the Tumen River is known by the Chinese as the Autonomous Prefecture of Yanbian (Yonbyon in Korean). Although in recent decades the Korean portion of the Yanbian population has slipped from a solid majority to only 40 per cent (due to the arrival in the area of many Han), there are still over two million ethnic Koreans – enough to create an ethnic environment into which the new arrivals can melt. The capital, Yanji, is majority ethnic Korean.

Still, China does not permit North Koreans to apply for asylum in China, nor does it even recognize them as refugees. True, in relaxed times it has deliberately overlooked the flow of people across the border. Registration (*hukou*) requirements can be relaxed, and marriage between Chinese and North Koreans allowed.⁴³ In tense times, on the other hand, such as after high-profile refugee invasions of foreign embassies and consulates, the Chinese have cracked down widely. At such times, North Koreans (who would tend to be recognizable as such even in Yanbian, but have often gone to great lengths not to do so – using makeup and dressing like locals) are in the greatest danger of being discovered by Chinese police or North Korean agents. Thus, there have on occasion been raids on suspected hiding places, and mass expulsions.

Some of the North Koreans are able to find work and housing in local factories run by Christian churches. Others work on farms, perhaps each year earning 600 renminbi (RMB), equivalent to US\$ 72. It is a dangerous life for both the refugees and their local protectors. The police sometimes issue threats to households and churches suspected of aiding “illegal immigrants”. Employers, who are subject to fines of RMB30,000 (US\$ 3,600) for harbouring such people, often become nervous and make the underground workers move on. Thus, the refugees transfer from safe house

⁴¹ Won-Jae Park

⁴² Zhong-Chao liang guo jun fang qian ‘bianfang hezuo xieyi’ weihu bianjing anquan [China and Korea military sign ‘frontier cooperation agreement’ to protect border security], *China.com*, 30 June 2004, http://news.china.com/zh_cn/domestic/945/20040630/11757669.html [accessed November 2004]

⁴³ United States, Department of State, *Country Reports on Human Rights Practices: China*, Washington, 25 January 2004

to safe house, remaining indoors (often in secret cavities or tunnels) except when going outside is absolutely necessary.

At first these people received a reasonably warm welcome, and help. There was widespread sympathy among the Korean Chinese, who recalled that when China had its famine in the early 1960s, many fled to North Korea and were saved. However, in recent years reciprocity has been more problematic, due to donor fatigue, the crackdown by Chinese authorities, and interference by North Korean agents. Substantial bounties are paid to anyone who turns in undocumented North Korean immigrants,⁴⁴ and fines of RMB1,000 (US\$ 120) are imposed on Chinese citizens discovered protecting illegal border-crossers. While there are many horror stories, it is also true that arrivals often still enjoy the mercy and kindness of strangers. Chinese and foreign religious and humanitarian workers have provided assistance in finding housing, education, health care, and general financial support. The locals have established many “safe houses” and various “underground railroads” for those intent on fleeing to Mongolia⁴⁵ or Southeast Asia.

As we shall describe in detail later, some activists take a much more overt approach, organizing attempts to gain entry to foreign embassies and consulates. The main purpose of the organizers seems to be to draw international attention to the plight of these people, but such efforts can have serious side effects, with the Chinese response often being to crack down on the North Koreans more harshly than ever. Interviews in northeast China conducted by the organization Refugees International in the summer of 2004 show a picture of a deteriorating security situation for the North Koreans, with the “underground railroads” becoming increasingly insecure, and North Koreans facing increased risk of deportation to the DPRK.⁴⁶

Some helpers take a more cautious approach, providing the people with a realistic picture of how problematic trying to reach a third country would be, and how difficult it would be to integrate into another culture, even in South Korea.⁴⁷

3.3.2 Estimating the Number of North Koreans in China

For several reasons, it is unclear how many North Koreans there are in China, not least because almost all of them are hiding, or doing their best to be unnoticed. Furthermore, whatever the number might be at any given time, it fluctuates, with many returning (voluntarily or otherwise) to North Korea, and a smaller number finding their way to third countries and/or South Korea.

⁴⁴ Refugees International, North Korean Asylum Seekers in China Face Heightened Risk of Deportation, Washington DC, 27 August 2004 (press release), <http://www.refugeesinternational.org/content/article/detail/3233> [accessed November 2004]

⁴⁵ The case of a woman who travelled across the Gobi desert to the South Korean embassy in Ulan Bator is described in Ward, A., Global Community Slowly Turns Attention to N. Koreans' Plight, *Financial Times*, 31 July 2004

⁴⁶ Refugees International, North Korean Asylum Seekers...

⁴⁷ These problems are elaborated upon in Shim, C., The Lost Generation: North Korean Refugees' Adjustment to South Korean Society, Senior Thesis, Princeton University, 2004, especially ch. 4. Available at <http://www.chosunjournal.com/princetonthesis2004.pdf> [accessed November 2004]

The official Chinese estimate of the number of North Koreans in China is 10,000, but the real figure is several times that number. It is possible that there were as many as 200,000 at the peak of the famine.⁴⁸ The most active NGOs in the area estimate (based on extrapolation from village surveys) that there have been 300,000 or more,⁴⁹ but this is probably an exaggeration. More distant (and thus perhaps more objective) organizations put the numbers at between 10,000 and 50,000 in the year 2002, and since then, well under 50,000.⁵⁰ These latter figures apply to the Yanbian area, but it is unlikely that large numbers of North Koreans are living elsewhere. In early 2003, UNHCR High Commissioner Ruud Lubbers put the figure for China in general at 100,000.⁵¹ If the numbers have been declining since then, the reasons are the improved situation in North Korea (more food, less punishment), intensified surveillance by Chinese police and soldiers, and a high level of refolement.

However, it also true that, for many in the DPRK, going to China has become “thinkable” in a way that previously was not the case. Thus, although after the turn of the century the food situation in North Korea improved slightly, it is doubtful that the migration into China declined precipitously. It has become more generally known that travel to China is not only possible, but also relatively desirable. North Korean propaganda to the effect that China is still a land of civil war, epidemic and famine no longer has credibility. The routes are now well established, and prices to “handlers” have become standardized. Furthermore, eventual (or even quick) resettlement outside of China has come to be perceived, rightly or wrongly, as increasingly likely.

China, however, is determined to keep the population of North Koreans in China as small as possible. The worry is that if it is made too easy for them to come, there will be a flood. “If we grant political asylum to one refugee today”, worried one official recently, “there could be thousands or millions of North Koreans who might seize the opportunity and pour into China”.⁵²

⁴⁸ This figure is said to come from Chinese cadres, and refers to the summer of 1998. See, Natsios, *The Politics of Famine...*

⁴⁹ One press account puts the number of people who have fled North Korea at “as many as 400,000”, see, Mooney, P., Escaped Converts, *South China Morning Post*, 7 February 2004, <http://www.pjmooney.com/nkrefugees.shtml> [accessed November 2004]

⁵⁰ The organizations citing the relatively modest figures are US Committee for Refugees, and the Johns Hopkins School of Public Health. Cited in Smith, H., North Koreans in China: Defining the Problems and Offerrng [sic] Some Solutions, Paper presented at a conference on Cross-border Human Flows in Northeast Asia: A Human Security Perspective, United Nations University and Monterey Institute of International Studies, Tokyo, 7 October 2003, p. 118, http://gsti.miis.edu/CEAS-PUB/2003_Smith.pdf [accessed November 2004]

⁵¹ Choi Wook-seok, UN Official Decries Starvation in North, *Chosun Ilbo*, 19 June 2003, <http://english.chosun.com/w21data/html/news/200306/200306190029.html> [accessed November 2004]

⁵² Platt, K., N. Korea Gets China’s Cooperation on Refugee Returns, *Christian Science Monitor*, 9 June 2000, <http://csmonitor.com/cgi-bin/durableRedirect.pl?durable/2000/06/09/text/p7s1.html> [accessed November 2004]

3.3.3 *Gender Issues*

Various international agreements prohibit trafficking in women. These include the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Suppression of Trafficking in Persons and the Exploitation of the Prostitution of Others. These rights have not been upheld by either China or North Korea in the case of women fleeing North Korea.

Indeed, women face great hazards. They are often forced into sexual slavery, and are sometimes subject to rape. Despite this, today, more than three quarters of the North Korean immigrants are women. Female refugees have more options than do males. Many women have found employment and shelter as domestic workers, though they often end up in prostitution.⁵³ Even women who find more orthodox employment often find themselves over-worked and under-paid.⁵⁴

Some women become wives. A few manage to marry men from Korea (either North or South), but more commonly they marry local ethnic Koreans. Sometimes this is arranged by brokers either in China or pre-arranged in North Korea,⁵⁵ in other cases people sheltering the women arrange, or press, for them to marry locally. Although the arrangements can be exploitive, the women tend to consider themselves lucky – compared with imprisonment or being hungry in North Korea. However, many of the women are virtual sex slaves, before leaving their country often having placed themselves in the hands of professional bride traffickers. Many North Korean parents think that it is better to send their daughters to China than for them to remain at home. At the same time, many of China's ethnic Korean farmers have difficulty finding local wives (the young women being attracted to the cities to work). Sometimes the system produces satisfactory marriages to ethnic Koreans, but all too often, the purchased women are resold to other men, often ethnic Chinese; sooner or later they land in the hands of the police.⁵⁶

3.3.4 *Children*

Some parents have taken their children with them to China. The main purpose, of course, has had to do with nutrition. However, there is the added factor that children in North Korea generally receive inadequate education, though it is uncertain whether moving to China enhances their educational opportunities. Boys of ten years or so can often survive as beggars in Chinese cities, sleeping on the street or in shelters provided by humanitarian organizations. It is not uncommon for them to return

⁵³ Good Friends Center for Peace, Human Rights and Refugees, *In shin mae mae* [Human Trade], n.d., <http://www.jungto.org/gf/archive/korean/rep/43.htm> [accessed November 2004]. See also Refugees International, Trafficking of North Korean Women in China, Washington, 28 July 2003, <http://www.refugeesinternational.org/content/article/detail/890/> [accessed November 2004]

⁵⁴ I Forgot What It Is Like to Hope: Interview with a North Korean Defector in Yanji China, *Keys*, Vol. 13, Summer 2003, <http://www.dailynorthkorea.com/en/keys/lastkeys/2003/13/05.php> [accessed November 2004], pp. 60-9

⁵⁵ North Korean Women Are Everywhere: Meeting with a Marriage Broker, *Keys*, Vol. 13, Summer 2003, <http://www.dailynorthkorea.com/en/keys/lastkeys/2003/13/05.php> [accessed November 2004], pp. 70-4

⁵⁶ Refugees International, Trafficking...

voluntarily to North Korea, boys perhaps being less subject to harassment from DPRK authorities than are adults. The more successful among them take back a little money to their relatives. Others may find their way to third countries, but they are a particularly difficult group to integrate into any non-DPRK society, given their experience of surviving by living on the edges, or even outside, of any social system. This situation is only exacerbated by the fact that in China the children, being unregistered, have little possibility of attending school.⁵⁷

3.3.5 Detention in China

When captured by the Chinese authorities, North Korean escapees can sometimes get off by paying fines, which range from RMB2,000 to RMB5,000 (US\$ 250-600). More likely, they will be imprisoned, pending being returned across the border. While confined in China, mistreatment is common, but conditions are still preferable to repatriation. In April 2004, believing they were about to be repatriated, 80 apprehensive prisoners in Jilin Province's Tumen Detention Centre rioted, taking two guards hostage for three days. After sending in a large force of People's Armed Police, the authorities regained control. The prisoners' fears proved justified; the next day most of them were returned to North Korea.⁵⁸ Another incident recently occurred at the Rongjing prison camp, where 110 reportedly went on hunger strike.⁵⁹

More recently there have been signs that elements in the Chinese government may be concerned about the bad image China is gaining over the refoulement issue. Moderates may be urging a rethinking of the whole issue, also arguing that the Pyongyang regime should be pressed to institute Chinese-style agricultural reforms. Chinese politics at the higher levels is notoriously opaque, and speculation must be understood to be only that. Still, to the extent that such voices exist, they must be heeded if China is to gain respect as an upholder of international law.⁶⁰

3.4 International Response

Regarding the issue of the treatment of North Koreans in China, the international response has been insufficient.

3.4.1 Foreign Governments and NGOs

The West and Japan have other priorities. There is the added concern that intervention might be counterproductive; it is believed that China might react to pressure by closing the border completely. The ROK holds the view that it must tread lightly, given the geopolitical realities. The South Korean media have been discouraged from reporting on the problem.

⁵⁷ The best account of children's issues is Refugees International, *No Chance to Dream: North Korean Children in China*, Washington, 7 July 2004, <http://www.refugeesinternational.org/content/article/detail/3007/> [accessed November 2004]

⁵⁸ 418 Domun [Tumen] Border Prison Uprising, *Keys*, Vol. 16, Spring 2004, pp. 51-59

⁵⁹ Life Funds for North Korean Refugees, *Hunger Strike Spreading Among Detained NK Refugees: Reports Indicate New Spirit of Protest*, Tokyo, 25 March 2004, <http://www.northkoreanrefugees.com/hunger1.htm> [accessed November 2004]

⁶⁰ See e.g. Takahashi, K., *China's Worsening North Korean Headache*, *Asia Times* [Hong Kong], 29 January 2005

On the other hand, South Korean NGOs have been outspoken. These include the Citizens' Alliance to Help Political Prisoners in North Korea, and other Buddhist and Christian organizations. However, it is the general perception among Chinese government officials and academics that the South Korean NGOs are more political or sectarian than humanitarian, and are seeking to publicize problems rather than work seriously to ameliorate them. This view is not entirely wrong, but it is a gross oversimplification. It is unfortunate that there is so little communication between the South Korean NGOs and Chinese academics and others interested in the problem. The organizations are at least technically illegal, so must operate in secrecy, which is not a situation conducive to their being understood on the basis of transparent operations. Under the circumstances, it is certainly understandable that these organizations, from the Chinese and North Korean point of view, are tainted by their underlying anti-communist, anti-DPRK, and Christian fundamentalist points of view.

Although there are many South Korean religious and other humanitarian personnel working in China's northeast (mainly in the Jilin province), it is not easy for international aid workers to operate there. Most of them are in China on a temporary basis. Their presence in the country is at the sufferance of China, whose attitude hardened at the turn of the century. Aid workers tended to be closely watched, and were sometimes arrested and deported. The situation worsened in 2002. On occasion aid workers have been physically abused. The crackdown even affected South Korean journalists who were covering the refugee issue. Thus, it has been estimated that only 20 per cent of the North Koreans in China have any contact with foreign NGOs.⁶¹ The percentage is not higher because of the severe constraints placed on these organizations by the Chinese authorities. Some of the teams in China have reportedly been infiltrated by North Korean spies, giving rise to suspicions and recrimination. Aid workers are subject to arrest and deportation, or disappearance.⁶²

As for the international, largely Western and Japanese NGOs, they have done what they can, with Amnesty International making appeals, and the International Committee of the Red Cross issuing travel certificates. The New York-based organization Human Rights in China has written to the Chinese authorities appealing for humane treatment of these refugees and reminding China of its obligations under international law. Among the more active groups is the Japan-based Rescue North Korean People (RENK).⁶³

3.4.2 United Nations

In 1995, UNHCR entered into an agreement with China establishing a full Branch Office in Beijing.⁶⁴ At the time, any refugee issues were comparatively minor,

⁶¹ Jung Hwa Song, Shanghai University. Personal communication.

⁶² China Ousts 4 over Korea Refugee Issue, *New York Times*, 28 August 2003

⁶³ See, Rescue North Korean People, website in Japanese, Korean and English at <http://www.bekkoame.ne.jp/ro/renk/> [accessed November 2004]

⁶⁴ 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

involving limited numbers of people mainly from Vietnam. It could not have been known at the time that soon undocumented North Koreans would be arriving in China in substantial numbers. While the UNHCR presence was originally welcomed by China, the organ is now seen as meddling in what China would prefer to keep as an internal or bilateral matter.

According to Articles II and IV (2, 4) of the agreement, the agency was expected to fulfil all of its functions in accordance with the UNHCR mandate. According to Article III (5): “In consultation and co-operation 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.” Disputes were to be submitted for binding arbitration (Article XVI). In the late 1990s, a few visits were paid to the northeast, but when UNHCR interviewed some North Koreans there and established that they were refugees, China objected and thereafter denied access. Since then, UNHCR has had virtually no direct access to the North Koreans in the northeast.

Thus, the organization’s involvement has been largely limited to individuals who attempt to gain entrance to diplomatic or international facilities – a situation which only encourages such actions. In 2001, it assisted a family of seven North Koreans who sought refuge in the UNHCR offices in Beijing; they were eventually allowed to travel to a third country. More recently, however, UNHCR has broadened its purview, as for instance in the case of the aforementioned 48 asylum seekers whose voyage from Shandong to Korea was aborted by the Chinese. However, the big issue is the North Koreans in the northeast, where UNHCR is unable to operate.⁶⁵

The effectiveness of UNHCR in this situation has been questioned.⁶⁶ However, the commissioners have had to be cautious in dealing with these issues. As the then High Commissioner Sadako Ogata said in 2000, she had to limit herself to “discreet means” of dealing with the problem. She conducted talks with the various governments involved “aimed at clarifying the position of the UNHCR in regard to North Korean political asylum seekers and refugees, and trying to promote a humanitarian approach to this problem in line with universally accepted standards”.⁶⁷

People’s Republic of China, UNTS Vol. 1898/1899, I-3237, 11 December 1995, pp. 61-71. Text available at http://www.house.gov/international_relations/108/rad042804.pdf [accessed January 2005]

⁶⁵ UN News Service, China: UN Agency Seeks Access for 48 Asylum Seekers from DPR of Korea, 21 January 2003

⁶⁶ Rosett, C., Insane Asylum Policy: The U.N. Nurtures Terrorists and Lets Real Refugees Fend for Themselves, *Wall Street Journal*, 8 January 2003; Life Funds for North Korean Refugees, How Effective is the UNHCR? China Flagantly Ignoring Treaty, Tokyo, n.d., <http://www.northkoreanrefugees.com/unhcr.html> [accessed November 2004]

⁶⁷ Quoted in Seymour, J.D., China and the International Asylum Regime: The Case of the North Korean Refugees in China, in *North Korea: Countries’ Policies on North Korean Refugees*, Human Rights Without Frontiers, Brussels, n.d., http://www.hrwf.net/html/north_korea_countries_polic.html [accessed November 2004]

Early in his tenure, High Commissioner Ruud Lubbers continued in the same vein.⁶⁸ Soon, however, he became much more outspoken – though still obviously aware of China’s sensitivities:

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.⁶⁹

Although the United States has expressed support for UNHCR’s efforts to help the North Koreans, the reaction from most foreign governments to the problem has been muted. Still, it is quite possible that UNHCR demarches have had a positive, albeit limited, impact on the situation.

3.5 Third Countries

Those who succeed in gaining entry into foreign diplomatic compounds have generally been treated leniently, and allowed to travel to third countries, with South Korea being the ultimate goal.

A particularly dramatic diplomatic incident took place on 8 May 2002, when armed Chinese police entered Japan’s Shenyang consulate and dragged away five North Koreans seeking asylum. Although this would appear to be a violation of the Vienna Convention on Consular Relations, a videotape of the incident showed Japanese officials doing nothing to interfere with the police. Eventually, an agreement was reached for the North Koreans to travel to Seoul via the Philippines. Thereafter, the Chinese circulated a memorandum to all Beijing embassies, insisting that foreign governments “inform the Consular Department of the Chinese Ministry of Foreign Affairs in case illegal intruders were found, and hand over the intruders to the Chinese public security organs”. There was considerable international objection. Some ambassadors ignored the memorandum on the grounds that, inasmuch as China would probably send the people to North Korea, turning them over would be tantamount to refoulement, and thus illegal. Now, the outsides of the compounds are heavily guarded by Chinese police.

⁶⁸ Interview with High Commissioner Ruud Lubbers in *Asahi Shimbun*, 4 August 2003, in which he explained why the UNHCR was so much more proactive regarding Africans than North Koreans. For text of interview see <http://www.freenorthkorea.net/archives/freenorthkorea/000387.html> [accessed November 2004]

⁶⁹ Opening Statement by Mr. Ruud Lubbers, United Nations High Commissioner for Refugees, in, United Nations, General Assembly, Report of the Fifty-fourth Session of the Executive Committee of the High Commissioner’s Programme, A/AC.96/987, 10 October 2003, <http://www.unhcr.ch/cgi-bin/texis/vtx/home/openssl.pdf?tbl=EXCOM&id=3f8d03ad4&page=exec> [accessed November 2004], *UNHCR RefWorld*, Issue 13, 2004, Vol. 1

Nonetheless, similar attempts have continued, and are often successful. Twenty people gained entry to the South Korean consulate in Beijing early in the morning on 15 October 2004.⁷⁰ The South Koreans' policy on such matters is to respect the wishes of the refugees and negotiate with the Chinese authorities accordingly. Nevertheless, ROK diplomatic facilities are so heavily guarded by the Chinese police that other countries' missions are more likely targets.

Thus, on 29 September 2004, 44 people disguised as Chinese construction workers climbed makeshift ladders and gained entry into the Canadian diplomatic mission in Beijing. With the exception of one elderly man, who was caught by the Chinese police, all made it into the compound, though one was so badly injured that he had to be sent to a local medical facility. The Canadian embassy has had only minor improvements to its security, with the Canadians refusing a Chinese request that the compound walls be topped with razor wire.⁷¹ Towards the end of October 2004, a spate of similar incidents took place around Beijing's foreign embassies.⁷²

Those who favour these high-profile tactics argue that, even though only a tiny minority of China's North Koreans benefit, at least these individuals do, and at the same time, these incidents remind the world of the plight of this population. Critics argue that the cost to others is too great, and question whether the people organizing these events are really interested in helping the population or are mainly bent on promoting a political and religious agenda. At any rate, the number gaining access to diplomatic compounds is small compared to the number who quietly pass through China to other countries.

3.5.1 Asian Countries

Most North Koreans in China have no intention of travelling to a third country but would like to remain in China at least temporarily, or return home when conditions there improve.

Some do indeed seek to move on. There are religious organizations and brokers who arrange passage. This often involves the purchase of false identity papers and passports, arranged by foreign sympathizers (or opportunists). Some simply fly out, but most employ brokers to guide them either to Mongolia, or across the Yunnan border to Laos, Burma, or (more problematically) Vietnam. Some North Koreans who reached Vietnam have been forced back into China. The lucky ones may go on to Thailand or at least Cambodia. In Thailand, especially, the international refugee regime is respected. The North Koreans are generally referred to UNHCR by religious

⁷⁰ Video footage in *Korea Times* [Seoul], 15 October 2004

⁷¹ York, G., Desperate Refugees Storm Canada's Beijing Embassy, *The Globe and Mail* [Toronto], 30 September 2004

⁷² Seoul, Beijing Discuss Fate of Detained N. Korean Asylum Seekers and S. Koreans, *Chosun Ilbo*, 29 October 2004, <http://english.chosun.com/w21data/html/news/200410/200410290014.html> [accessed November 2004]. For the position of the Chinese government, see Foreign Ministry Spokesperson Zhang Qiyue's Press Conference on 28 October 2004, <http://www.fmprc.gov.cn/eng/xwfw/s2510/t168339.htm> [accessed November 2004]

groups or by the South Korean embassy. After interviewing them, UNHCR generally confirms the individuals as refugees, and they are allowed to proceed to South Korea.⁷³ Overall, because of the expense and hardship involved, few who attempt such a journey succeed. Aside from the risk of being caught, bribes, forged papers, and general living and travel costs is apt to be over US\$ 10,000, and is often two or three times that.

More feasible is travel to relatively nearby Mongolia, even though a trip there requires travelling across Manchuria, which Chinese authorities make difficult. There has been talk of setting up a refugee camp in Mongolia for the North Koreans. The site of the former Soviet military base at Choybalsan has been proposed for the purpose. In addition, the South Korean Christian organization Doorae Community Movement has purchased land in Mongolia with a view to establishing such a camp. Both China and North Korea are adamantly opposed to any such facility, and Mongolia is disinclined to antagonize either country. Not even South Korea favours establishing such a camp.⁷⁴

The reception the North Koreans receive in Mongolia has varied considerably. Sometimes they have been arrested at the border and forced to remain in China. At other times, however, the Mongolian authorities have co-operated with the South Korean embassy in Ulan Bator, and with UNHCR, to protect them and facilitate their onward travel. This is not a phenomenon that the Mongolian authorities are eager to encourage, and the re-opening of North Korea's embassy in Ulan Bator in August 2004 will not have made matters easier.⁷⁵

3.5.2 Russia

Although most North Korean émigrés have sought first refuge in China, a few cross the 16 km long Russo-Korean border, or reach maritime Russia via the PRC. Russia's ethnic Koreans, known as Kahyeretz, are very poor, do not speak Korean, and have little sense of kinship with people from Korea. However, Russia is still usually a better place for Korean refugees than is China. UNHCR has a stronger presence in Russia, and the South Koreans are also able to help them there. In the late 1990s, the Russians handed over 340 North Korean refugees to UNHCR. However, not all were so lucky.

One notorious case involved a group of seven people who escaped from North Korea in November 1999. They included six adults and a 13-year-old boy. The group first entered China, and then moved on to Russia. They found refuge in a home in the town of Pervomaiskoe, but were discovered and arrested there by the Russian Border Patrol. Interviewed on Russian television, they said they feared execution if they were returned to North Korea; they wanted to go to South Korea or a third country. At first,

⁷³ Human Rights Watch, *Invisible Exodus...*

⁷⁴ Brooke, J., Refugee Plan for Mongolia Adds to Dispute on North Korea, *New York Times*, 28 September 2003

⁷⁵ Brooke, J., Mongolia under Pressure to Serve as Haven for Refugees, *New York Times*, 21 November 2004

the Russians agreed to send them to Seoul, and seats were reserved for them on a flight. However, China, which President Boris Yeltsin was about to visit, objected, and the Russians fell into line. The Russian ambassador in Seoul declared that Russia would not tolerate the use of its territory as a route of passage for “illegal trespassers” from North Korea or any other country. Thus, even though they had been certified as refugees by UNHCR and carried travel documents issued by the International Committee of the Red Cross stamped with South Korean visas, the group was sent back to China. Refugee High Commissioner Ogata’s reaction was sharp: “They must be protected against forcible return to North Korea.” However, her unusually blunt admonition went unheeded. Chinese Foreign Ministry spokesperson Zhang Qihua insisted that the North Koreans in China were not refugees and could be sent back to their country.⁷⁶ Information obtained from the North Korean government later indicated that two of the returnees were serving labour camp sentences, while four had “returned to their normal lives”. The existence of the seventh returnee was denied, but other sources found that he had fled once more and now reached South Korea.⁷⁷

3.5.3 *Western Countries*

The Western nations have been slow to involve themselves in the North Korea refugee issue. However, the US Congress recently passed, and President George W. Bush signed, the North Korean Human Rights Act of 2004, which authorized (but did not appropriate) US\$ 24 million per year in assistance, and allowed North Korean refugees to come to the United States. Congressional discourse has been dominated by the Christian right, and the bill was marred by provocative language which immediately raised questions as to whether the intent of the bill was purely humanitarian.⁷⁸ Simultaneously with the signing of the bill, a Korean-American Christian group announced that it was setting up a shelter in New York to accommodate about 50 North Koreans.⁷⁹

The reaction of Pyongyang to this has been extremely strong. A statement carried by the official KCNA news service described the new law as “full of anti-DPRK poisonous clauses”, and indicated that there was now all the less reason to negotiate issues such as disarmament.⁸⁰

⁷⁶ See United Nations High Commissioner for Refugees, UNHCR Protests Chinese Deportation of North Koreans, 13 January 2000 (press statement), <http://www.unhcr.ch/cgi-bin/texis/vtx/news/opedoc.htm?tbl=NEWS&id=3ae6b81460&page=news> [accessed January 2005]

⁷⁷ United States Committee for Refugees, *World Refugee Survey: Country Report 2002: North Korea*, Washington, 2002

⁷⁸ United States, Congress, North Korean Human Rights Act of 2004, HR4011, 18 October 2004. Text of the law available e.g. at <http://www.northkoreanrefugees.com/hr4011.pdf> [accessed November 2004]. Press accounts, e.g. Bloomberg.com, Bush Signs Law Expanding Rights of North Koreans to U.S. Asylum, 18 October 2004, <http://quote.bloomberg.com/apps/news?pid=10000080&sid=af4UnWfen0HY&refer=asia#> [accessed November 2004]; BBC News, US Law Promises Help to North Koreans, 19 October 2004, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/asia-pacific/3754974.stm> [accessed November 2004]

⁷⁹ Chung Ah-young, Shelter for N. Koreans Due in New York, *Korea Times*, 17 October 2004

⁸⁰ Bloomberg.com

3.6 South Korea

Between the Korean war and 1989, only 607 people defecting from North Korea reached South Korea, despite the fact that the ROK often encouraged them to do so. By the early 1990s, the number arriving was only eight or nine per year. This began to change in 1994, when 52 arrived, and the number has increased almost every year since.⁸¹ Altogether, between 1994 and 2003 approximately 3,800 arrived – at least 1,140 in 2003 alone. So far, in 2004 North Koreans have continued to arrive in South Korea in substantial numbers. In July 2004, a cohort of 468 arrived in Seoul via an unspecified Southeast Asian country. There have been predictions that by 2005 the number of North Koreans in the South could exceed 10,000.⁸²

On rare occasions, people manage to travel by boat directly from the North to the South. Such was the case on 19 October 2004, when two defectors were found in a small boat off the west coast of South Korea.⁸³ However, as explained above, almost all arrive via China and a third country.

For their part, the South Koreans have mixed feelings about the prospect of North Koreans arriving in increasing numbers.⁸⁴ To be sure, the constitution defines northern and southern Korea as a single country (Article 3). Thus, with some exceptions (including those whose arrival in South Korea could cause the country political or diplomatic hardship), North Koreans have the right to travel to the South, a policy spelled out in law:

1. Any person who has defected from North Korea and desires to be protected under this Act shall apply for protection to the head of an overseas diplomatic or consular mission....
2. The head of an overseas diplomatic or consular mission...who receives such an application for protection...shall without delay inform the fact to the Minister of National Unification and the Director of the Agency for National Security Planning....
3. The Director of the Agency for National Security Planning notified pursuant to the provision of Paragraph 2 shall take provisional protective measures or other necessary steps and shall without delay inform the Minister of National Unification of the result.⁸⁵

Although this sounds unequivocal, in practice much depends on the attitude of the immediate host country. Usually the ROK does endeavour to make it possible for such people to travel to South Korea. In 2003 Seoul issued a position paper on the North Korean refugee issue, which reiterated the principle of accepting all North

⁸¹ Press releases issued by the Ministry of Unification of the Republic of Korea cited in Shim, p. 47

⁸² Na Jeong-ju, NK Defectors Living in Poverty in South, *Korea Times*, 17 October 2004

⁸³ Yonhap News, Two North Koreans Defect after Crossing the Western Sea, 19 October 2004

⁸⁴ The ambivalence of South Korean public opinion is detailed in Shim, pp. 58-70

⁸⁵ Republic of Korea, The Protection of North Korean Residents and Support of Their Settlement Act, Law Number 6474, partial revision, 24 May 2001

Korean refugees wishing to come, and also said that people wishing to settle in third countries would be assisted. However, “from a long term perspective” the government wanted to reduce the number of refugees “by eliminating causes of leaving their home country”.⁸⁶

As for handling people when they arrive in South Korea, traditionally the “defector model” has been adhered to. That is, the new arrival receives a lump sum of money and then, after debriefing, is largely ignored by the authorities. It may be that the ROK is moving toward a more appropriate refugee resettlement model. When people arrive in South Korea, they are still turned over to the Korean National Intelligence Service to undergo debriefing, but they now usually remain for a few months at Hanawon Camp, which can accommodate 1,500 people and even after release, the government continues to have some supervisory authority over them. They receive financial support from the government. Instead of each person on arrival being provided with a lump sum (which often resulted in the funds being mishandled or used to pay off a debt to a broker), it is now paid out over a three-year period. Also, in 2004, 70 per cent were reported to be on government allowances for the poor. People are also provided with job training, but the results have been disappointing, with under two per cent actually employed.⁸⁷ Thus, the “refugee resettlement model” is not yet a complete reality.

The transition from living under communism to the rough-and-tumble of life under individualistic capitalism is very difficult for many.⁸⁸ A poll conducted by a South Korean newspaper in September 2004 found that in a sample of 100 local North Korean refugees, 69 per cent indicated that they would prefer to proceed to a Western country. Nonetheless, such persons should be counted as already among the fortunate ones.⁸⁹

3.7 Repatriation to DPRK

It is likely that over the years the portion of refuge seekers forcibly repatriated by China to North Korea has been about ten per cent (more during crackdowns, less during more relaxed times).⁹⁰

The North Korean criminal code provides for up to a three-year sentence in a labour re-education camp for “illegal” border crossers.⁹¹ If such a person has “betrayed the motherland and people” or committed “treacherous acts ... such as espionage or

⁸⁶ Republic of Korea, Ministry of Foreign Affairs and Trade, The Republic of Korea’s Position on the Issue of North Korean Refugees, 26 September 2003, http://www.mofat.go.kr/en/for/en_forPrint.mof?seq_no=1692&b+code=~peace [accessed November 2004]

⁸⁷ Na Jeong-ju

⁸⁸ Paterniti, M., The Flight of the Fluttering Swallows, *New York Times*, 27 April 2003

⁸⁹ *Taipei Times*, 22 November 2004, citing *Segye Times*

⁹⁰ Sokolski, H.D. (ed.), *Planning for a Peaceful Korea: A Report of the Korea Competitive Strategies Working Group*, Carlisle PA: Strategic Studies Institute, 2001, Chapter 1, p. 14

⁹¹ Democratic People’s Republic of Korea, Criminal Code, Article 117

treason” the term is supposed to be at least seven years, and in serious cases capital punishment is authorized.⁹² In practice, the State Security Bureau normally first detains returnees for ten days to two months. Some have then been let off with simply a warning, and even people considered offenders, if not serious, are sent home after a few months in jail (sometimes to be re-incarcerated). Sometimes these “minor” offenders are transferred to labour camps (*nodongdan ryundae*) or provincial concentration centres (*do jibkyul so*). The former are normally for people who have committed minor economic crimes, receiving sentences of six months or less; the latter are intended for temporary detention and investigation of people suspected of more serious offences.

For those who are repeat offenders, had religious contacts, or simply were abroad more than a year, the outcome has been harsher. They have been put on trial, either by the Social Security Department or State Security Department. If the motivation for escape is deemed to be purely economic, the sentence might still be relatively light. In the past, people were routinely detained in reform centres (*kyohwaso*), i.e., sites of administrative detention.⁹³ One young escapee describes what happened to him after his first unsuccessful flight: “I was caught. They sent me to a labour training camp. There I worked in a housing construction site. When I tried to pause and catch my breath, they started beating and kicking me. Many people died there, but I was young enough to survive for four months until I was released”.⁹⁴ However, it is likely that conditions have improved; with the official Pyongyang line, at least, now being that people who went to China only in search of food are no longer to be considered criminals.

If the motivation is seen as in any way political, however, the sentence has generally been dire: sometimes execution, and rarely less than life in prison, where conditions are potentially life-threatening. Some people are sent to prison farms, which are forbidding places, with small unheated cells. Food is wholly inadequate. Often prisoners sleep on the cold floor. Sanitary facilities are poor. There are reports of prisoners being tortured. Sometimes an inmate’s condition becomes so dire that the wardens will release him or her, rather than have a dead prisoner on their hands.

Such extreme treatment was relatively common from the mid-1990s through 1998. After that, there appear to have been fewer instances of such harshness for returnees. Still, life can be made very unpleasant for such people. The Human Rights Watch report describes the observations of a former border guard who was repatriated in Musan in April 2000:

While we were crying loudly, they brought us to the Chilsung customs house in Musan. A North Korean officer of the National Security Agency greeted us

⁹² *Idem*, Article 47

⁹³ Rendler, J., *The Last Worst Place on Earth: Human Rights in North Korea*, in Sokolski, H.D. (ed.), *Planning for a Peaceful Korea: A Report of the Korea Competitive Strategies Working Group*, Carlisle PA: Strategic Studies Institute, 2001, p. 122

⁹⁴ Becker, J., *Speaking Out: The Refugees’ Accounts*, *South China Morning Post*, 17 May 2000

there, shaking hands with each of us, saying, ‘Good job!’ However, after the Chinese turned back, the officer shouted, ‘Kneel down, you son of a bitch’. They checked our pockets. They forced my wife to take off her *talle-baji* (tailored trousers) and took them away, because they symbolized capitalism. She had to stay, wearing only her underwear, even though it was very cold outside. They also took the South Korean clothing off people. They investigated whether the repatriated people had any relationship with South Korea.... If a person met South Koreans or reporters or wrote articles, or attended church or escaped after committing a crime in North Korea, they would be secretly killed, without even God knowing.⁹⁵

Given the inhumane conditions in the camps,⁹⁶ and the disparity in treatment of different categories of border crossers, the tendency is for those caught to deny any political motivation and insist that they had only left the country for economic reasons. It should also be noted that the DPRK recognizes guilt by association. Relatives of an “illegal” emigrant or of a convicted person can be punished even if they themselves bear no guilt.

Of course, it is impossible to verify most of the claims of inhuman treatment of returnees. However, given the closed nature of the system and the refusal of the North Korean authorities to grant access to prison facilities, it would be unwise to dismiss the bulk of the claims. Solid research that suggests that the reality is not very different from the worst charges.⁹⁷

4 Prospects

4.1 Influence of International Actors

The issue of North Korean asylum seekers was forced upon a reluctant PRC, which has tried to keep the matter bilateral between China and North Korea. For a long time the international community, for reasons both sound and unsound, largely ignored the issue. As the problem has not gone away, the international community now finds that it must become more involved.

4.1.1 UN Bodies

The United Nations is becoming more proactive. In 2004 the UN Commission of Human Rights adopted a resolution expressing “deep concern” about the human rights situation in North Korea, including “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”. The DPRK was called upon to refrain from “sanctioning citizens ... who have moved

⁹⁵ Human Rights Watch, *Invisible Exodus*, p. 22

⁹⁶ Detailed at length *idem*, and also in Hawk, D., *The Hidden Gulag: Exposing North Korea’s Prison Camps, Prisoners’ Testimonies and Satellite Photographs*, Washington: US Committee for Human Rights in North Korea, 2003, <http://www.hrnk.org/hiddengulag/toc.html> [accessed November 2004]

⁹⁷ Hawk

to other countries” and from “treating their departure as treason leading to punishments...”⁹⁸ The Commission also appointed a Special Rapporteur on North Korea. His first report echoes the concerns already expressed, but also contains recommendations addressed both to the government of the DPRK and to countries receiving North Korean refugees and migrants as well as other international agents. In particular, the recommendations emphasize that other countries should “uphold the protection of refugees and other persons who have fled from the Democratic People’s Republic of Korea, including the principle of non-refoulement and the grant of at least temporary refuge/protection, and end bilateral and other arrangements that jeopardize the lives of those who seek asylum.”⁹⁹ In addition, as noted above, the UNHCR has played a somewhat more active role, though not in the area in the northeast of China of greatest concern.

4.1.2 Nation-state Actors

Otherwise, the burden now falls almost exclusively on South Korea. So far, South Korea has been able to handle the influx. However, the numbers are unlikely to remain at their current low levels, and the international community will have to come to grips with the issue, by pressing China to live up to its obligations under the international refugee regime; by assisting China in providing for the North Koreans in China and helping those who wish to leave China to do so; and by making provisions for these people to settle in South Korea and third countries.

4.1.3 International NGOs

So far, the international NGOs that have been most visibly involved are those based in South Korea. Recently some trans-national organizations, such as Human Rights Watch, Refugees International, and Freedom House, are also being heard from. Governments dealing with China might be in a position to influence Beijing to ease its stand regarding NGO activities in China. At the same time, the NGOs (particularly those based in East Asia, but also some in the West) must be aware of China’s political and nationalistic sensitivities; if the North Koreans are to be helped, any aid effort must be professional, non-political and non-judgmental. If this spirit is adhered to, it should be possible to have a favourable impact on the lives of the target population.

4.2 Internal Developments in China.

It is never possible to predict the course of Chinese politics. At this writing, the “fourth generation” of leadership has just consolidated its control. No one knows in what direction they will take the country, but they are in a position to begin heeding international human rights law and humanitarian regimes if they so intend. Beijing will have to choose between adhering to its commitments to North Korea, and

⁹⁸ United Nations, Commission on Human Rights, Resolution on the Situation of Human Rights in the Democratic Peoples’ Republic of Korea, E/CN.4/2004/L.21, 8 April 2004

⁹⁹ United Nations, Commission on Human Rights, Situation of Human Rights in the Democratic People’s Republic of Korea: Report Submitted by the Special Rapporteur, Vitit Muntarbhorn, E/CN.4/2005/34, 10 January 2005

honouring its obligations under international law. China is more likely to do the latter if offered incentives rather than punishments. Although the international community cannot make it “safe” in terms of domestic politics for them to yield to external pressures, at least it can try to create a climate in which humane treatment of refugees will be seen as being to China’s (and even the regime’s) benefit.

4.3 Internal Developments in North Korea.

The outlook in North Korea is not wholly bleak. In 1999, North Korea’s economy turned the corner and finally began growing again, with the GDP estimated to have risen by 6.2 per cent that year. More recently, growth has slowed to around one per cent (in 2003),¹⁰⁰ so the economy is still well below 1980s levels. The economy can be expected to improve as the benefits of marketization (however limited) are realized. And foreign aid is helping. However, there was a general drop in aid to North Korea following the international political crisis of October 2002.

Regardless of any improvements in North Korea’s economy, whether most of the North Koreans now in China will be willing to return home, given the still repressive political system, is doubtful. Many are frantically trying to save enough money to buy counterfeit Chinese residency cards, which cost well over US\$ 1,000 each. It is unlikely that North Korea will be able to win their hearts. But if the international community rewards any effort on the part of Pyongyang to reform the economy, that would go a long way toward keeping the flight problem under control. Already there are positive signs. There have been indications that the North Korean authorities have concluded (either on their own or due to international pressure) that it is not appropriate to punish people who merely spent time in China in search of food. Cautious steps have even been taken to normalize visits to China, at least on a trial basis.¹⁰¹ All such measures should be acknowledged and encouraged.

5 Conclusion

Although the severity of the famine in North Korea, and the hardships under which North Koreans labour in China, have both eased somewhat since the late 1990s, there are still many North Koreans in China, and some in third countries, who urgently need assistance.

The international community is divided on what approach to take in addressing the North Korean refugee problem. Various NGOs, and more recently the United States Congress, believe in high-profile actions to call attention to the problem. South Korea, on the other hand, prefers to avoid antagonizing the North Korean government over these issues, and emphasizes quiet diplomacy. However, in the ROK, pressures are mounting, with the government being urged to take a more proactive approach. The Korea Institute for National Unification has issued a report arguing “if the

¹⁰⁰ United States, Central Intelligence Agency, *The World Factbook: Korea, North*, Washington, January 2004 [updated 2 November 2004], <http://www.cia.gov/cia/publications/factbook/geos/kn.html> [accessed November 2004]

¹⁰¹ See Pyongyang Loosens Border Controls, *Chosun Ilbo*, 15 March 2004, <http://english.chosun.com/w21data/html/news/200403/200403150023.html> [accessed January 2005]

government remains passive while the human rights issues involving North Korea are rapidly gaining momentum in the international community, it will weaken Seoul's international standing and exacerbate domestic conflicts".¹⁰²

It would be desirable if these issues could be addressed in legal and humanitarian terms, and handled separately from the political and strategic issues that embroil this part of the world. This does not mean that excessive legalism is called for. China has shown that when it wants to it can live with legal anomalies. The Chinese government would do well to go further, and seek creative ways to give some legitimacy to the status of long-staying North Koreans, perhaps by granting visas. In addition, the international community must be sensitive to shifts in policy on the part of Beijing and Pyongyang. Subtle movements may seem frustratingly limited, but any step in the right direction should be cause for reduced foreign hostile rhetoric and increased willingness to co-operate. The situation is ever in flux. History demonstrates that failure to appreciate and work with East Asian realities is usually counterproductive.

Given the hazards of reaching a third country, most of the North Koreans in China would simply prefer to remain in China as the least intolerable option. Many of the migrants have been able to integrate into the local society and lead productive lives; this is always an appropriate way to solve refugee problems. Those who have fallen into unsavoury pursuits or are victims of exploitation need help in extricating themselves from their situations, but even for such people, refugee camps are not a good solution.

The analysis presented in this paper suggests that there are a number of specific measures that could be taken by the international community, by China, and by North Korea, which would ameliorate the situation of the North Korean refugee seekers.

International community

- Supply resources to provide for the health and welfare of the North Koreans in northeast China, and education for the children;
- Provide assistance for the economic development in the poorer northern areas of the DPRK, such as North Hamgyong province;
- Sponsor an international meeting of representatives of the affected and interested governments, and inter-governmental organizations, to forge a comprehensive plan to deal with the various problems.

China

- Refrain from involuntarily returning to North Korea, or otherwise penalizing, North Koreans in China who have (aside from the issue of border crossing) abided by international common law;
- Remove impediments to legitimate foreign humanitarian organizations willing and able to assist the North Koreans in China;

¹⁰² Seo Dong-shin, Minister Doubts Pressure Tactics on Human Rights in North Korea, *Korea Times*, 19 October 2004

- Give UNHCR access to any person seeking assistance in a foreign embassy or consulate, with China respecting any determination made by the UNHCR regarding an individual's claim to refugee status;
- Give UNHCR access to North Koreans now in China, so that (as a first step) an inventory of needs could be established and prioritized;
- Repeal any national laws and regulations, and all bilateral agreements, that are incompatible with international legal instruments to which China is a party;

North Korea

- Cease to punish people who have voluntarily returned to North Korea, people who were previously involuntarily returned, and the relatives of both;
- Establish orderly procedures for those wishing to go to the Republic of Korea, preferably directly;
- Provide access for UN representatives to prisons and detention facilities believed to hold people for "illegally" having left the country;
- Allow the international community to provide assistance for economic development in poorer regions of the country.

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